IN THE FIRST-TIER TRIBUNAL **Case No.** EA/2012/0129
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM:

The Information Commissioner's
Decision Notice dated 23 May 2012

Appellant: **The Home Office**

First Respondent: **Information Commissioner**

Second Respondent: **Ian Cobain**

Heard at Field House London on 8 January 2013

Date of decision: **30 January 2013**

Before
John Angel
(Judge)
and
Rosalind Tatam and Suzanne Cosgrave

Attendances:

For the Appellant: Oliver Sanders
For the First Respondent: not represented
For the Second Respondent: Aidan Eardley

Subject matter: S.23(1) FOIA Information supplied by, or relating to, bodies dealing with security matters

Cases: ***IC v Home Office*** **[2011] UKUT 17 (AAC)**
APPGER v IC & FCO **[2012] 1 Info LR 258**
Common Services Agency v Scottish Information Commissioner **[2008] 1 WLR 1550**

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice FS50411501 dated 23 May 2012.

SUBSTITUTED DECISION NOTICE

Dated: **30 January 2013**

Public authority: **Home Office**

Address of Public authority: **2 Marsham Street London SW1P 4DF**

Name of Complainant: **Ian Cobain**

The Substituted Decision

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 23 May 2012.

The number of Deprivation Orders made on counter-terrorist and/or national security grounds between 1st January 2006 and 12th July 2011 are exempt from disclosure under section 23(1) FOIA. The number of Deprivation Orders, if any, made under section 40(2) of the British Nationality Act 1981 (as amended) on other grounds during the same period are not subject to the exemption and should be disclosed.

Action Required

The Home Office to disclose the information within 35 days of date of this decision.

Dated this 30th day of January 2013

Signed

John Angel
Tribunal Judge

Reasons for Decision

Background

1. Section 40(2) of the British Nationality Act 1981 (as substituted by section 56 of the Immigration, Asylum and Nationality Act 2006) ("BNA") permits the Secretary of State to make an order depriving a person of his status as a British citizen (or similar status) if s/he is satisfied that deprivation is conducive to the public good. Thirteen such "Deprivation Orders" were made between 1 January 2006 and 12 July 2011. The Home Office provided this information, and more, in response to Mr Cobain's request under the Freedom of Information Act 2000 ("FOIA") made on 15 June 2011.

2. The request was for the following information between 2006 and July 2011:
    i. How many dual nationals have been deprived of British citizenship under section 56 of the Immigration, Asylum and Nationality Act 2006 for each year since the Act took effect.
    ii. The number of orders made under section 56 during 2010 before the General Election and the number made during 2010 after the General Election.
    iii. The other nationality held by each individual deprived of British citizenship.
    iv. The number of instances in which an order by the Home Secretary to deprive a person of citizenship has been appealed and the number of occasions upon which any appeal has been upheld.
    v. The number of occasions when an order has been made because the individual had known or suspected terrorist connections or intent, as opposed to orders made as a result of other national security concerns, or because the Home Secretary concluded that such a measure was conducive to the public good for reasons unconnected with national security.

3. The Home Office disclosed information it held in response to parts (i) to (iv) of the request. This appeal is therefore concerned solely with part (v) of the request. This information is hereafter referred to as "the disputed information". The Home Office refused to provide the disputed information on the grounds that it was personal data and so exempt under section 40(2) FOIA. This decision was upheld on internal review.

4. The Information Commissioner issued a Decision Notice on 23 May 2012 in which he found that the disputed information did not constitute personal data and was not therefore exempt under section 40(2) FOIA.

5. The Home Office appealed to the First-tier Tribunal ("FTT") by a notice of appeal dated 20 June 2012. It did not appeal against the Commissioner's finding that section 40(2) FOIA was not engaged. However, it claimed that

the disputed information was exempt under section 23(1) FOIA in that it had been directly or indirectly supplied by, or relates to, one of the security bodies referred to in section 23(3) FOIA.

6. The Home Office did not seek to rely on section 23(1) FOIA at the time it dealt with Mr Cobain's request, or subsequently during the Commissioner's investigation, but is entitled to do so now following the Upper Tribunal's decision in *Information Commissioner v Home Office* [2011] UKUT 17 (AAC).

Basis of the Appeal

7. This appeal by the Home Office raises a narrow issue: is the Home Office permitted, under FOIA, to refuse Mr Cobain's request for a breakdown of this total number of Deprivation Orders into (a) the number of orders made on what might be called "counter-terrorist" grounds; and (b) the number of orders made on other grounds (whether or not connected with national security)? The Home Office has never refused to state whether it holds this information. It accepts it does. Its reasons for refusing to provide it to Mr Cobain have shifted over time. Initially it contended that the information constituted personal data, disclosure of which was exempt under FOIA section 40(2). When the Commissioner disagreed[1], the Home Office changed tack and, belatedly, now relies only on the absolute exemption under FOIA section 23(1) ("Information supplied by, or relating to, bodies dealing with security matters"). Specifically it seeks to argue that the requested information is information supplied by or relating to the Security Service.

8. The Commissioner has now accepted this position and asks us to allow the appeal and substitute a new decision notice accordingly.

9. Mr Cobain's position, in a nutshell, is that providing a numerical breakdown of the 13 cases will not involve disclosure of any information supplied by the Security Service; nor will it involve (except perhaps in a *de minimis* sense) disclosure of information which relates to the Security Service. Therefore section 23(1) is not engaged. We note that in his request for an internal review, he cited various public interest grounds for providing the information. As we are dealing with an absolute exemption these are not relevant in this case.

Legal framework

10. The British Nationality Act 1981 (as amended by the Immigration, Asylum and Nationality Acts 2002 and 2006) ("BNA") provides so far as is relevant to this case:

    s. 40 Deprivation of citizenship.

[1] ICO's Decision Notice 23.05.12 pp.1-6

(1) In this section a reference to a person's "citizenship status" is a reference to his status as—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British Overseas citizen,

(d) a British National (Overseas),

(e) a British protected person, or

(f) a British subject.

(2) The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good.

(3) The Secretary of State may by order deprive a person of a citizenship status which results from his registration or naturalisation if the Secretary of State is satisfied that the registration or naturalisation was obtained by means of—

(a) fraud,

(b) false representation, or

(c) concealment of a material fact.

(4)The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.

(5) Before making an order under this section in respect of a person the Secretary of State must give the person written notice specifying—

(a) that the Secretary of State has decided to make an order,

(b) the reasons for the order, and

(c) the person's right of appeal under section 40A(1) or under section 2B of the Special Immigration Appeals Commission Act 1997 (c. 68).

11. In effect there are two bases for a Deprivation Order. The first is where deprivation is conducive to the public good because say an individual is involved in terrorism, espionage or serious crime. Secondly, where an individual has used fraud to obtain British citizenship. This case involves the first.

12. In so far as relevant to this appeal, section 23(1) FOIA provides that:

(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
(2) ..
(3) The bodies referred to in subsections (1) and (2) are –
(a) the Security Service,
(b) the Secret Intelligence Service,
(c) the Government Communications Headquarters,
(d) the special forces,
(e) the Tribunal established under section 65 of the Regulation of Investigatory powers Act 2000,

> (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
> (g) the Tribunal established under section 5 of the Security Service Act 1989,
> (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
> (i) the Security Vettings Appeals Panel,
> (j) the Security Commission,
> (k) the National Criminal Intelligence Service, and
> (l) the Service Authority for the National Criminal Intelligence Service.
>
> (5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

13. The bodies specified in section 23(3) are hereafter referred to as "the security bodies". Section 23(1) FOIA is an absolute exemption, i.e. if information falls within its scope it is exempt regardless of any public interest there may be in disclosure.

14. Although we are not bound by other decisions of the FTT: see *London Borough of Camden v The Information Commissioner &YV* [2012] UKUT 190 (AAC) §12 "previous decisions are of persuasive authority and the tribunal is right to value consistency in decision-making. However, there are dangers in paying too close a regard to previous decisions. It can elevate issues of fact into issues of law or principle". With this in mind we refer to decisions of the FTT which the parties have brought to our attention.

15. In *All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner & FCO* [2012] 1 Info LR 258 *("APPGER")* the FTT held that a broad approach should be adopted to the interpretation of section 23(1) FOIA subject to a remoteness test, i.e. whether the disputed information is so remote from the security bodies that section 23(1) does not apply (§70).

16. Approving the approach to section 23(1) FOIA taken in *Cabinet Office v Information Commissioner* EA/2008/0080 (§§21-23 & 27) ("*Cabinet Office*") and *MPS v Information Commissioner* EA/2010/0008 (§15) ("*MPS*"), the FTT in *APPGER* found that:

> *64. In the Commissioner of Police of the Metropolis v IC (EA/2010/0008) ("MPS") at [15] the First-tier Tribunal found that:*
>
> > *"s.23 provides absolute protection to information coming from or through the specified security bodies or which, "relates to" any of those bodies. Significantly for this appeal, that very broad class of information plainly embraces, not just the content of information handled by a specified body but the fact that it handled it. It is, moreover, an exemption which applies without proof of prejudice. Parliament decided that the exclusionary*

> *principle was so fundamental, when considering information touching the specified bodies that even perfectly harmless disclosure would only be made on the initiative or with the consent of the body concerned."*
>
> *65. Applying the ordinary meaning of the words "relates to", it is clearly only necessary to show some connection between the information and a s.23(3) security body; or that it touches or stands in some relation to such a body. Relates to does not mean 'refers to'; the latter is a narrower term. Thus, for example, a response that no information is held may create a sufficient connection between the response and a security body for the purpose of s.23(5): see Cabinet Office v Information Commissioner (EA/2008/0080) at [21]-[23] and [27] ("Cabinet Office").*
>
> *66. In MPS the Tribunal rejected a contention that "nothing short of certainty" that the information was supplied by or relates to a s.23(3) body should suffice. The Tribunal applied the balance of probabilities standard, observing that they had "no doubt that the normal principles as to the standard of proof apply" ([19]-[20]).*
>
> *67. We agree with and adopt the Tribunal's approach in MPS and Cabinet Office.*
>
> *68. Also we prefer Mr Hopkins' explanation of the distinction between "supply" and "relates to". "Supply" is about the origins of the information - how does the FCO come to hold it?; "Relates to" is about its contents - is the information about something to do with the security bodies. As a result "relates to" must be given a broad interpretation.*
>
> *69. Finally Ms Clement contends that information supplied directly by the SyS/SIS which "triggers" a series of subsequent events, about which information is recorded by the public authority, does not "relate to" the SyS/SIS. We consider this is a matter of fact for the Tribunal to determine taking a broad approach to the construction of s.23.*
>
> *70. To sum up we consider that the Tribunal should adopt a broad, although purposive approach to the interpretation of s.23(1). However this should be subject to a remoteness test so that we must ask ourselves whether the disputed information is so remote from the security bodies that s.23(1) does not apply.*

17. In *Cabinet Office* at §26 the tribunal found that a purposive approach in relation to section 23(1) should be construed in accordance with Lord Hope's judgment in *Common Services Agency v Scottish Information Commissioner ("CSA")* [2008] 1 WLR 1550 [4], namely that the whole legislative purpose of the release of information should be limited by the exemptions against disclosure. In relation to the section 23(1) exemption the tribunal accepted that its purpose is "*to ensure that the exclusion of security bodies from disclosure obligations should not be circumvented by allowing information relating to them to be obtained from a public authority*

that fell within the scope of FOIA" §[26 & 27].

18. In *Dowling v IC & Police Service for Northern Ireland* (EA/20110/0118) ("*Dowling*"), following the reasoning in *Cabinet Office*, the tribunal held that the connection between the information and the security body must be "significant": [20]. Further at [22], while concluding that the words must be given a broad interpretation, it held that *"There are clearly limits to be imposed by commonsense and, in a particular case, the probable ambit in principle of the need for protection"*.

19. To summarise:

    (i) Whether information is "supplied" by a security body is a question of fact as to the origins of the information, i.e. how the public authority came to hold it.
    (ii) Whether information "relates to" a security body is a question of fact to be determined by reference to the contents of the information.
    (iii) Whether information falls within the scope of section 23(1) FOIA is to be determined on the balance of probabilities, rather than certainty.

The facts

20. The request was addressed to UK Border Agency ("UKBA") but the relevant public authority for the purposes of FOIA is the Home Office.

21. The disputed information comprises the information referred to in part (v) of the request. Although the initial request could be read as comprising two limbs the Home Office in its skeleton argument describes the request as a tripartite breakdown of the number of "deprivation orders" made by the Home Secretary under section 40 BNA, between 2006 and 2011 on each of the following grounds:

    (1) counter-terrorism ("CT")
    "because the individual had known or suspected terrorist connections or intent";

    (2) other national security ("NS")
    "as a result of other national security concerns"; or

    (3) non-CT, non-NS conducive to the public good ("CPG")
    "because the Home Secretary concluded that such a measure was conducive to the public good for reasons unconnected with national security".

22. In paragraph 5.6 of its grounds of appeal, the Home Office states:

    Given the functions of the Security Service, including its responsibility for the Joint Terrorism Analysis Centre …it is inevitable that it will have a role in advising the Secretary of State on deprivation orders. Indeed it

will often initiate the process by making a recommendation to the Secretary of State in favour of such an order.

23. In support of these contentions, the Home Office relies on the evidence of Chris Kelly, an Assistant Director of the UK Border Agency with management responsibilities for cases in which individuals are deprived of British Citizenship and who oversees "deprivation work" and the development of UKBA's policy surrounding use of the power to deprive individuals of citizenship. He gave evidence to us both in open and closed sessions. The Home Office provided both an open and closed version of his witness statement. Prior to the hearing, the Tribunal considered the closed version and whether any of the redacted parts in the open version should be disclosed to Mr Cobain. The subsequent open version reflects the result of this process.

24. In summary, Mr Kelly's open evidence is that:

(1) In some cases, the initiative for considering depriving an individual of citizenship may come from the UKBA itself. In such cases, UKBA may consult with other departments and agencies including the Security Service and the Serious and Organised Crime Agency ('SOCA');

(2) In other cases, UKBA may be requested by others to consider a Deprivation Order. Such requests may come from (among others) the Security Service ("where justification for deprivation may be espionage, counter terrorism or other national security reasons") or SOCA ("where the justification for deprivation may be serious crime"), and where a request comes from the Security Service, the UKBA may also occasionally be required to consider material from the Secret Intelligence Service ('SIS') and the Government Communications Headquarters ('GCHQ');

(3) The Security Service has a role in advising the Secretary of State in contexts such as deprivation, particularly where terrorism and other national security issues are involved such as espionage;

(4) In the first instance, staff within UKBA review the merits of a case for depriving an individual of citizenship;

(5) If UKBA considers that deprivation is appropriate, its officials will draft a submission which is sent to interested parties/stakeholders for their comments. After taking these into account the submission then goes to the Home Secretary;

(6) The final decision whether to make the Deprivation Order is taken by the Home Secretary;

(7) When she so decides a Notice of Intention ("NoI") is served on the individual which in Mr Kelly's terms "would make it perfectly clear what the grounds were" for making an order. This is a requirement of section 40(5) BNA, presumably so that the individual knows the case against

her/him as it is the NoI which triggers the right to appeal against an order which might be to a First Tier Tribunal but for those cases involving National Security the appeal would usually go to the Special Immigration Appeals Commission ("SIAC");

(8) Very soon thereafter a Deprivation Order is served on the individual by the Home Secretary;

(9) The Home Office disclosed that 13 Deprivation Orders had been made between 1 January 2006 and 12 July 2011. It already held this information because it had already been given in response to a Parliamentary Question (and other FOIA requests). However the UKBA did not hold the information in the form requested by Mr Cobain, whether as described in paragraphs 7 or 17 above. In order to be able to potentially do so staff reviewed the files of the cases that had been prepared for each individual in respect of which a decision to deprive had been made. This was done after the commencement of these proceedings. Then according to Mr Kelly they consulted with the Security Service in order to "double check" they had categorised them in the way set out in paragraph 17 above, namely as CT, NS and CPG. This was done despite the fact that the grounds would have been set out in the NoIs. Mr Kelly was not involved personally in this part of the process.

(10) 10 of the 13 orders were under appeal to SIAC in July 2011. Appeals go to SIAC where the Home Secretary has certified that her decision to deprive the individual has been taken partly with reliance on information that, in her opinion, should not be made public for certain reasons as listed in section 40A(2) BNA which includes national security. The question of dual nationality is often dealt with as a preliminary matter as where an individual can prove that s/he, if deprived of British citizenship, would be stateless (section 40(4) BNA) then the carrying out of the order is not permitted. SIAC in its substantive decisions provides detailed open reasons often with closed annexes.

25. Mr Cobain does not challenge any of this evidence, so far as it goes. His position is that it goes nowhere near establishing that the numerical breakdown he has requested is information "supplied by" or which "relates to" any of the bodies listed under section 23(3).

26. However the Home Office says that because the Home Secretary receives advice from and consults with security bodies it follows that information as to the numbers of orders made on CT, NS and CPG grounds inevitably contains information which was supplied by and which relates to such bodies.

Does the Home Office hold the requested information?

27. The Home Office accepts that it does hold the information for the purposes of FOIA even though at the time of the request it did not hold it in the three categories identified in paragraph 17 above. Therefore this is not a matter we need to dwell on. However in case we have misunderstood what the Home Office has accepted we set out below why we find the Home Office does hold the disputed information.

28. The obligation of a public authority under FOIA is to inform the requester whether it "holds" information of the description specified in the request, and if so, to communicate the information it holds", section 1(1)(a) FOIA. "Holds" is not further defined in the Act, but the obligation applies only to information which is "recorded in any form" (section 84) and the question whether the public authority "holds" such information is judged at the time of the request.

29. It follows (as is frequently stated in Tribunal decisions) that there is no obligation on a public authority to answer questions generally or to create information which is not held in recorded form at the time of the request.

30. A public authority which has not been able to locate requested information after a properly conducted search of appropriate scope will be regarded as not holding it.[2]

31. Information may still be regarded as having been "held" at the time of request, even if it is required to be released in a somewhat different form, but this would not be so if, for example, producing the version for release could be said to involve carrying out research, or amount to creating new information.[3]

32. Public authorities are frequently requested under FOIA for statistics. They may not previously have extracted the particular statistic from their records but may be able to do so easily. In that case, the authority would be regarded as holding the requested information. By contrast, where the requested statistic cannot be derived readily from the existing records (because, say, the request is for a level of detail which simply cannot be ascertained from existing records), then it would be regarded as a request, falling outside FOIA, for the public authority to create new information, and the authority would be entitled to respond that it did not hold the requested information. Determining whether a requested statistic is "held", by virtue of the public authority holding the "building blocks" of raw data from which the statistic can be derived, turns therefore on the complexity of the operations which need to be performed on the building blocks and the

[2] See *Bromley v IC & Environment Agency* (31.08.07) EA/2006/0072.

[3] See *Common Services Agency v Scottish Information Commissioner* [2008] 1 WLR 1550, [14]-[16] (order for release of data in "Barnardised" form was nevertheless an order for release of information "held" by the authority at the time of the request).

degree of skill and judgement necessary to ascertain whether a particular building block should be regarded as contributing to the statistic.

33. On the evidence in this case we find that the Home Office was correct to accept that it holds the disputed information. It was largely derived from 13 NoI to deprive citizenship, although because of the lack of familiarity with some of the cases and inexperience with FOIA of the relevant UKBA staff undertaking the exercise they also looked through the files. The Security Service was only consulted to check the understanding of the terms used in the request as it related to what was held. This exercise was not undertaken at the time of the request but only recently after the Home Office had changed its position on the exemption being claimed (when it was less likely staff would be familiar with the cases).

Is the exemption engaged for the disputed information?

34. The Home Office issued 13 NoIs with reasons for the decision to deprive citizenship. The Home Secretary then issued 13 Deprivation Orders. The request is for a numerical breakdown of these 13 cases in either two or three categories whichever way the request is interpreted. This is the relevant information in this case. The Security Service did not make the orders, or determine the grounds on which they should be made, and then pass the numbers on to the Home Office. This is the function of the Home Office and Home Secretary.

35. The requested breakdown is not a piece of information as such which has been supplied directly by a security body to the Home Office. In these circumstances can section 23(1) be engaged?

36. It was common ground between the parties that the Security Service will always be involved in some way in the process leading to a deprivation order on counter terrorism grounds and most likely to be involved in other cases where the grounds relate to other national security concerns, such as espionage. We can conclude therefore on a balance of probabilities that the decision of the Home Secretary would in some way be based on information provided by the Security Service. This finding appears to us to be commonsense.

37. However does this mean that a section 23(3) body has supplied directly or indirectly the parts of the disputed information involving national security? The evidence appears to us to suggest, again on a balance of probabilities, that the disputed information is contained in the NoIs and the Deprivation Orders. Therefore in itself it was not supplied directly by the Security Service. Whether it was supplied indirectly is uncertain. However we do not need to concern ourselves with making a finding on this limb of section 23(1). This is because it is clear to us on the evidence in this case that the information requested on national security cases relates to the Security Service. This is not a remote possibility. The Security Service has a, or even the, key role in protecting our national security. It would be inconceivable that the issuing of a deprivation order on the grounds of

national security, particularly terrorism, would not relate in a significant way to the Security Service.

38. Mr Cobain argues that it is plain that the provision of the requested numerical breakdown is not going to lead to the disclosure of any information about the Security Service which is not already in the public domain. Therefore, he says, taking a purposive approach the disputed information cannot be subject to the exemption. The application of section 23(1) requires us to decide whether the disputed information was "supplied by,... or relates to" a security body. The purposive approach we adopt is the one explained in paragraph 16 above particularly as prescribed by the House of Lords in *CSA* . Mr Cobain's argument would be relevant to the application of a public interest test but we are dealing with an absolute exemption in this case.

39. Therefore we find that for two parts of the request (CT and NS) that the exemption is engaged.

40. However for the other part (CPS) the above analysis may not be helpful. There is no evidence to suggest that the Security Service instigate or advise on deprivation cases other than those involving national security. In evidence we heard they may be one of the stakeholders consulted particularly before the NoI is issued. We find based on the evidence in this case that, on the balance of probabilities, the Security Service did not supply directly or indirectly any information in relation to this part of the request. The connection might be if they were consulted as a stakeholder which in this context i.e. deprivation of citizenship on grounds unconnected to national security would be more as a matter of formality and here we find, again on a balance of probabilities in this particular case, that this is too remote to bring the number of cases (if any) where the order was on CPG grounds within the exemption on the basis that they relate to the Security Service.

41. We have provided a confidential annex to this decision which explains our findings in more detail based on the closed evidence given.

Conclusion

42. We find that the section 23(1) exemption applies to the numerical information covering CT and NS but not CPG. We issue a substituted Decision Notice requiring the CPG numbers, if any, to be disclosed to Mr Cobain within 35 days of the date of this decision.

43. Our decision is unanimous.

John Angel
Tribunal Judge

Dated: 30 January 2013

IN THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)

RULING on an APPLICATION for PERMISSION to APPEAL
By

The HOME OFFICE

1. This is an application dated 27 February 2013 by the Home Office ("Application") for permission to appeal the First Tier Tribunal (Information Rights) ("FTT") decision dated 3rd 30 January 2013.

2. The right to appeal against a ruling of the FTT is restricted to those cases which raise a point of law. I accept that this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended ("the Rules") as it provides arguable points of law.

3. I have considered whether to review our decision under rule 43(1) of the Rules, taking into account the overriding objective in rule 2, and following the Case Management Note dated 27 March 2013 and the responses of the parties have decided not to review the decision because the grounds of the Application raise important points of law which I consider can be more appropriately dealt with in the Upper Tribunal.

4. In this case the grounds of appeal advanced are clearly set out in the Application and I give permission for the Home Office to appeal to the Administrative Appeals Chamber of the Upper Tribunal on the grounds advanced.

5. I would remark however on the contention in paragraph 5 of the grounds to the Application that the FTT attributed erroneous statements as to the evidence of the Home Office witness. Understandably there is no elaboration of this ground in the Application because of the confidential nature of the evidence. However I wish to point out that the panel met to consider its decision immediately following the hearing and because of security requirements wrote the confidential annex at the time referring to their notes taken earlier in the day.

6. Under rule 23(2) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended the Home Office has one month from the date this Ruling was sent to it to lodge the appeal with:

The Upper Tribunal (Administrative Appeals Chamber)
5th Floor, Rolls Building,
7 Rolls Buildings, Fetter Lane,
London, EC4A 1NL

Tel: 020 7071 5662
Fax: 020 7071 5663
Email: adminappeals@hmcts.gsi.gov.uk

John Angel
Tribunal Judge First-tier Tribunal (Information Rights)
Dated this 17th day of April 2013