

FOIA s.58(2) – Tribunal’s powers

James Nisbet v IC

EA/2007/0031

29th November 2007

Cases:

Simmons v IC [2005] UKIT EA_2005_0003

Prior v IC [2005] UKIT EA_2005_0003

Facts

The Appellant sought information from the National Audit Office (NAO) for background information relating to a pie chart in the NAO’s 2001 Report. The NAO stated that it could not provide any further information since the difference between the content of the pie chart and another document which contained the source of the information set out in the pie chart represented “extra work” carried out by the Research Team at Bath University. It was this additional work which explained the difference in the pie chart. The Appellant was invited to contact an individual within the NAO’s team if he had any further enquiries on the use of the data in the pie chart, but the Appellant did not take advantage of that offer.

The IC was satisfied that the NAO did not withhold any information from the Appellant. The IC also stated that if he did not hear from the Appellant within the next 20 working days, he would assume that the Appellant had withdrawn his appeal. The Appellant declined to withdraw his complaint and stated that his complaint was did not “limit information to that held by the NAO” the implication being that he wanted to uncover an audit trail that led back to wherever there might be located the underlying information. The IC concluded that the NAO had dealt with the request in accordance with FOIA and no further steps need be taken. He also stated that no audit trail existed.

Findings

The Tribunal upheld the findings of the IC. There was simply no evidence before the IC to enable him to find that there was a documented audit trail. The IC made no error in ignoring urgent evidence which went to the question as to whether the information requested was in fact held.

Conclusion

The Tribunal dismissed the appeal and upheld the IC’s decision notice.

Observations

Despite the issuance of standard directions during the course of the appeal, in particular, that the Appellant be at liberty to put in further evidence, the statement that

he did put in was a lengthy duplication of the Notice of Appeal. The Tribunal stressed that it would have been preferable had there been a separate document setting out in short, concise paragraphs or terms what the Appellant's contentions were. The Tribunal suggested that in future cases with litigants in person particularly, the IC should be sensitive to the possibility of overlap as between the Notice of Appeal and further documentation and as to the advisability of urging the party in question either to not to repeat submission in the Notice of Appeal or to put his or her contentions in a short, separate document.