

FOIA s.50(2) – Decision of Commissioner

FOIA s.1(1) – Whether information held

Glen Marlow v IC

EA/2005/0031

31st August 2006

Cases:

Facts

The Appellant requested a local council to disclose to him what had been described in correspondence as a “formal advisory system for lawyers”. In fact the reference was to a commercial database of legislative material that the council had a limited licence to access, search and download selected material from.

The IC had declined to issue a Decision Notice in respect of the request, having informed M, by letter that he considered that the request was not a valid request under FOIA.

Findings

The Tribunal held that it was not open to the IC to deal with the Advisory System Issue in the way that he did. S.50(2) of the FOIA provides that on receiving a complaint:

“... the Commissioner shall make a decision unless it appears to him -

- (a) that the complainant has not exhausted any complaints procedure which is provided by the public authority ...
- (b) that there has been undue delay in making the application,
- (c) that the application is frivolous or vexatious, or
- (d) that the application has been withdrawn or abandoned”.

None of those exceptions applied and the IC should therefore have issued a Decision Notice incorporating his decision.

The extent to which material in the database could be said to be “held” by the council for the purposes of s.1(1) FOIA depended on the terms of the licence granted to it by the council. Having directed the IC to investigate those terms the Tribunal decided that only information from the database that had been accessed and downloaded could be considered “held” by the council.

Conclusion

The Tribunal decided that the public authority was not under any obligation to disclose to the Appellant any other information available to it under the terms of its licence.