



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

**Appeal No. EA/2012/0029**

**BETWEEN:-**

**MR DANIEL EDWARDS**

**Appellant**

**- v -**

**THE INFORMATION COMMISSIONER**

**Respondent**

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**Decision striking out the Appeal**

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1. By a letter dated 7 June 2011 the Appellant sought from the Department of Transport information relating to security at airports:-

‘I would like to request the following information.....

i. All risk assessments carried out for the use of ionising radiation in security scanners for airport security,

ii. Which radiation protection experts were consulted and what their responses were,

iii. The independent assessments of the security performance of security scanners installed at UK [United Kingdom] airports.”

2. The Department responded in an undated letter and disclosed the information held in relation to items i and ii of the request. The information held in relation to item iii was however withheld on the basis of the exemption at section 24(1) of the Act.

3. Following an internal review which did not lead to any further disclosure the Appellant complained to the Commissioner.
4. In the course of his investigation the Commissioner characterised the Appellants case as being that the effectiveness of the scanners used for airport security was questionable or unproven and that the risks of radiation injury enhanced the public interest in disclosing the assessments of the performance of these scanners.
5. The Commissioner concluded that S24(1) was engaged. This provides that:-

“Information... is exempt information if exemption from 1(1)(b) [the duty to disclose information] is required for the purpose of national security”

6. In weighing the balance of where the public interest lay in disclosing the information or not he stated:-

“34. The Commissioner agrees with the public authority that there is a strong public interest in ensuring the public are aware of the nature of the scanners deployed at the airports which the public might consider invasive. He however also agrees that this has to be balanced against the need to maintain the effectiveness of the scanners as a security measure. Disclosing information which undermines their security effectiveness would not be in the public interest.

35. The Commissioner disagrees with the complainant that there is conclusive proof that scanners are not an effective security measure. There is certainly an ongoing debate regarding the effectiveness of airport scanners in detecting all items prohibited on aircrafts or at airports. However, there is no conclusive evidence to suggest they are of little or no value as a security measure. Security scanners are part of a range of security measures deployed at UK airports and to diminish their effectiveness by exposing their vulnerabilities in effect undermines airport security as a whole.”

7. He also considered the argument put forward that the Department of Transport had not properly considered health and safety and in particular the ALARP test “as low as reasonably practicable”. The investigation carried out by the Commissioner led him to a very different conclusion:-

“The Commissioner considers the steps taken by the public authority demonstrate that the potential health risks from the use of scanners were a

matter of serious consideration before their deployment at UK airports. It is in any event debateable whether the disputed information would be specifically relevant in this regard. The Commissioner therefore finds that the public interest in disclosure for health and safety reasons (which, for the avoidance of doubt, the Commissioner considers to be a compelling public interest for disclosure) is significantly diminished by these factors”

8. The Commissioner noted that public confidence in the Government would be eroded if it disclosed information which compromised its ability to protect aircraft and the public.
9. In his appeal the Appellant argued that the Commissioner was wrong to argue that there was not conclusive proof that scanners were ineffective , that they were not used on all passengers, that they were banned under EU law, and he cited articles suggesting that the benefits in terms of security were not proportionate to potential health risk and that terrorists knew what prohibited articles were and so knew what was to be tested for.
10. In his submissions with respect to this consideration he asserts:-

“The European Commission has found that the public interest in safeguarding citizen’s health outweighs using methods of security screening that are detrimental to human health.

...

The Department for Transport and the Commissioner have failed to take into account the public interest with regards to the European Union Charter of Fundamental Rights, Article 35, which requires a high level of human health protection.”

11. In considering whether there is any realistic prospect of this Appeal succeeding I have considered the balance which the Commissioner has struck in determining the public interest and the materials to which the Appellant has referred in challenging that balance.
12. The Commissioner has considered the process which the Department of Transport has been through to assess safety of these machines, has considered the needs of openness and concluded that harm to national security interests outweigh the benefits of disclosure.

13. The hypothesis which the Appellant is seeking to advance is that the security benefits of the scanner are outweighed by the health hazards. On close analysis of the material submitted and referred to in his submissions there is nothing to detract from the Commissioner's conclusion that the health risks have been seriously considered or to show that relevant information has not been taken into account or to show that there is a risk which has not been quantified to the extent that is possible and considered by the Department of Transport. With respect to the hypothesis that the security benefits are negligible he has put forward a number of news stories suggesting (essentially) that the scanners do not work.
14. In considering this case and determining whether or not to strike out this appeal as having no reasonable prospect of success I have (following *Sutradhar v NERC* [2006] UKHL 33) adopted the approach that the Appellant's primary contention, that the scanners are ineffective, is true. The hazards of ionising radiation at these doses have been researched over many years and can be quantified and have been considered by the Department of Transport. They can fairly be described as very small. On the basis of these facts (low risk from the scanners) and presumed facts (ineffectiveness of scanners) the difficulty with the Appellant's case is this. At present there may be speculation as to the effectiveness of these security measures. Individuals with hostile intent who threaten the security of passengers in aeroplanes are privy to that speculation but in formulating their plans to attack aeroplanes they do not know how effective or ineffective these measures are. By putting this information into the public domain terrorists would be assisted in determining more precisely the strengths and vulnerabilities of one apparently significant component of the security systems protecting the millions of passengers using British airports every week. They would know the scanners are ineffective and could plan accordingly.
15. However the security benefits that come from these scanners do not simply come from detection (on the Appellant's hypothesis there are none) they come from the uncertainty they create for terrorists and the consequent deterrence of the terrorists. Of necessity that benefit is hard to quantify. I am however satisfied that it is a real benefit.
16. I am therefore satisfied that there is no realistic prospect of success in this claim and I therefore strike out the appeal. If the scanners are indeed ineffective then concealing this from terrorists is a useful exercise in misinformation and deterrence, if

(as seems more likely) they have some effectiveness then the precise performance of the scanners is of substantial benefit in planning at attack. The benefits to the public of this knowledge are, it seems to me, negligible in comparison and could not justify putting the information into the public domain.

C Hughes  
Tribunal Judge

18 May 2012