

FOIA s.44 – Absolute exemption: prohibitions on disclosure

HRA Art 2 – Right to life

HRA Art 6 – Right to a fair trial

HRA Art 8 – Right to private and family life

HRA Art 10 – Right to freedom of expression

John Hoyte v IC & The Civil Aviation Authority

EA/2007/0101

5th March 2008

Cases:

Facts

The Appellant, a retired pilot, requested information from the Civil Aviation Authority (CAA) relating to an incident in which he elected not to fly as crew due to a number of factors (factors which were explored during the appeal). The CAA refused the information on the grounds that it was exempt under s.44 FOIA as its disclosure was prohibited under s.23 of the Civil Aviation Act 1982. The Appellant believed the report contained information regarding contaminated air on aircraft.

The IC concluded that the CAA had dealt with the request for information in accordance with the FOIA and did not require any steps to be taken.

Findings

Was the information prohibited from disclosure?

The Tribunal was satisfied that the information requested was prohibited from disclosure due by an enactment, the enactment being Article 117(1)(ii) of the ANO 2000 which provides that provided that certain persons closely connected to flying, manufacturing, maintenance or air traffic control of aircraft operated in the UK must make a report to the CAA of any reportable occurrence. The CAA applies a principle of confidentiality whereby it does not disclose the name of a person submitting a report or of a person to whom it relates, unless required to do so by law or unless, in either case, the person concerned authorises disclosure. Therefore it was possible that s.44 was engaged. They further rejected the Appellant's submission that because the public interest in the issue of contaminated air was so great, they should ignore the legislative prohibition and order disclosure.

Was there an exception to the prohibition?

The Tribunal held that even though an exception to this prohibition applied, the CAA's choice to exercise its discretion as not to disclose the information for purposes of aviation safety was not irrational under the Wednesbury test for unreasonableness and therefore exercised its discretion lawfully. They observed that the test was not

whether they would exercise discretion in the same way nor whether they approved of the way in which the CAA exercised its discretion, but whether the discretion was properly exercised: ie was the decision a reasonable one which the CAA was entitled to make. The Tribunal held therefore that the s.44 exemption was engaged.

Were the Appellant's Human Rights breached?

The Tribunal also considered whether a decision not to disclose the information would breach the Appellant's human rights. They concluded that the Appellant's Article 2 right to life would not be breached as the information referred neither directly or indirectly to the issue of contaminated air.

They held that consideration of a breach of the Appellant's Article 6(1) right to a fair trial for the reason that a hearing with the House of Lords Select Committee on Toxicity of Chemicals in Food Consumer Products and the Environment without the disputed information was beyond their jurisdiction.

They held that the Appellant's Article 8 right to a private and family life was not breached by the decision made by the CAA with regard to the exercise of discretion under s.23 CAA 1982.

They held that the Appellant's Article 10 right to freedom of expression was not breached as the Appellant's ability and right to give evidence to the House of Lords Select Committee s not curtailed by the statutory bar on disclosure and the exercise of discretion under s.23 CAA 1982.

Conclusion

The Tribunal upheld the Decision Notice and dismissed the appeal.

Observations

The Tribunal commented that a number of points had been raised by the Appellant that had no direct bearing on the appeal and were not within the jurisdiction of the Tribunal, for example, substantive complaints about the handling of the issue of contaminated air by the airline operator, the CAA and Parliament.