

FOIA s.1(1) – right of access

Edward Anthony Barber v IC

EA/2005/0044

11th November 2005

Cases:

Facts:

The IR failed to provide Mrs Barber with an immediate tax refund following the submission of her self assessed tax return, as had happened prior to the introduction of the Self Assessments. Mr Barber entered into a long correspondence with the IR about the matter and recommended how the system could be corrected. It took 3 years for the IR to introduce the reforms and Mr Barber's FOI request in effect, asked for information as to why it had taken so long. He used terminology such as "maladministration" and "failed standards" and the IR refused the request on the basis that they did not accept there had been failures.

The IC in his Decision Notice found that Mr Barber's "request for information is framed in general and subjective terms focusing on the complainant's opinions of the alleged actions of the Inland Revenue" and, in effect, because the Inland Revenue did not accept those opinions they were justified in refusing the request.

Findings

Under s.1(1) FOIA there is no definition of a valid or effective request as such. The only provision is that "any person making a request for information to a public authority is entitled ...to be informed by the public authority whether it holds information of the description specified in the request." There is no restriction on what that "description" might be. However, where the public authority cannot easily "identify" the information then s.1(3) provides a mechanism whereby the authority can seek to clarify the request and if this further information is not supplied then the authority is not obliged to comply with the request.

If public authorities are permitted under FOIA to pick and choose which requests they respond to on the basis of whether or not they approve of the language used by requesters, this would make a mockery of the legislation. If the language causes difficulty in identifying the information then they can resort to s.1(3), which the IR did not use in this case.

Conclusion

The Tribunal found that the IR was not entitled to refuse to consider a request merely because it regarded the language of the request as tendentious. They also found that Mr Barber had a genuine and unfulfilled requirement to know what actions had taken place in relation to the prioritising of refunds of overpaid tax. As a result they found

that the Commissioner was wrong in law to find that the Inland Revenue have no information to provide in response to his request.

Observations

The Tribunal made several observations:

1. There will be very few complaints where the IC can rely on the papers only. He will usually need to follow up the complaint with the requester and the public authority;
2. Just because a complainant does not specify a breach of the duty to provide advice and assistance in his complaint, that should not mean that the IC is under no further obligation to consider the public authority's duty in this respect. Also by drawing the parties attention to the s.16 duty this could result in an earlier determination of the matter.