

FOIA s.30 – Qualified Exemption: Investigations and proceedings conducted by public authorities

Guardian Newspapers Ltd v IC & The Chief Constable of Avon and Somerset Police

EA/2006/0017

5th March 2007

Cases:

Facts

The Guardian sought information about a police investigation in the late 1970s into allegations of incitement to murder and conspiracy to murder made against certain individuals, including the former leader of the Liberal Party. The individuals were subsequently charged but acquitted at trial. The authority refused to disclose the information on the basis that the ss.30, 38 and 40(2) FOIA exemptions were engaged.

The IC upheld the withholding of the information as to s.30 and s.40(2) for part of the data, but rejected the justification based on s.38. With regard to s.30, he concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure.

Findings

In balancing the public interest with regard to s.30, the Tribunal examined the following arguments:

1. The 27-year passage of time was a double-edged argument, whichever side wielded the sword. It probably reduced the risks of witnesses being reluctant to assist investigations for fear of publicity (thereby prejudicing future investigations) but it similarly weakened the legitimate public interest in knowing more of the background facts.
2. There was little, if any evidence of any widespread current interest in the matter.
3. The former leader of the Liberal Democrats had ceased to be a public figure long ago.
4. The approaching end of the 30-year period, at the end of which historical records are released for public inspection, was irrelevant for two reasons:
 - (a) Parliament decided on 30 years, not 27. To use proximity as an excuse for disclosure would be to erode the interval which Parliament chose.
 - (b) It is not certain that disclosure will follow in 2010 as other exemptions may apply.
5. The Tribunal, having read the information requested and concluded that it provided no support for a suggestion that the police had “pulled their punches” because of the eminence of one of the suspects, concluded that there was little, if any public interest in its disclosure.

6. The counter arguments for maintaining the exemption were not overwhelming on the facts of the case.

(a) The Tribunal was not persuaded that distress to surviving participants in the trial was an interest which exemption in question was designed to protect.

(b) Although there was a risk that an attempt would be made to revisit the verdicts in the trial, the public interest in revisiting a possibly unjustified conviction would be greater than any public interest in re-examining an acquittal..

(c) Whilst the passage of time was a significant feature the Tribunal acknowledged weighty interest in principle in protecting information acquired, often in confidence, in police investigations.

The Tribunal concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure and therefore did not need to consider the position under s.40(2).

Conclusion

The Tribunal upheld the Decision Notice and dismissed the appeal.