

**FOIA s.30** – Qualified exemption: investigations and proceedings conducted by public authorities

**FOIA s.2(2)** – Public interest test

## ***Mr Stanley Desmond Keely v IC***

**EA/2007/0113**

**19<sup>th</sup> May 2008**

### **Cases:**

### **Facts**

The Appellant had asked for certain information from the Company Investigation Department (“CIB”) of what is now the Department for Business, Enterprise and Regulatory Reform about its preliminary vetting of a complaint about a public company, which had led to the CIB declining to commence an investigation into its affairs. Some information had been provided in response to the request but the Appeal centred round a question as to whether the CIB had made enquiries *to* determine if other complaints had been made to the Financial Securities Authority, the DTI or the London Stock Exchange (the answer given was “yes”) and a request for disclosure of all correspondence with those organisations. Disclosure of the correspondence was refused on the basis that it was exempt information under FOIA section 30 (investigations and proceedings conducted by public authorities) and that the balance of public interest in maintaining that exemption outweighed the public interest in disclosure.

The IC agreed with that analysis.

### **Findings**

#### **S.30 exemption**

The number of complaints received by each regulator did not fall within the request for information. A request had to be approached in a common sense manner; and not construed as a formal legal document. It should be approached with a bona fide intention to assess what it is that the person making the request wished to know. If that was not clear then the public authority receiving the request might have an obligation (under FOIA s.16) to advise and assist the person making the request, a process which may lead to the scope of the request being clarified. However in this case, the request was clear on its face and the public authority did not have an obligation to try to imagine what other information the person making the request might have considered asking for if he or she had thought of it.

S.30 was engaged.

An argument by the Appellant that it would only be engaged if, following the preliminary vetting procedure, a formal investigation was commenced was rejected. One had only to consider the words in s.30(1)(b) “may lead to a decision by the

*authority to institute criminal proceedings*” (emphasis added) to conclude that the vetting process fell squarely within the exemption.

The Tribunal also rejected an argument that the CIB had to show that the information was still, at the time of the request, held for the purposes of an investigation: s.30(1) (b) expressly stated that the exemption applies if the information was held “at any time” for the purposes of a relevant investigation.

#### Public Interest Test

Publication of the individual steps taken in the course of the CIB’s investigation would serve to inform public debate into the quality and effectiveness of its work. However, the significance of the particular information in question in this case was slight and was reduced by the fact that the standard of the Department’s work had already been considered by the Ombudsman’s investigation of a complaint by the Appellant on that issue. The public interest in disclosure was substantially outweighed by the desirability of maintaining the secrecy of the CIB’s operating methodologies in this field of its work and the confidence of those who may be asked to provide information in the course of its investigations

#### **Conclusion**

The Appeal was dismissed and the Decision Notice upheld.