

FOIA s.31 – Qualified exemption: Law enforcement

Christopher Martin Hogan and Oxford City Council v IC

**EA/2005/0026 and 0030
17th October 2006**

Cases:

John Connor Press Associates Limited v Information Commissioner [2006] UKIT

EA_2005_0005

R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin)

Paul Hemsley v IC[2006] UKIT EA_2005_0026 (Bellamy v IC and the Secretary of State for Trade and Industry [2006] EA_2005_0023

Facts

The Appellant requested information from Oxford City Council regarding vehicles which it operated, including vehicle identification numbers (VINs). Oxford refused the Appellant's request on the grounds that the s.31(1)(a) FOIA exemption was engaged. The Council stated that it was concerned that if information regarding VINs were disclosed with other vehicle information, then the information could be used for cloning. The Appellant replied stating that he would limit his request.....

The IC made findings including:

- Disclosure of VINs to the public at large would be likely to increase the risk of the information being used for vehicle cloning and that the s.31(1)(a) exemption was therefore engaged.
- The public interest in maintaining the exemption outweighed the public interest in disclosure of VINs.
- The exemption in s.31(1)(a) was not engaged in respect of the remainder of the information sought.

Findings

Prejudice Test

The Tribunal categorised the s.31 exemption as a “prejudice test”, in that it was necessary to establish that disclosure would or would be likely to prejudice a specified activity or interest. In this case the interest was the public one of law enforcement. A risk of disclosure facilitating vehicle cloning had been established, which created the necessary causal connection with law enforcement. However it was necessary to establish that the prejudice would or would be likely to lead to the prejudice that had been identified.

The Tribunal noted that following the cases of *John Connor Press Associates and R (on the application of Lord) v Secretary of State for the Home Office* there are two possible limbs on which a prejudice-based exemption might be engaged: the occurrence of prejudice to the specified interest is more probable than not, and there is a real significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not. They considered that the greater the likelihood of prejudice, the more likely the balance of public interest will favour maintaining whatever qualified exemption is in question. The Tribunal considered that there was a degree of risk which may very well have prejudiced the prevention or detection of crime, even if that risk may have fallen short of being more probable than not. Therefore they considered that the disclosure of VINs in relation to the Request was likely to prejudice the prevention or detection of crime. Therefore, the s.31 exemption was engaged.

Public Interest Test

The Tribunal noted that because they found that disclosure of VINs would be likely to prejudice the prevention or detection of crime, the public interest in maintaining the exemption is more difficult to determine than where the alternative limb of the test is applied.

They noted that the FOIA did not include any general provision to the effect that there is a presumption in favour of the disclosure of information held by public authorities. However they commented that the duty to communicate information under s.1(1)(a) may be displaced by a qualified exemption under s.2(2)(b) only if the public interest in maintaining the exemption outweighs the public interest in disclosure of the information sought. It concluded that if the competing interests were equally balanced, then the public authority ought to communicate the information sought.

The Tribunal found on balance that the disclosure of VINs by Oxford would contribute to the sum of criminal knowledge to a greater extent than that already existing from currently available sources. As a result the risk of crime would be greater if the information was disclosed than if not. The Tribunal did not that consider the risks associated with the cloning of vehicles should be increased by the wider disclosure of VINs and therefore found that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Conclusion

The Tribunal upheld the decision notice and dismissed the appeal.

Observations

In this case the public interest factors were finely balanced in coming to the decision mainly because of the extent to which VINs are already in the public domain. As a general rule, the public interest in preventing disclosure diminishes over time. Therefore the Tribunal expected that the application of the public interest test to similar requests to that of the Request may be differently balanced in the future, particularly if VINs become more easily accessible and more widely available on the internet.