

**FOIA s.42** – Qualified exemption: legal professional privilege

**FOIA s.41** – Absolute exemption: confidential information

## ***Dr Christopher T Husbands v IC***

**EA/2006/0048**

**19<sup>th</sup> March 2007**

### **Cases:**

Three Rivers DC and ors v Governor and Company of the Bank of England (no 6) [2004]

UKHL 48

Belabel v Air India [1988] 2 All E R;

Bellamy v IC and The Secretary of State for Trade and Industry [2006] UKIT EA\_2005\_0023\_

Shipton v IC and National Assembly of Wales [2007] UKIT EA\_2006\_0028

### **Facts**

A request had been made by the Appellant for certain information contained in bills for legal services delivered to a University in relation to an employment dispute between the University and one of its academic staff. The request had been refused on the basis that the information was the subject of legal professional privilege and disclosure would disadvantage the University in the context of continuing litigation. It was said that the bills were therefore exempt from disclosure under FOIA section 42 and that the public interest in maintaining that exemption outweighed the public interest in disclosure.

The IC had concluded that legal professional privilege applied to bills of costs which contained a detailed narrative of work carried out. He also decided that there was a public interest in the way that educational establishments spent public money but considered that there was a stronger generic public interest in maintaining the section 42 exemption based on the importance of clients being able to communicate with their legal advisers in confidence. In addition he said that there was a specific disadvantage likely to be suffered by the University in that disclosure of a detailed breakdown of legal charges could be advantageous to the other party to the dispute in that it might disclose.

### **Findings**

The Tribunal decided, as a preliminary point, that it was irrelevant that the request for the information may have been made on behalf of the other party to the dispute. It did not think that the motive which might lay behind a request for information should influence its decision. If it ordered disclosure of the information requested it must do so on the basis that it is disclosed to the public as a whole, and not just to the person who made the original request. It was therefore the consequences of the disclosure that must be considered, not the Appellant's reasons for making the request in the first place.

#### S.42, Legal Professional Privilege

Relying on the broad guidance provided by the House of Lords in *Three Rivers DC* (in preference to older cases which seemed to treat lawyers' bills as a class of document that automatically attracted privilege) the Tribunal stated that it was required to decide whether disclosure of the information set out in the bills in question would expose to public scrutiny any of the facts placed before the University's lawyers with a view to obtaining legal advice, or any part of the advice itself. If they did not reveal anything as to the contents of the communications between lawyer and client, there was no reason why they should attract privilege.

Applying that test the Tribunal decided that the formal single page VAT invoices submitted by the lawyers, which did not contain any information about the work undertaken, were not privileged and did not therefore fall within the section 42 exemption. However, documents which accompanied the bills and contained a detailed description of work undertaken were capable of being subject to legal professional privilege and therefore fell within the exemption. In this case the documents did not appear to disclose very much about either the facts disclosed by the University to the lawyers, the advice given based on those facts or the resulting litigation strategy developed by client and lawyer. However, the Tribunal was conscious that it knew very little indeed about the nature of the dispute and considered that it was possible that an element of information that seemed insignificant to an outsider might betray very much more to a person familiar with the issues at stake.

#### Public Interest Test

The Tribunal concluded that the public interest in maintaining the exemption in respect of that information outweighed the public interest in knowing more about how the University spent its money, particularly as the disclosure of the non-privileged single-page VAT invoices would provide the public with the information it might need in order to inform any debate on the University's expenditure.

#### **Conclusion**

The single page VAT invoices did not fall within the exemption. Accompanying documents that described the work undertaken were privileged and the public interest in maintaining the resulting s.42 exemption outweighed the public interest in disclosure.