



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2013/0174

B E T W E E N:-

GANESH SITTAMPALAM

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and for the reasons set out in Annex A:

IT IS ORDERED BY CONSENT THAT:

1. The Appellant withdraws his appeal in relation to section 42.
2. The appeal is part allowed insofar as the Commissioner's decision notice FS50479442 is substituted to include a breach of section 17(1).
3. There be no order as to costs.

Signed:

NJ Warren

Chamber President

13 December 2013

Annex A

Section 42

A previous decision notice (FS50425063) had ordered the release of all of the information in the 2008 pamphlet on the grounds that it was within the scope of the relevant request and was not covered by section 42.

This decision notice was substituted, by consent, on appeal (EA/2012/0200) because the Commissioner accepted that a large amount of the August 2008 pamphlet was out of scope of the relevant request which specifically sought information about the Duchy of Cornwall. In addition, the Commissioner accepted that parts of what remained in the 2008 pamphlet which were within scope were in fact exempt under section 42.

In this case of FS50479442, the Commissioner considered that the parts of the 2008 pamphlet that were out of scope in the previous request but in scope for this request and that had not already been voluntarily disclosed by the Cabinet Office were also covered by section 42. The Commissioner further concluded that section 42 applied to the withheld parts of the 2010 and 2011 pamphlets.

The Appellant was of the view that the reasoning for the change of position from FS50425063 to FS50479442 was not clear and in particular that paragraphs 12; 23 and 31 of the latter decision notice were inadequate or erroneous in this regard and that this was one of the main reasons for bringing the appeal.

However, upon receiving the above clarification, the Appellant has accepted that section 42 is engaged in respect of the disputed information.

The Appellant then also reviewed the public interest test arguments. Upon reflection, the Appellant advised that he no longer wished to pursue the appeal on the basis that the Commissioner erred in concluding that the public interest test favoured maintaining the exemption.

As such, the Appellant agreed to withdraw his appeal insofar as it relates to section 42.

Section 17

The Appellant argued that there was a breach of section 17(1) for the failure of the Cabinet Office to claim reliance on section 42 in respect of the entirety of the withheld information within 20 working days of the request. The Appellant also argued that whilst internal reviews are important; their existence does not remove the need for a public authority to comply with the procedural requirements of the Act.

The Cabinet Office, being the relevant public authority in this case, has not sought to be joined as a party to this appeal in light of the Appellant's concessions on section 42. However, the Cabinet Office would nonetheless wish it to be recorded that it does not agree that a breach of section 17(1) has occurred. It argued that it did not breach section 17(1) because its initial response identified valid exemptions covering all of the information at the time it was issued (which was within 20 days of the request); that its position is consistent with the Commissioner's guidance and that there are important public policy reasons for giving a public authority an opportunity to conduct an internal review.

The Commissioner readily accepts the importance of public authorities conducting internal reviews. However, he does not agree that the substituted section 17(1) finding runs contrary to his guidance. Further, the Commissioner will say that there is an inherent time limit contained in section 17. Thus, there was a breach of section 17 because it was the Cabinet Office's case that section 42 applied in respect of all the requested information but it did not give the Appellant a notice stating that fact within the time for complying with section 1(1).

Thus, whilst the Commissioner will consider what procedural breaches have occurred at the time of the internal review, it is not possible to correct the fact that the Cabinet Office had not provided the Appellant with a notice in which it confirmed that it was relying on section 42 in respect of all of the requested information within the time for compliance with section 1(1).

The Commissioner's decision notice (FS50479442) is therefore substituted with a breach of section 17(1).