

**1 IN THE MATTER OF AN APPEAL TO THE INFORMATION TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No.EA/2006/0088

BETWEEN:-

ROBERT ANDREW BROWN

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

THE NATIONAL ARCHIVES

Additional Party

RULING

The parties are referred to as “the Appellant”, “the Commissioner”, and “TNA”, respectively.

1. Pursuant to the Tribunal’s directions dated 27 February 2007, the parties have made written submissions as to the Tribunal’s jurisdiction to deal with issues relating to certain procedural failings on the part of the TNA and the Commissioner, as alleged by the Appellant. The Tribunal has received and considered the submissions from each party together with the authorities they rely on.
2. The directions required the Appellant to identify the procedural issues in question, and to set out the basis on which he considers that these come within the Tribunal’s jurisdiction. In his submissions, the Appellant has listed the following procedural issues:

“Delay ICO

A lack of robust accurate sufficient consideration and decision making by the ICO

Unreasonable delay by the TNA in making the public interest consideration

Record keeping TNA

Fair allocation of resources”

He has provided brief particulars in respect of each.

3. The Appellant's submissions as to the Tribunal's jurisdiction in relation to such matters are not entirely clear. The authorities he has submitted indicate, however, that he believes that the Tribunal's jurisdiction is or is akin to that of a Court on an application for judicial review. That is not so. The Information Tribunal is a statutory tribunal. The scope of its jurisdiction is specified by statute. When dealing with an appeal from a Decision Notice of the Information Commissioner, as in the present case, its powers are as set out in section 58(1) of the Freedom of Information Act ("FOIA"). If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent the notice involved an exercise of discretion by the Commissioner, the Tribunal considers that he ought to have exercised that discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. If, therefore, the ICO did not properly consider the Appellant's complaint, as the Appellant says, that is something the Tribunal can consider.
4. Where procedural failings by a public authority constitute a breach of its obligations under Part 1 of FOIA, for example, under section 10 (time of compliance with a request), or section 16 (duty to provide assistance and advice), these are also matters which the Tribunal has the jurisdiction to consider. Therefore, an allegation that TNA failed to comply with any time limits in Part 1, would come within the scope of the Tribunal's jurisdiction.
5. The Tribunal can also deal with procedural failings in relation to proceedings before the Tribunal itself, under the provisions of the Information Tribunal (Enforcement Appeals) Rules 2005 (although the Tribunal notes that none are being alleged in this case).
6. However, the Tribunal's jurisdiction does not extend to other procedural failings in how parties deal with freedom of information matters, generally.

Ms A Dhanji
Deputy Chairman

2 April 2007