

FOIA s.40(1) and (2) – Absolute exemption: personal data

FOIA ss.30(1) and 30(2) – Qualified exemption: **Investigations and proceedings conducted by public authorities**

Stafford Freeborn v IC & Sussex Police

EA/2007/118

5th August 2008

Cases: Durant v Financial Services Authority [2003] EWCA Civ 1746

Facts

The Appellant was convicted of violent crime but contended that he was wrongly convicted and complained about the way Sussex Police conducted the case. He believed that they had interfered with a 999 tape used in evidence against him. He made a number of complaints to Sussex Police and the Police Complaints Authority (PCA). As a result, he made a number of requests for information in relation to the tape and how his complaints were handled. With regard to the request regarding the complaints and for details recorded on the Sussex Police's exhibit register of a cassette tape of the 999 call which was an exhibit in his criminal case the authority refused the request relying on ss.30(1) and (2), 38, 40(2) and 41 of the Act. The Appellant complained that the requests for information which the Sussex Police had not complied with had not been dealt with in accordance with Part I of the Act.

The IC held that in so far as the information requested was held by the Sussex Police, it was all "personal data" of which the Appellant was the data subject and thus exempt under s.40(1).

Findings

Section 40(1)

The Tribunal held that the IC's decision that all the information requested was exempt under s.40(1) was unsatisfactory for the following reasons:

- (1) The Sussex Police had not themselves relied on that particular exemption and were not obliged to rely on it;
- (2) The IC made no investigation or findings as to what information was held by the Sussex Police coming within the requests although it was by no means clear from the requests themselves that the information requested was necessarily going to constitute the Appellant's personal data;
- (3) The IC made no findings in relation to other exemptions which had been relied on by the Sussex Police.

The Requests

With regard to the Appellant's first request for information, the Tribunal accepted Sussex Police's evidence that the information requested had never existed. Therefore, they held that there was never any reason for the IC to introduce s.40(1) into the debate. However, because he did, they stated that they could not see how the information requested could possibly have constituted the Appellant's personal data as it was not 'biographical' in any sense, therefore the IC was wrong to assert s.40(1) in any case.

With regard to the Appellant's request for information regarding his complaints, the Tribunal was satisfied that the Police did not now hold information as to two of them as it may have been destroyed. The Tribunal accepted undertakings to search for the file in relation to the third complaint and send it to the Appellant.

With regard to the Appellant's request for details recorded on the exhibit register of a cassette tape which was an exhibit in his criminal case, the Tribunal was satisfied that the register did not contain any information constituting the Appellant's personal data and therefore s.40(1) did not apply. With regard to s.30 the Tribunal held that the Register clearly came within s.30(1) of the Act; however, the public interest balancing exercise required by s.2 of the Act clearly came down in favour of disclosure given that the investigation in question ended in a conviction ten years ago, the information should have been disclosed in the course of the court proceedings in any event and the Appellant has been complaining that he was wrongly convicted for many years. Subject to the application of s.40(2) the Sussex Police undertook to send a copy of the register to the Appellant.

Conclusion

The Tribunal allowed the appeal in part and substituted a new Decision Notice.

Observations

The Tribunal formed the general impression that Sussex Police's approach was to seek to supply as little information as possible rather than acting in the co-operative and helpful spirit exhorted by s.16 of the Act. They urged them to adopt a more co-operative and helpful approach to future requests for information.