

FOIA s.41 – Absolute exemption: confidential information

FOIA s.42 – Qualified exemption: legal professional privilege

Sean Caughey (on behalf of Geo Provenance International Limited) v IC

EA/2008/0012

Cases:

Facts

The Appellants Geo Provenance are a company limited by guarantee who applied to the Charity Commission (CC) for charitable status. The Commission refused the application as the aims of the company were not charitable. The CC requested the Independent Complaints Review (ICR) to investigate its handling of the company's application and a complaint which the company had made, to which it produced a report. The company requested from the CC all the information in relation to its complaint and the information which the CC provided to the ICR on this matter. The CC provided some information but refused to disclose a draft report on the grounds that it was exempt information under s.41 FOIA. The Appellants also made a second request for information which was refused on the basis that it was exempt under s.42 FOIA.

The IC held in his first decision notice that s.41 was engaged and that the CC was right to withhold the draft report. The IC held in his second decision notice that s.42 was engaged and that the public interest in maintaining that exemption outweighed the public interest in disclosure.

Findings

With regard to the first decision notice, the Appellant submitted his appeal out of time and thus the Tribunal only considered the appeal relating to the second decision notice. Therefore, most of the Appellant's grounds for appeal were rejected for the reason that they related to the first decision notice only.

With regard to the Appellant's "Request to issue Enforcement notices in respect of 18th May 2005 FOIA request" the Tribunal stated that Enforcement Notices in general terms are issued by the Commissioner whenever he is not satisfied that the requirements of Part I of FOIA have not been complied with by the public authority. They observed that the Second Decision Notice clearly stated that in all material respects, the public authority complied with its obligations under FOIA. The Tribunal held that it had no reason to challenge or upset the finding, therefore this ground was rejected.

The Tribunal further held that 'an explanation why the complaint was not being dealt with at some stage' did not constitute information within the meaning of information under FOIA and so the Appellant's argument in relation to this was rejected.

The Tribunal also refused to judge whether the relevant chronology was as claimed by the Appellant with regard to an exchange of correspondence that took place in July 2006 in which the CC was required to carry out its own review. The Tribunal was merely willing to deal with the substance of the second decision notice and the main bone of contention (being whether s.42 was correctly applied) was not affected by the date or dates on which an internal review confirming the original decision may or may not have been carried out.

With regards to the Appellant's contention that there was a deliberate and lengthy delay in investigating the case, the Tribunal held that this was in no way material to the issue of the appeal (ie the validity of claiming the s.42 exemption).

With regards to the Appellant's contention that the Commissioner's finding that a waived privilege as to one document did not amount to a waiver in respect of the remaining documents which otherwise formed part of the privileged information was incorrect, the Tribunal found no error of law in that finding.

As to the Appellant's claims that various documents have privacy markings on them, the Tribunal held that there was no evidence to justify this submission and the Tribunal also found the statement "communications will be confidential if they had taken place in circumstances where a relationship of confidence is express or implied" to be unimpeachable.

Finally, with regard to the public interest test applied with regard to s.42, the Appellant alleged that "...this case involves clear evidence of deliberate and devious manoeuvres by the public authority ... and by its legal advisors ..." in the form of suppression of information or the denial of information. However, the Appellant provided no evidence in support of these allegations and even if it were provided the Tribunal stated that this would not necessarily cause a public interest test carried out by the Commissioner to be revisited or shown to be wrong. Further, the Tribunal stated that the IC clearly took into account the particular considerations applicable to the facts of the case, of which factors did not in the Commissioner's view reveal any issues which were of such concern or interest as to justify placing the legal advice which was sought "in the public domain" for public scrutiny and/or were of such concern or interest as would advance democracy or inform public debate. The Tribunal found there to be no error of law in this conclusion.

Conclusion

The Tribunal upheld the decision notice and dismissed the appeal.