

FOIA s.40(2) – Absolute exemption: personal data

FOIA s.30(2) – Qualified exemption: investigations and proceedings conducted by public authorities

Edwin Alcock v IC & Chief Constable of Staffordshire Police

EA/2006/0022

3rd January 2007

Cases:

Johnson v Medical Defence Union (No 2) 2006 EWHC 321 (Ch)

Facts

The situation stemmed from the fact that the police had received allegations from an informant regarding the Appellant which included an allegation that a bailiff who had tried to serve some papers on the Appellant had been threatened by him with a brick and been chased off the Appellant's premises, that he had threatened to blow someone up and had threatened a judge in court. This information was passed on to the Appellant's employer and this resulted in him losing his job as an explosives expert, suffering health problems, losing his home and his explosives licence. The Appellant made a request for information to the Chief Constable for Staffordshire Police regarding what the Appellant termed as a 'malicious informant'. Staffordshire Police refused the request on the grounds that it was a vexatious or repeated request under s.14 FOIA and that the identity of the informant was exempt from disclosure under ss.30, 31, 38,40 and 41 of the Act.

The IC held that the Appellant's request was not vexatious. However, the IC held that on a literal reading of the Appellant's request that the Police did not consider that there was any evidence of malicious intent on the part of their informant and so there was no information about any investigation or attempt to recover public funds, the Police did not hold the information requested by the Appellant. With regard to the request for the identity of the informant (which the IC considered to be the substance of the request), the IC found that this information was exempt from disclosure on the basis of two exceptions: one is the absolute exemption in section 40(2) of the Act, and the second is the qualified exemption in section 30(2)(b) of the Act

Findings

s.40(2) FOIA

The Tribunal observed that any information which could identify the informant is clearly personal data in relation to that individual. They stated that disclosure of that information would lead to 'processing' of that personal data within the meaning of DPA 1998 in that it means '*obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data*'. Processing of the personal data must comply with the Data Protection Principles,

however the Tribunal agreed that the first principle would be breached for two reasons:

(i) disclosure would be unfair because it would be contrary to the reasonable expectations of the confidential informant; and

(ii) there was no basis for disclosure of the information under Schedule 2 to the DPA 1998.

Even on the assumption that the Appellant was pursuing a legitimate interest in seeking disclosure of the information, the Tribunal found that the disclosure was unwarranted by reason of prejudice to the legitimate interests of the data subject, who had specifically asked for his/her identity to be kept confidential.

Therefore they found that this exemption did apply and therefore the identity of the informant should not be disclosed. They considered that as a result there was no need to consider the other exemption. However, in case they were wrong on this point they considered the exemption under section 30(2)(b) FOIA regardless.

s.30(2)(b)

The Tribunal held that the exemption was clearly engaged as the information sought by the Appellant was obtained from a confidential source. The Tribunal went on to consider the public interest test. The Tribunal rejected the idea that disclosing the information would assist in the proper functioning of the legal system, and thus held that the public interest in maintaining the exemption outweighed the public interest in disclosure as disclosure by Staffordshire Police of information provided to them on a confidential basis would be likely to deter others from providing information to them. This would be likely seriously to hinder police efforts in the prevention and detection of crime.

Conclusion

The Tribunal upheld the decision notice and dismissed the appeal.

Observations

(a) It could be argued that no information was held by the police covered by a request for the “name of a malicious informant”, as the police did not believe that the informant in question had been malicious. However, following the guidance provided in *Barber*, the Tribunal interpreted the request as being, in substance, a request for the name of the person who had made the allegations in question.

(b) When considering the public interest balance the Tribunal should carry out a review on the merits and may substitute its own view for that of the Information Commissioner.