



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**Case No. EA/2010/0109**

**ON APPEAL FROM:**

**The Information Commissioner's [Decision] Notice No: FS50235260  
Dated: 17 May 2010**

**Appellant: PUBLIC PROSECUTION SERVICE FOR NORTHERN IRELAND**

**Respondent: INFORMATION COMMISSIONER**

**Second Respondent: JOHN COLLINS**

**Heard at: Laganside Court, Belfast**

**Date of hearing: 7 & 8 April 2011**

**Date of decision: 3 June 2011**

**Before**

**Brian Kennedy QC  
(Judge)**

**Jacqueline Blake**

**Marion Saunders**

**Attendances:**

**For the Appellant: Mr Paul Maguire Queens' Counsel**

**For the Respondent: Robin Hopkins of Counsel**

**For the Additional Party: John Collins**

**Subject matter: Freedom of Information Act 2000**

Investigations and proceedings conducted by public authorities, s.30;  
Law enforcement, s.31;  
Personal data, s.40;  
Confidential information, s.41

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**DECISION OF THE FIRST-TIER TRIBUNAL**

We have decided to allow the Appeal and amend the decision of the Information Commissioner (“the Respondent”) contained in a Decision Notice (“DN”) dated 17 May 2010 (reference FS50235260) with a finding that the public interest favour the maintenance of the exemption at sections 31(1)(c) Freedom of Information Act 2000 (“FOIA”) the Appellant was entitled to withhold all of the disputed information.

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**REASONS FOR DECISION**

**BACKGROUND:**

1. On 30 November 2008 a request for information, relating to a criminal prosecution in Northern Ireland, was made by Mr John Collins (“the Additional Party”) to the Appellant in the following terms –

*“During the week beginning 24/11/08 three men and a youth were cleared of causing criminal damage to a crane in Belfast – they were also cleared of obstructing the police.*

*Could I have all the PPS documentation relating to this case (I don’t require any names or addresses of anyone involved in the case)”.*

2. On 5 January 2009 the Appellant responded to the Additional Party refusing to disclose the information requested (“the disputed information”) relating to the above prosecution (“the crane case”) on the grounds that it was exempt under sections 30, 31, 38, 40(2) and 41 FOIA. The Additional Party requested an internal review.
3. On 16 February 2009 the Appellant informed the Additional Party that it had carried out an internal review and that the decision to refuse to disclose the information requested had been upheld; although it no longer sought to rely on sections 38 and 41 FOIA (in the course of the Respondent’s investigation however the Appellant again sought to rely on section 41 FOIA).
4. The Additional Party contacted the Respondent on 16 February 2009 to complain about the Appellant’s refusal to disclose the information he had requested.

5. The Respondent served the DN dated 17 May 2010 in accordance with section 50 FOIA and the DN is the subject matter of this appeal.
6. The Respondent found that the information requested was contained in a prosecution file comprising 41 separate documents. Those documents are listed in a confidential annex to the Decision Notice which has been lodged with the Tribunal with the Notice of Appeal. Paragraph references below are to paragraphs in the Decision Notice.
7. In summary, the Respondent found as follows –
  - (i) A number of the documents contained personal data, and in some cases sensitive personal data, relating to the accused, police officers, non-police staff, PPSNI staff and other witnesses (paragraphs 29 to 39).
  - (ii) Disclosure of this personal data would contravene the first data protection principle with the exception of the names of senior PPSNI staff and names and ranks of police officers involved in the investigation (paragraphs 40 to 74).
  - (iii) Section 30(1)(c) FOIA was engaged but that the public interest in maintaining the exemption did not outweigh the public interest in disclosure (paragraphs 75 to 96).
  - (iv) In light of the finding that section 30 FOIA was engaged, section 31 FOIA could not be (paragraphs 97 to 98).
  - (v) Section 41 FOIA was not engaged (paragraphs 99 to 110).
  - (vi) In failing to disclose those parts of the requested information that the Commissioner found not to be exempt, the PPSNI had contravened sections 1(1)(b) and 10(1) FOIA (paragraphs 111 to 112).
  - (vii) The Appellant breached section 17(1)(b) and 17(1)(c) FOIA in failing to provide an adequate refusal notice (paragraphs 113 to 115).

8. The Appellant was therefore directed by the Respondent to disclose the information identified in the confidential annex to the Decision Notice (paragraph 118).
9. The Appellant appealed by way of a notice of appeal dated 11 June 2010. The Appellant maintains that -
  - (i) the Commissioner erred in finding that section 41 FOIA was not engaged;
  - (ii) the Commissioner erred in finding that the public interest in maintaining the exemption in section 30 FOIA did not outweigh the public interest in disclosure;
  - (iii) the Commissioner erred in finding that disclosure of the name and rank of police officers and the name of staff at the PPSNI were not exempt under section 40(2) FOIA; and
  - (iv) the Commissioner erred in finding that the PPSNI had breached sections 1(1)(b), 10(1) and 17 FOIA.
10. The Respondent took the view that while the notice of appeal identified those parts of the DN that the Appellant contested, no adequate grounds were given to explain in what way the Respondent is said to have erred.
11. However on the 19<sup>th</sup> August 2010, the Appellant put forward detailed grounds of appeal [Open Bundle Tab 6] in which it fully articulated its arguments regarding the disputed information for the first time. As a result of the detailed and comprehensive submissions provided by the Appellant, the Respondent has changed its position and now supports the Appellants' withholding of all of the disputed information. The Respondent informed the Additional party of this change of position by letter of 6 October 2010.
12. All parties agree that this series of events is most regrettable from the Additional Party's perspective and the Respondent has indicated sympathy to the Additional Party for the resulting confusion.

**THE ISSUES:**

13. The issue identified by the Tribunal in this appeal is whether the Respondent is correct in agreeing with the Appellant that its appeal against the DN should be allowed, on the grounds that the public interest in maintaining the exemption at s. 30(1) of the Freedom of Information Act 2000 (“FOIA”) outweighs that in the disclosure of the disputed information.
14. It is not in dispute that s. 30(1) is engaged in respect of all of the disputed information, which comprises the prosecution file for the “crane case”. This Tribunal accept the submissions made that the public interest balancing exercise must take into account the need for prosecutors to have a “safe space” in which to make their decisions – without fear of frank assessments being publicised after the event – as to whether or not any particular case meets the threshold of there being a reasonable prospect of a successful prosecution. To erode such safe space in the circumstance of this case would be to undermine the independence of prosecution authorities. This would compromise the quality of decision-making. It could also deter witnesses from co-operating with police and prosecution authorities, and could undermine (without good reason) public confidence in those authorities.
15. In the Respondent’s submission, these factors in favour of maintaining the exemption attract very substantial weight. We accept that premise and agree that In order for disclosure to be ordered, public interest factors of at least equal weight must be adduced. A general interest in the transparency of a prosecution authority’s decisions will not suffice. Something substantial and particular to this information is needed.
16. The Additional Party’s case is that there is reason to suspect that PPSNI made substantial mistakes in deciding to take the “crane case” forward for prosecution, and, if there were, then there is a weighty public interest in those mistakes being made known.

17. In the Respondent's submission, this public interest argument does not succeed in the present case. a) because there is insufficient basis for the Additional Partys' submission as it is based solely on comments in newspaper articles citing remarks made by barristers acting for the defendants acquitted in the "crane case" and b) because – as the Tribunal has seen in considering the disputed information for itself – this information contains no evidence of any material mistakes by PPSNI, nor of anything "out of the ordinary" as far as prosecution decisions go. The Respondent argues in particular, that the Additional Party raised two areas of suspicion, namely: the fact that a prosecution proceeded without the crime scene having been secured, and the fact that obstruction charges were brought against two of the four defendants in the "crane case" despite those defendants being unable to get down from the crane. This Tribunal accepts the submission that the disputed information – coupled with Appellants explanations about prosecutorial decision-making – shows there to be no substance to either of these points, quite properly raised by the Additional Party, on the facts of this case. There was nothing in the documents contained in the prosecution file which would have answered any of the questions raised by the Additional Party.

## **CONCLUSION:**

18. For these reasons, the Respondent has submitted, the public interest in favour of maintaining the s. 30(1) exemption clearly outweighs that in disclosure of the disputed information. The Tribunal accepts these submissions having considered all the evidence, including the closed evidence, and having considered the detailed submissions made by all parties at this hearing. Accordingly the Tribunal allow the appeal and issue a Substituted Decision Notice stipulating that the Appellant was entitled to withhold all of the disputed information.

19. The Tribunal wish to acknowledge the comprehensive and detailed presentation of the submissions by all parties at this hearing. Both counsel were particularly helpful in their conduct throughout. Mr. Collins, the Additional Party was also extremely helpful and succinct in making his submission on the important issues relating to public interest, transparency and accountability. The Tribunal commends his public spirit and accept entirely his bona fide interest in the important matters he has quite properly raised in this request for information. We salute his determination and acknowledge his sincere interest in pursuing this appeal. We acknowledge his concern arising from the numerous examples he has given us in what he describes as an apparent waste of public funds in prosecution failures with little or no explanation or information to the public as to what has led to these failures. His request for accountability and transparency should be noted. We accept that there is a strong public interest in maintaining the Section 20 (1) (c) exemption on the facts of this case relating to a prosecution file. However we are of the view that there should be some form of analysis or assessment of prosecution functions in each case which could inform the public in a manner that would allow a greater understanding without undermining the public interest by the disclosure of sensitive information. We are also of the view that more advice and assistance should have been given to the Additional Party to enable him to make his request more specific and relevant to matters that may not necessarily have been within the prosecution file itself or otherwise have undermined the public interest test.

Brian Kennedy QC

Judge

Date: 3 June 2011