



**First-Tier Tribunal
General Regulatory Chamber
(Information Rights)**

Appeal reference: EA/2020/0326

Between

Samuel Budu

Appellant

and

Information Commissioner

Respondent

and

Serious Fraud Office

Second Respondent

**TRIBUNAL: JUDGE LYNN GRIFFIN
Sitting in Chambers on 11 March 2021**

RULING ON APPLICATION TO STRIKE OUT THE APPEAL

DECISION

1. Mr Budu's appeal is struck out pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, on the grounds that there is no reasonable prospect of it succeeding.

REASONS

Background to the Application

2. On 12 February 2020 Mr Budu requested the identities of Ghanaian individuals suspected of receiving bribes from Airbus from the Serious Fraud Office (SFO). The SFO refused the request, arguing that the information was exempt from disclosure under sections 30(1)(b) and (c) (investigations and proceedings) and 40(2) (personal information) Freedom of Information Act 2000 (FOIA).
3. The Commissioner's decision, Reference: IC-38315-J9D6 dated 19 October 2020 was that the SFO was entitled to rely on section 30(1)(b) to refuse the request, she therefore had no need to consider s40(2). The Commissioner required no steps to be taken.
4. The Commissioner also noted that disclosure of the names would be in breach of the order of the President of The Queen's Bench Division (The Rt. Hon. Dame Victoria Sharp) made as part of her ruling approving the deferred prosecution agreement on 31 January 2020¹.

The Application to the Tribunal

5. In his appeal made on 14 November 2020 the Appellant said that he fundamentally disagreed with the IC's conclusion that the public interest test in maintaining the exemption at section 30(1)(b) outweighs the public interest in disclosing the withheld information and that the Commissioner was wrong to conclude that releasing the information would be inconsistent with the order of Rt Hon Dame Victoria Sharp President of the Queen's Bench Division.
6. In her response to the Appeal the Information Commissioner has applied for the appeal to be struck out on the basis it has no reasonable prospects of success.
7. Mr Budu has replied at length to the application. I summarise his points as follows

¹ The ruling and the documents associated with the deferred prosecution agreement may be found at this link - <https://www.sfo.gov.uk/download/airbus-se-deferred-prosecution-agreement-statement-of-facts/>

- a. The public interest in disclosure outweighs any harm to the criminal investigation or prosecution based on his belief that that SFO has all the information it requires to mount a successful prosecution
- b. The individuals concerned, the names of whom Mr Budu believes he knows from media reports, are not capable of influencing the criminal investigation
- c. In other cases, the individuals have been named by the SFO without prejudice to their investigations or trial
- d. The individuals have been treated differently because of their race
- e. As regards the order of the Dame Victoria P, “a wholesale interpretation and application of the judgement is wrong” and had the learned President been aware of his arguments Mr Budu is confident they would have found favour with her
- f. The withholding of the names does not assist the global fight against corruption. The withholding of the names will encourage others to believe that even if they are caught acting corruptly that nothing will happen to them and they will not even be identified
- g. The spirit and the letter of the law are in favour of disclosure because the exemptions relied upon are subject to the public interest test

8. Dame Victoria P. made the following order as part of that judgement

13. In the Statement of Facts, the identity of the individuals concerned has not been included. There are ongoing investigations in respect of a number of individual suspects in this jurisdiction and abroad. It is appropriate to protect the rights of the suspects to a fair trial. In addition some of the individuals involved in the relevant conduct are based in jurisdictions where there are human rights concerns, and the death penalty exists for corruption. Further, the intermediary companies used by Airbus were often made up of a few individuals. Naming the companies would therefore be tantamount to naming those individuals. To go further than the Statement of Facts or my summary and identify the employees or others by name, would be to prejudice potential criminal proceedings and could lead to action or the imposition of a penalty which, in this country, we would regard as contravening Article 3 of the European Convention on Human Rights. The identities and positions of relevant employees and other persons referred to in the Statement of Facts have however been made known to me so that I have been able to assess their comparative seniority and, thus, the responsibility of Airbus. In the circumstances however, none are identified.

9. That order was made pursuant to Crime and Courts Act 2013, Sch 17, Deferred prosecution agreements paragraph 12 which states

12. The court may order that the publication of information by the prosecutor under Paragraph 8(7)², 9(5), (6), (7) or (8), 10(7) or (8) or 11(8) be postponed for such period as the court considers necessary if it appears to the court that postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings.

10. The order was in force at the time of Mr Budu's request and remains in force. I conclude that were the SFO to publish the identities of the individuals as requested by Mr Budu they would be in breach of the order. Information disclosed under FOIA is considered as if it were being released to the world at large.
11. It seems to me on a balance of probabilities that the publication of the names requested pursuant to a request under FOIA would constitute or be punishable as a contempt of court. Thus, I conclude that the information sought is exempt information under s44 FOIA. There is no requirement to balance the public interest when this exemption is engaged.
12. It is not for this Tribunal to go behind the order of the President of the Queen's Bench Division. Thus, this Tribunal cannot give Mr Budu the remedy he seeks.
13. I would also observe that I approve the analysis within the decision notice and the conclusion that, in this case, the public interest in maintaining the exemption outweighs the public interest in disclosure. I am therefore satisfied that the SFO was entitled to refuse the request under section 30(1)(b) of FOIA.
14. The fact that Mr Budu does not agree with that analysis is not the same as having a tenable position that the notice against which the appeal is brought is not in accordance with the law, or to the extent that the notice involved

² This is the relevant paragraph in this case

8(7) Upon approval of the DPA by the court, the prosecutor must publish—

(a) the DPA,

(b) the declaration of the court under paragraph 7 and the reasons for its decision to make the declaration,

(c) in a case where the court initially declined to make a declaration under paragraph 7, the court's reason for that decision, and

(d) the court's declaration under this paragraph and the reasons for its decision to make the declaration,

unless the prosecutor is prevented from doing so by an enactment or by an order of the court under paragraph 12 (postponement of publication to avoid prejudicing proceedings).

an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently. I acknowledge that Mr Budu's aim is to combat corruption but Mr Budu's submissions in his grounds and in response to this application are speculative.

15. In order for Mr Budu's appeal to proceed there must be a realistic prospect of its success. For the reasons set out above, I have concluded that this Tribunal would not be able to provide him with the outcome he seeks and that therefore the appeal is hopeless, or in other words has no reasonable prospect of success.

CONCLUSION

16. Having taken account of all relevant considerations, I strike out this appeal pursuant to 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 because there is no reasonable prospect of the appeal succeeding.

Tribunal Judge Lynn Griffin

Dated: 11 March 2021

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