

FOIA: FOIA ss1(1)(a) and 23(5) and 24(2) – neither confirm nor deny information relating to the security service

COMMISSIONER OF METROPOLITAN POLICE v INFORMATION COMMISSIONER

Case Number: EA/2010/0008
23 May 2010

Facts

In September 2006 President Bush stated in public that information obtained from questioning terrorist suspects at secret US detention facilities had helped stop hijacked planes being flown into Heathrow and Canary Wharf. In July 2007 a journalist requested information from the Met about how such plots were foiled by use of that information. The Met refused to confirm or deny it had such information and relied on ss 23(5) or 24(2) (without specifying which) among others. The Information Commissioner upheld a complaint by the requestor and the Met appealed to the Tribunal.

Findings

Before the Tribunal it was clear that an answer to the request for information would disclose whether information derived from interrogations was or was not held. There was also very significant new evidence presented which was accepted by the Tribunal that there is virtually no direct contact between the Met and the CIA and that it would be very unusual for intelligence coming from the CIA to reach the Met other than through a “section 23 body” (which include the Security Service). The Tribunal also found that members of the public would appreciate that if the Met held information like that to which President Bush referred then the Security Service would also do so. Thus a confirmation or denial in response to the request for information would disclose not only whether the Met held such information but also whether the Security Service did: it would thus disclose information “relating to the Secret Service” which is information covered by s23(5) which is an absolute exemption.

Conclusion

On those narrow grounds the Tribunal allowed the appeal (with the effect that the Met did not have to confirm or deny holding the information) observing that this was an unfortunate result given the very high level of public interest in the questioning of terrorist suspects and that it was hard to see that significant damage could be caused by confirmation or denial given that the President had made a public statement about the matter.