

FOIA: ss 23 and 24 national security
S30 investigations
S38 health and safety
S58 – tribunal’s powers on late raising of exemptions

***COMMISSIONER OF THE METROPOLITAN POLICE v INFORMATION
COMMISSIONER***

Case Number: EA/2010/0006

9 July 2010

Cases:

Home Office v Information Commissioner EA/2010/0011

Facts

On 25 July 2008 the complainant made the following request under FOIA to the Metropolitan Commissioner: “How much money has Croydon police spent in each of the last three years on paying informants?” On review the Met refused to disclose the information in reliance on s30(2) and 38. On appeal to the Tribunal against the Commissioner’s decision that they ought to have disclosed the information they sought to rely also on ss23 and 24 and on evidence from two senior officers whose significance only emerged (to the concern of the Tribunal) in the course of expanding on written statements or cross-examination.

Issues

The issues for the Tribunal were:

- (1) whether the Met could rely on ss23 and 24 for the first time before the Tribunal;
- (2) whether those exemptions were engaged;
- (3) whether the ss 30 and 38 exemptions were engaged;
- (4) where the public interest balance lay.

Findings

- (1) Both parties accepted and the Tribunal adopted the well established jurisdiction of the Tribunal that the Tribunal has a discretion whether to consider exemptions raised for the first time before it notwithstanding the fact that permission had recently been granted for an appeal by DEFRA to the Upper Tribunal to argue that the Tribunal must consider

any exemption raised at any stage in the process (and, now, the decision of a differently constituted Tribunal to the contrary in *Home Office v Information Commissioner EA/2010/0011*). In its discretion the Tribunal ruled that although the fault lay with the Met it would consider the s24 exemption but not the s23 one: while the s23 exemption is a “class” exemption which requires no damage to be demonstrated s24 is engaged if exemption is required “for the purpose of safeguarding national security” and therefore has significant “potentially serious public implications”.

- (2) The Tribunal accepted the evidence of “DI D” to the effect that disclosure of such detailed information would erode the relationship of trust between the police and covert police informants which would cause serious harm to their recruitment and retention which would itself undermine the investigation of terrorism and other criminal activity to the detriment of national security. S24 was thus engaged.
- (3) It was common ground that s30(2) was engaged.
- (4) The Tribunal found that the public interest in maintaining each of the exemptions overwhelmingly outweighed that in disclosure of the information requested: of particular relevance were (a) that disclosure of this information on a Met wide basis is already made and a breakdown in relation to Croydon would not add to accountability or transparency and (b) the fact that actual or potential informants would regard disclosure of the requested information as a breach of confidence which would significantly undermine their confidence in having their identities protected.

Conclusion

The Tribunal allowed the appeal on the basis of ss 24 and 30 and found that the Met was not obliged to disclose the information requested.