



**Tribunals Service**  
Information Tribunal

Appeal Number: EA/2008/0012

Freedom of Information Act 2000 (FOIA)

Decision on consideration of papers alone

In the matter of an Appeal to the Information Tribunal

**BEFORE**

**INFORMATION TRIBUNAL DEPUTY CHAIRMAN**

**DAVID MARKS**

**And**

**LAY MEMBERS**

**JOHN RANDAL**

**And**

**DAVE SIVERS**

**Between**

**SEAN CAUGHEY**

**(on behalf of Geo Provenance International Limited)**

**Appellant**

**And**

**INFORMATION COMMISSIONER**

**Respondent**

## **Decision**

The Tribunal upholds the decision in the Information Commissioner's Decision Notice ("the Commissioner") dated 28 January 2007.

## **Reasons for Decision**

### **General**

1. The Appellant is an individual who has at all times been acting on behalf of the real complainant in this matter which is a company called Geoprovenance International Limited ("the Company"). The Company gives its address as Greensleeves, Highfield, Banstead, Surrey on the face of the Decision Notice and the Tribunal assumes that its address was the same as at the date of the original request. In the Notice of Appeal which is relevant to the Decision Notice in this case, the Appellant describes himself as the director of the Company. No point is taken by the Commissioner as to the fact that the appeal is prosecuted by the Appellant in his capacity as such director as distinct from the appeal being prosecuted by the Company itself.
2. From the materials the Tribunal has seen in this appeal, the Company is a company limited by guarantee. It was established in 2004. The Company it seems was set up in order to provide and carry out research in relation to the pharmaceutical trade in the United Kingdom. In November 2004, it applied to the Charity Commission ("the CC") for charitable status. The CC is a public authority for the purposes of the Freedom of Information Act (FOIA) and as is well known, is responsible for the regulation of charitable bodies in England and Wales.
3. It seems that the CC refused the application on the basis that the aims of the Company were not charitable. The CC was also not satisfied with the number of trustees which the Company had appointed. No further details have been made available to the Tribunal.
4. The CC then requested another public authority called the Independent Complaints Review ("the ICR") to investigate its handling of the Company's application of a charitable status and a complaint which the Company had made. The ICR then produced a draft report which it made available only to the CC. This was followed by a final report sent by the ICR to the CC and to the Company. On 27 February 2007, the Company then made a request under FOIA to the CC for:

“... all paperwork relating to my complaint from in the section to date, warning and reminding you that only certain qualifying documents are allowed to be retained under the aegis of being legally privileged. I wish to receive file copies of all paperwork and correspondence including annotated file copies of anything that we have sent you at any point in time in the past. The request includes the provision of a copy of the ICR’s original 17<sup>th</sup> January 2006 report on my complaint and its covering letter.”

As is reasonably clear from this passage, the author of the letter was the Appellant in effect writing on behalf of the Company. It appears the request also included a request for full disclosure of all financial payments made to the ICR in the financial years 2004/2005 as well as 2005/2006 to the date of the request, along with projections as to what payments were either anticipated or were required to be made to the ICR for the remaining part of the tax years 2006/2007. The request ended with a specific request for information as to what funding the CC projected for the ICR in the financial year 2006/2007. It appears that the ICR’s final report only partially upheld the Company’s complaint. The Company had claimed that it had incurred wasted costs and expenditure in the wake of the CC’s treatment of its application. The Tribunal has not been acquainted with, or been provided with, any further details of the Company and in particular, its dealings whether by complaint or otherwise with the ICR.

5. The above request can be called for present purposes “the First Request”. As will be explained below in due course the First Request formed the basis of a Decision Notice dated 19 December 2007 bearing the reference number FS50148089 which the Tribunal will call the First Decision Notice. It is sufficient to state at this point that the Company made a further request to the CC in part regarding the information which it, ie the CC, provided to the ICR. Although the CC did provide the Company with some of the information which had been sought in the First Request and this subsequent request, eg financial information, it refused to disclose a draft report which it admitted that it held, placing reliance on the exemption contained in section 41 of FOIA which in general terms exempts from disclosure information which is provided in confidence. Section 41 contains an absolute exemption under FOIA.
6. In the First Decision Notice the Commissioner found that section 41 was engaged. He was also satisfied that the CC had been correct to withhold the draft report under FOIA. The Notice did however also determine that the CC had failed to respond within the applicable statutory time limits provided by other provisions of FOIA.
7. At this point the Tribunal is obliged to retrace its steps into the relevant history and refer to events which occurred prior to the First Request. By an email dated 18 May 2005, the

Company again acting by the Appellant, had previously contacted the CC. Reference was made to the fact that in the wake of the CC's refusal to afford charitable status to the Company, it and/or the Appellant had made a claim for financial redress in respect of the wasted costs and expenses referred to above. Although prior in time to what has been called the First Request, the Tribunal will call this request dated 18 May 2005 which was made by email, the Second Request. This is because in due course it came to be the subject of a further Decision Notice dated 28 January 2008 bearing the reference FS50119370, ie, a date after the date of the First Decision Notice.

8. The Second Request sought the following information, at least as the same as transcribed into the body of the Second Decision Notice, ie:

“The Name of the Person in the Legal Division from whom you (the public authority) allegedly sought advice regarding our claim for financial redress. Furnish us with copies of all paper-based and electronic based files and notes relating to (The complainant's) application and the complaint, including copies of all e-mails and all legal and other opinion used by (the public authority) from any other government department that has had any input regarding the application or complaint. Provide us with a full break down of manpower activity, time and costs that have been expended by (The public authority) on this application to date.”

Reference to the (“public authority”) was a reference to the CC.

9. In due course the Commissioner treated this request as in fact containing three specific requests dealing with distinct forms of information, namely:

- (i) the name of the person who gave the legal advice;
- (ii) all files and notes relating to the application and complaint, including the legal opinion; and
- (iii) a break-down of manpower activities spent on the application.

The CC in due course satisfied (i), and then claimed that it held no information in relation to (iii). In relation to the documents requested in category (ii), the CC advised that save with regard to any documentation it held with regard to the Company's application which was effectively in the public domain, information it had received regarding legal advice was subject to legal professional privilege and was exempt under section 42 of FOIA. Reliance was also placed upon the fact that the information in question contained personal data relating to a third party and as such was exempt under section 40(2) of

FOIA. However, that latter section plays no further part in this appeal. For the sake of completeness, section 42 of FOIA provides by subsection 1 that:

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

10. Section 42 is a qualified exemption under FOIA. This means in general terms that the public authority, together with the Commissioner and the Tribunal must consider whether as FOIA provides the public interest in maintaining the exemption is outweighed in all the circumstances of the case by the public interest in disclosure. In the Second Decision Notice which is the definition that the Tribunal will give to the Decision Notice of 22 January 2008, the Commissioner affirmed the decision of the CC that in the light of all the materials which were in issue in relation to the Second Request, the public interest favoured maintenance of the exemption. The Notice therefore confirmed that no steps needed to be taken.

### **The Appeals and Directions**

11. By Notice of Appeal dated 11 February 2008 received by the Tribunal on 13 February 2008, the Appellant as a director of the Company lodged appeals against both Decision Notices. Appended to the Notice was an extensive schedule consisting of fourteen pages and reflecting two specific sections, the first entitled “Observations emanating from comparing ICO’s two Decision Notices with the Complainant’s original 16<sup>th</sup> May 2006 submission to the ICO” and the second section being headed “Miscellaneous Observations emanating from the two Decision Notices, not from the original 16<sup>th</sup> May 2006 submission to the ICO”. The schedule contains 21 separate “submissions” to the Commissioner with, alongside in the case of each of these sets of submissions, two columns in relation to the first part of the schedule, the two columns being headed “ICO response” and “Counter response” in respect of this part and the second section bearing a second column only headed “Counter response”. These 21 submissions have been treaded both by the Commissioner and in effect by the Appellant as separate grounds of appeal and will be addressed below in further detail.
12. After its receipt of the Notice of Appeal, the Tribunal informed the Appellant that with regard to his appeal against the first Decision Notice it appeared that he was out of time under the Tribunal’s rules. The Appellant duly provided reasons as to why the time limit should be extended but on consideration of all the circumstance before it, including the Appellant’s representations, the Tribunal ruled on 15 April 2008 that time would not be extended in relation to his appeal against the First Decision Notice. It follows that the

Tribunal has since that date been concerned with only the Second Decision Notice. In addition, the submissions since made by the Commissioner have restricted themselves to the extent, if any, to which the 21 grounds of appeal address the Second Decision Notice alone.

13. The Tribunal pauses here to note that unfortunately the Appellant did not learn about the Tribunal's ruling of 15 April 2008 until the end of April at the earliest. That unfortunate fact however has no bearing upon the manner in which the matter has since proceeded and the fact remains that the Tribunal is now dealing only with the remaining appeal.
14. Following the provision of the Commissioner's Reply in early May, the Tribunal issued directions confirming that there would be a paper hearing with regard to the remaining appeal and inviting the parties to make written submissions accordingly.

#### **Role of the Tribunal**

15. The Tribunal's role and function in relation to the appeals under FOIA with regard to Decision Notices issued by the Commissioner are set out and provided for by the Act itself, in particular section 57 of that Act. Both the complainant and the public authority may appeal as of right to the Tribunal. In both cases, the Respondent will be the Commissioner who is in effect called upon to justify the Notice. In some cases, but not in the present appeal, a non-appealing party can be joined.
16. Section 58 of FOIA provides that the appeal will succeed if the Tribunal finds that the Notice is not in accordance with the law or that the Commissioner should have exercised his discretion differently in dealing with the complaint. In all other cases, the Tribunal must dismiss the appeal. On account of section 58(2) of FOIA, the Tribunal may review any finding of fact on which the Decision Notice is based. If the Tribunal finds that the grounds of appeal are made out, it should allow the appeal or substitute such other Notice as could have been served by the Commissioner: see section 58(1).
17. In very general terms and subject to what is said below, the Appellant appears to take issue with the lawfulness of the Commissioner's decision-making process. In some cases the Tribunal can hear further evidence. Again, in general terms and subject to what is said below with regard to the matters in this case, no further evidence has been put before the Tribunal since the date of the Second Decision Notice. In such circumstances the principal task facing the Tribunal is to consider whether the provisions of FOIA were correctly applied by the Commissioner. A Notice would be "not in accordance with the law" if it were based on a flawed decision-making process, eg because the Commissioner ignored or misconstrued a material fact or consideration.

Application of the public interest test set out in section 2(2)(b) of FOIA to qualified exemptions such as section 42 involves a question of law or a question of mixed law and fact.

18. The Tribunal now has a considerable body of decided case law since its creation. Even though a particular tribunal decision is not binding on another differently constituted tribunal, proper regard is generally paid to the findings of earlier decisions, particularly where a series of decisions has reiterated the same principle or principles in similar terms. One such principle concerns the approach which should generally be taken by a tribunal to the terms and effect of Decision Notices. This Tribunal would agree that a broad approach should be taken to such Notices where the general intent is clear so that the Notice should be interpreted accordingly. In that respect, minor errors or even any reasoning which does not affect the substance of the decision will generally be ignored; see eg *Guardian Newspapers and Brooke v Information Commissioner and BBC* (EA/2006/0011 and 0013) especially at paragraph 15.

### **Grounds of Appeal**

19. The Tribunal now turns to consider the 21 grounds which both parties agree form the basis of the Appellant's appeal, in this appeal, even though the two subheadings set out above in paragraph 11 contained in the Schedule appended to the Appellant's Notice of Appeal relate, in part at least, to both Decision Notices.

20. The first ground is put in the following terms, namely:

"ICR website misrepresentation that it had a regulated relationship with the FOI Act when it did not."

The third column in the relevant schedule headed "Counter response" comments that this submission is "an ICR control matter that it has refused to address ...".

21. As the Commissioner points out in his Reply, these allegations or contentions address the ICR whereas the public authority from whom the disputed information in the present appeal is sought is the CC. The fact that the ICR website may have been, or may be deficient or misleading in some way as to which there is no evidence before the Tribunal is simply irrelevant to the issue on that appeal.

22. The second ground is expressed in the following terms, namely:

"CC [*ie the CC*] repeated refusal to provide information or answer questions (some requested more than ten times), or CC repeatedly delayed doing so outside statutory response times in breach of the Act demonstrating a pattern of behaviour deliberately

aimed at prejudicing the strength of the case against it.” Similarly, the fact that no information request has been repeatedly refused on proper grounds is not in itself a ground under FOIA for complaining that the information has not been supplied.

Although the First Decision Notice as indicated above dealt with a failure on the part of the CC to deal timeously with the First Request, the Second Decision Notice made no such finding. It follows that this ground discloses no reasonable basis on which to allow the appeal.

23. The third ground is put in the following terms:

“Specific request for ICR to adjudicate on CC refusal to get David LOCKE/Fiona STEVENSON to sign statements attesting to the integrity of privileged information communicated to the ICR by Geoprovenance International and its delay in responding to the demand to do so (taking from 21<sup>st</sup> November 2005 until 14<sup>th</sup> February 2006 to do so), outside the statutory response times and written after ICR and CC had met to change and colluded the secret 17<sup>th</sup> January 2006 ICR report.”

24. This ground appears to be directed to a request that two named representatives of the CC provide statements of the kind described in the above passage. However, the period referred to is at a time which follows the date of the Second Request which was 18 May 2005 and therefore even if a request was made, it could not be the subject of the Second Decision Notice. The remainder of the passage appears to refer to the ICR report which again is not the subject of the Second Decision Notice. Accordingly the ground set out above has no relevance to the appeal and is rejected.

25. The fourth ground is put in the following terms, namely:

“Covering letter of secret 17<sup>th</sup> January 2006 ICR report was not a draft and so should have been produced.”

As in the case of the previous and third ground, the ICR request bears no relevance to the matters considered in the Second Decision Notice. This ground too is therefore rejected.

26. The fifth ground is expressed as follows:

“Home Office/Prison Service documents permit production of drafts.”

Yet again, any relevance borne by this ground relates to the First Decision Notice only. It has no relevance to any issue which arises in respect of section 42 of FOIA. This ground too, therefore, is rejected.



27. The sixth ground begins with the following sentence:

“Central importance and fact that ICR admits 17<sup>th</sup> Jan 06 and 15<sup>th</sup> Feb 06 reports are different is FACT” (emphasis in original).

The remainder of the passage relating to this ground alleges that the CC and the ICR colluded to conceal the true contents of the reports. The passage ends with the section :-

“It is important to know if the ICR upheld a wider number of complaints and not just the single one that appeared in the 15<sup>th</sup> February report.”

Again, the relevance of these contentions is in relation to the First Decision Notice. The Tribunal therefore also rejects this ground.

28. Ground number seven is expressed as follows:

“Full unexpurgated disclosure will lay to rest questions and deliver transparency that is absent in this case where the CC and its public sector friends are concerned.”

On the face of the above wording the Tribunal would agree that it might otherwise suggest that it addresses the Second Decision Notice and the possible public interest favouring disclosure. However, the lengthy “Counter response” which accompanies this ground (which the Tribunal does not feel needs be recited), makes it clear that issue is again taken with the ICR report and the materials relating to that report requested in connection with the First Request. This ground too, therefore, is rejected.

29. Ground number eight is stated as follows, namely:

“ICR knew that Complainant had been denied access to papers that ICR was relying upon while the ICR asked for no Complainant papers to be reduced and then it released the file to the CC without first taking a copy, causing the file to be tainted and it then impossible [*sic*] to know what retrospective privacy markings or removals took place. Specific instances were cited where the papers the ICR relied on were wrong.”

The relevant “Counter response “ again appears to be directed to matters relevant only to the First Decision Notice. However, the Tribunal would agree with the Commissioner in his Reply that insofar as this ground might relate to the Second Decision Notice, on any basis it addressed the CC’s filing procedures and that that consideration has no relevance to the present appeal. On that basis, this ground too is rejected.

30. Ground number nine is put as follows, namely:

“Refusal of ICR to determine on Complainant’s behalf which documents being withheld by CC were genuinely or erroneously being withheld – where the Complainant is not being allowed to carry out a parallel critique of filed papers that the ICR was relying upon.”

In his Reply, the Commissioner mentions the fact that this ground appears to be a repeat of Ground three. If not, it appears to the Tribunal to be at the very least a complaint about the ICR’s handling of the Company’s complaint, whether or not there is such a repetition as suggested by the Commissioner. The Tribunal is entirely satisfied that this ground bears no relationship to the subject matter of the Second Decision Notice. That Notice was concerned only with the legal advice sought and obtained by the Commissioner. This ground too is therefore rejected.

31. Ground number ten is again somewhat lengthy and the Tribunal does not feel that the entire ground need be recited here. It addresses two matters, the first relating to a Mrs Berg whose identity is not explained to the Tribunal, but who the Tribunal infers is connected in some way with the ICR, while the second part relates to “... all requests for detailed financial information ...” and in particular to the following, namely:

“The only information I have been given to date involved general running costs, not the fees that she has earned dealing with my specific claim – It is just not credible that the ICR will not have detailed billing and disbursement records allied to each and every complaint reference that it is dealing with in the exact same manner that professional service firms keep track of budgets using timesheets and expenses sheets.”

The Tribunal would agree in general terms with the Commissioner in his Reply and his contention that the first part of this ground appears to be directed to the First Decision Notice. As for the second part (which the passage recited above forms part of), the Tribunal however does not share the Commissioner’s view that the basis of this allegation is at that the Commissioner has “totally failed” (to use the phrase in the relevant Counter response) to address that part of the Second Request which dealt with “manpower activity”. The Tribunal finds that the entirety of this ground with its two apparent constituent parts is directed to matters which relate to the First Request and the First Decision Notice. If the Tribunal is wrong in that respect and the request for a breakdown of “manpower activity” is in truth addressed to the request made in the Second Request, the Tribunal would agree with the Commissioner that in the light of the CC’s Reply that it did not hold such information, the Commissioner in his Decision Notice had every legal and factual justification in coming to that view. This ground too, therefore, is rejected.

32. Ground number eleven is put as follows, namely:

“Request to issue Enforcement notices (5 counts) in respect of 18<sup>th</sup> May 2005 FOIA request.”

Enforcement Notices in general terms are issued by the Commissioner whenever he is not satisfied that the requirements of Part I of FOIA have not been complied with by the public authority. The Second Decision Notice clearly states that in all material respects, the public authority complied with its obligations under FOIA. The Tribunal has no reason to challenge or upset that finding and this ground too is therefore rejected.

33. Ground number twelve is in the same terms as ground number eleven, save that the date of 27 February 2006 replaces that of 18 May 2005. The Tribunal therefore repeats what it has said in the previous paragraph and rejects this ground also.

34. Ground number thirteen states as follows, namely:

“Decision FS 50119371 (*ie the Second Decision Notice*) quotes in Para 2 a quote from the Complainant.”

The accompanying Counter response states that the quoted passage from the emailed request set out at paragraph 8 above not only uses “selective phrases” but also omits a passage or passages said to relate to “the CC’s abuse of published procedures ...”. The latter abuse is said to be “part of its broader tactic of evasion and information denial.” The omitted passage is stated to be the following, namely:

“Invite Mrs Cridge to send us an e-mail by return explaining why she is apparently now not determining our complaint – and is not operating to the CC’s published procedures.”

FOIA is concerned with requests for information. The Tribunal agrees with the Commissioner in his Reply that what Mrs Cridge (whose relevant function has not been explained to the Tribunal) was being asked to provide, was an explanation why the complaint was not being dealt with at some stage. Such an explanation would not constitute information within the meaning of FOIA. This ground too therefore is rejected.

35. Ground number fourteen addresses the First Decision Notice and certain paragraphs within that Notice. This ground too is rejected.

36. Ground number fifteen however expressly addresses the Second Decision Notice, which, it is stated:

“...claims that an exchange of correspondence took place in July 2006 in which the CC required to carry out its own internal review.”

The Counter response refers to paragraphs 6 and 7 in the Decision Notice which refer to exchanges between the Commissioner and the CC. In paragraph 7, it is stated that on 7 September 2006, the CC wrote to the “Complainant” confirming that after an internal review, it, ie the CC, would not disclose the files and the legal advice. The Appellant takes issue with the date of the exchange, alleging in his Counter response that:

“... the formal request for information on 18<sup>th</sup> May 2005 was reviewed and responded to by the CC’s James MELTON-BRADLEY (Customer Services Manager) on 13<sup>th</sup> June 2005.”

This therefore prompts the Appellant to allege that the Commissioner is thereby “deliberately trying to muddy the water” and thus publish a Notice “that is totally untrue”.

37. The Tribunal is in no position to judge whether the relevant chronology is as claimed by the Appellant. However, whether paragraph 6 and/or 7 of the Second Decision Notice contained factual errors is irrelevant. It has already been noted above that the Tribunal in exercising its appellate functions should deal with the substance of any decision notice before it. The essence of the decision notice in question, ie the Second Decision Notice, is its confirmation that the original decision of the public authority was sustainable in the sense that the exemption in section 42 was correctly applied. That issue is not affected in any way whatsoever by the date or dates on which an internal review confirming the original decision may or may not have been carried out. This ground too therefore is rejected.

38. Ground number sixteen also addresses the Second Decision Notice in alleging that it:

“... claims that the Complainant contacted the ICO on 16<sup>th</sup> May 2007 and then claims that it then did nothing about investigating the case for more than a calendar year.”

39. There is a mistake in that paragraph since the date on which, according to the Decision Notice, the complainant contacted the Commissioner is stated to be in May 2006 and not 2007. Admittedly, from the chronology in the Decision Notice itself, it does appear as if it was in June 2007 that the Commissioner wrote to the CC. The Tribunal would agree that a year’s delay on the face of matters seems somewhat lengthy. However, the fact and length of the delay are again in no way material to the issue to be considered on this appeal, ie, whether the Commissioner had in some way committed an error in law by upholding the CC’s application of the section 42 exemption. In his Counter response, the Appellant implies that the delay was deliberate by, as he puts it:

“... prejudicing the strength of the evidence being presented to the Parliamentary and Health Service Ombudsman through the Complainant’s Parliamentary Representative.”

Quite apart from the absence of any evidence before the Tribunal to substantiate that allegation, it bears no relevance to the issue in the appeal, and again, this ground is rejected.

40. Ground number seventeen maintains that the Second Decision Notice:

“... notes that a legally privileged document was published with the name of a CC employee redacted.”

41. in paragraph 13 of the Second Decision Notice, the Commissioner noted that the CC had confirmed that it:

“...had waived privilege in relation to one item of the withheld information on the grounds that it reflected information which was already provided to the complainant in the course of correspondence. The Commissioner has had sight of this document and notes that it has been redacted to conceal the identities of the employees of the public authority.”

The Appellant’s contention is that such a waiver did not necessarily mean that all other documents otherwise privileged should not also be released or disclosed. The Commissioner found in the Decision Notice that waiver of one document did not entail waiver of other privileged information in the form of the legal advice which was being requested. The fact that a name otherwise well known to the Appellant had been redacted from the document which was subject to the waiver is neither here nor there. The Tribunal can find no error of law in the Commissioner’s contention to the effect that he was satisfied that waiver as to one document did not amount to waiver in respect of the remaining documents which otherwise formed part of the privileged information. The Tribunal therefore rejects this ground of appeal.

42. As to ground number eighteen, it is alleged that the Second Decision Notice:

“... claims that various documents have privacy markings on them.”

The reference to “privacy markings” is a reference to the fact, as found by the Commissioner on examining the withheld information that the information was “marked “privileged legal advice” or “request for privileged legal advice”” (see paragraph 14(iii) of the Decision Notice). In his Counter response, the Appellant alleges that such “markings” “have probably been placed on documents retrospectively ...”. There is no evidence before the Tribunal to justify this assertion. This ground too therefore is rejected.

43. As to ground number nineteen, this appears to take issue with the Commissioner’s statement in paragraph 20 of the Second Decision Notice that “Communications will be confidential if they have taken place in circumstances where a relationship of confidence

is express or implied.” The Tribunal finds that statement of principle unimpeachable. In his Counter response, the Appellant appears to claim that no such confidentiality applied:

“... where STEVENSON [*no doubt a reference to the same lady mentioned above in paragraph 23*] has discussed any matters relating to [*the Company*] with CC employees once she returned to the CC from her time of secondment with the ICR?”.

Again, no details or evidence have been provided as to the matters referred to in that passage. Given the correctness in law of the statement made in paragraph 20 of the Second Decision Notice, the Tribunal is unable to find that the Commissioner committed any error of law. Accordingly, this ground of appeal too is rejected.

44. As for ground number 20, issue is apparently taken here with the public interest test applied with regard to section 42 of FOIA by the Commissioner. In his Counter response, the Appellant alleges that:

“...this case involves clear evidence of deliberate and devious manoeuvres by the public authority ... and by its legal advisors ...”.

in the form of suppression of information or the denial of information. The Appellant in an earlier passage also accuses the Commissioner of “maladministration and devious behaviour ...”.

The Appellant has provided no evidence in support of these serious allegations. In addition, as the Commissioner rightly points out in his Reply, even if there were such evidence, and then only in the most exceptional circumstances, this would not necessarily cause a public interest test carried out by the Commissioner to be revisited or to be shown to be wrong. The Second Decision Notice in paragraphs 25 to 34 inclusive deals in extensive detail with the public interest test. The said paragraphs carefully consider the arguments for transparency and accountability on the one hand, and on the other, the need for candour between the CC and its lawyers on the other. The Commissioner clearly took into account the particular considerations applicable to the facts of this case being the following, namely:

- (1) the absence of any elements which could be said to constitute or involve “matters of great public concern”; and
- (2) the fact that the legal advice sought concerned an application for charitable status,

both of which factors did not in the Commissioner’s view reveal any issues which were of such concern or interest as to justify placing the legal advice which was sought “in the

public domain” for public scrutiny and/or were of such concern or interest as would advance democracy or inform public debate. The Tribunal finds no error of law in those conclusions. In particular, the Tribunal has not seen any evidence or been impressed by any argument which would cause it to revisit the correctness of the balancing test carried out by the Commissioner, again with a view to seeing whether or not any error of law had been committed. This ground too therefore is rejected.

45. Finally, as to ground number 21, the same expressly addressed the First Decision Notice in claiming that it was published on 19 December, but not despatched until the New Year “giving the Complainant little time to respond to the Information Tribunal”. This ground has nothing to do with the Second Decision Notice: it revisits the fact that the First Decision Notice was found to be out of time and therefore this ground too is rejected.

### **Conclusion**

46. For all the above reasons, the Tribunal dismisses this appeal.

David Marks  
Deputy Chairman

Date 14 July 2008