

FOIA s.21 – Absolute exemption: information accessible by other means

FOIA s.10 – Time for compliance

Mr T Prior v IC

EA/2005/0017

27th April 2006

Cases:

Facts

The Appellant requested information regarding why and under what legal basis his mother was removed from hospital to a residential home where she subsequently died from Hertfordshire County Council. The Council had twenty working days from the date it received the request in which to reply. It wrote to the Appellant within that time pointing out that a number of exemptions might apply, without specifying which. It invoked section 10(3), which sets out the circumstances in which the 20 working day time limit may be replaced by an obligation to respond within a period that is “reasonable in the circumstances”. The council responded by refusing the request on the basis of the s.21 exemption as they considered that they had already provided the information.

The IC upheld the council’s refusal notice.

Findings

With regard to the Decision Notice, the Tribunal found that the IC was correct in law in coming to this finding. They noted that the fact that a complainant does not accept the substance of the information provided is not a matter for consideration under the Act. The only obligation under the Act is for the public authority to provide the information it holds of the description specified in the request. The IC was satisfied, in effect, that the Council did provide such information prior to the date of the request, thereby finding the exemption applied.

The Tribunal held with regard to the refusal notice that the council was not justified in responding after the 20-day time limit, as although s.10(3) of the Act allows public authorities to have a reasonable extension of the time-limit to comply with s.1(1) which provides for the situation where a qualified exemption applies and the authority needs additional time to consider the public interest test; but in this case the exemption being applied was an absolute one. Therefore, s.10(3) did not apply and the council should have complied with the Appellant’s request. This section although technically correct is not good English. Please rephrase.

Conclusion

The Tribunal found that the Decision Notice was in accordance with the law so far as the application of the exemption was concerned and to that extent upheld the appeal.

However, with regards to the refusal notice, the Tribunal held that the refusal notice was served out of time and to that extent upheld the appeal.