Freedom of Information Podcast

Episode 23 – May to August 2010

Ladies and gentlemen welcome to episode 23 of the UK's only Freedom of Information podcast. I'm Ibrahim Hasan and I'm here to discuss the decisions of the Information Commissioner and the First Tier Tribunal (Information Rights) in the four months from May to August 2010.

In this episode we will be discussing decisions involving:

- Vexatious requests
- Costs of compliance
- Information in Publication Schemes
- Requests made through What Do They Know .com
- Draft reports and the section 22 exemption
- Disclosure of Surveillance Commissioner reports
- The section 36 exemption
- The latest thinking on the personal data exemption
- AND disclosure of PFI Financial models

Section 14 – Vexatious Requests

There is now a fair amount of jurisprudence from the Tribunal on what constitutes a vexatious request under section 14(1). The Tribunal has approved the Information Commissioner's Guidance (last updated in December 2008) which states that if a public authority wants to deem a request as vexatious, it must make a reasonably strong case that it can answer yes to least two of the following questions:

These are:

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

Two recent Tribunal decisions give more guidance on section 14.

In **Rigby v Information Commissioner and Blackpool, Flyde and Wyre Hospitals NHS Trust** (EA/2009/0103) the Tribunal considered that the Commissioner's guidance, and the five questions that it identified, were useful, although they should not lead to an overly structured approach.

The Tribunal referred to a number of the earlier cases, and set out the following general principles which should be borne in mind when considering whether a request should be deemed vexatious:

• Section 14(1) is concerned with whether the request is vexatious in terms of the effect of the request on the public authority, and not whether the applicant is vexatious.

• The term "vexatious" refers to activity that "is likely to cause distress or irritation, literally to vex a person to whom it is directed".

• The focus of the question is on the likely effect of the activity or behaviour. Is the request likely to vex?

• For the request to be vexatious, there must be no proper or justified cause for it.

• The judgment that section 14(1) calls for is balancing the need to protect public authorities from genuinely vexatious requests on the one hand, without unfairly constraining the legitimate rights of individuals to access information. The standard for establishing that a request is vexatious should not be set too high. Equally, however, it should not be set too low.

• It is not only the request itself that must be examined, but also its context and history. A request which when taken in isolation, is quite benign, may show its vexatious quality only when viewed in context. That context may include other requests made by the applicant to that public authority (whether complied with or refused), the number and subject matter of the requests, as well as the history of other dealings between the applicant and the public authority.

The Tribunal then gave a series of examples of considerations that had been held relevant in the decided cases, as follows:

• where the request forms part of an extended campaign to expose alleged improper or illegal behaviour in the context of evidence tending to indicate that the campaign is not well founded or has no reasonable prospect of success;

• where the request involves information which has already been provided to the applicant;

• where the nature and extent of the applicant's correspondence with the authority suggests an obsessive approach to disclosure;

• where the tone adopted in correspondence by the applicant is tendentious and/or haranguing and demonstrates that the applicant's purpose is to argue and not really to obtain information;

• where the correspondence could reasonably be expected to have a negative effect on the health and well-being of the employees of the public authority;

• where the request, viewed as a whole, appears to be intended simply to reopen issues which have been disputed several times before, and is, in effect, the pursuit of a complaint by alternative means;

• where responding to the request would likely entail substantial and disproportionate financial and administrative burdens for the public authority;

• where the same requests have been made repeatedly, or where on repetition, the particulars of the requests have been varied making it difficult to know exactly what the requester is seeking and making it less likely that the request can be satisfied; and

• where providing the information requested previously has tended to trigger further requests and correspondence, making it unlikely that a response ending the exchange of correspondence could realistically be provided.

The Tribunal agreed that this particular request was vexatious. On its face it was straightforward; but viewed in context it was part of a continuing campaign relating to the Trust's treatment of the requester's mother, and that campaign had become obsessive. Any response would have been likely to trigger further requests. The Trust had fielded 56 separate requests from the Appellant on 16 different dates, though the requester disputed these figures. The Tribunal accepted that, whatever the requester's intentions, the effect of his requests had been to vex, that is, to cause distress or irritation, given the language of the requests and the repeated allegations of bad faith against Trust employees.

In **Young v Information Commissioner*(EA/2010/0004)*** the requester was an individual who had been prosecuted and convicted. He subsequently made a number of complaints about his arrest and detention, which were considered by the IPCC. An FOI request to the relevant police force was rejected as vexatious, and the Commissioner upheld the authority's handling of the request. On appeal, the Tribunal approved the approach taken in Rigby. It considered that the request was obsessive, might in some respects involve harassment of the authority's staff, and lacked serious purpose or value. On balance (though narrowly) the Tribunal accepted that the request was vexatious. However, the Tribunal emphasised that it was not suggesting that the requester was himself vexatious, and did not doubt that he sincerely believed himself to have been badly wronged.

The last point is important. Section 14(1) is about vexatious requests, not vexatious people. There is no power to treat someone as a vexatious requester (i.e. as a person who is no longer entitled to make FOIA requests to the authority). Each individual request must be considered on its merits. And of course the decision to treat a request as vexatious may lead to a complaint to the Commissioner, and then an appeal to the Tribunal. Hence, if a request is easy to answer, it may well be less time-consuming to respond to it rather than to treat it as vexatious - even where the latter course would be justifiable.

Section 12 – Cost of Compliance

Section 12 of the Act and Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004 No 3244) (the "Regulations") mean that when a public authority wishes to refuse a request on grounds that to comply with it would be over the appropriate limit, it can only take account of the costs in doing four things calculated at a rate of £25 per hour:

(a) determining whether it holds the information,
(b) locating the information, or a document which may contain the information,
(c) retrieving the information, or a document which may contain the information, and
(d) extracting the information from a document containing it.

In **Mr John Jenkins v Information Commissioner and Dept for Environment, Food and Rural Affairs** (discussed in episode 10) (EA/2006/0067 2nd November 2007)), the question before the Tribunal was whether "extracting the information" includes the time it takes for the public authority to redact exempt information from a document before disclosure of the rest. The Tribunal agreed with the Commissioner that such an act of deletion was not extraction within the meaning of the Regulations and so not an allowable cost for the purpose of calculating whether the appropriate limit has been reached. However the Tribunal did observe that the point was not free from doubt.

A recent decision by a differently constituted Tribunal has dispelled this doubt. In **Chief Constable of South Yorkshire Police v Information Commissioner (EA/2009/0029 14th December 2009)**, the Tribunal came to the same conclusion having considered points of both statutory construction and matters of principle. (see episode 21)

The Tribunal's first decision in the case of **Alasdair Roberts v IC and Department for Business, Innovation & Skills (EA/2009/0083)** concerned a request for lists of records and comments together with the names of the creators of the same. I examined this decision in episode 22 in the context of the timing of the opinion of the qualified person under section 36.
The second decision in this case ***Alasdair Roberts v IC and Department for Business, Innovation & Skills*** **(EA/2009/0035)** offers further guidance on applying the fees provisions. In Roberts, the Tribunal accepted the established principle, discussed above, that costs of redacting (in this case names) are to be excluded. At paragraph 37 it qualified this as follows:

"…And where the task is as complex as it would have been in this case, we do not think it appropriate for the whole process to be ignored for cost estimate purposes simply on the basis that it could be said to fall within the broad scope of "name redaction". That may be appropriate where the task is simply to locate individuals' names and redact them if they fall below a particular grade of seniority. But where, as here, the process requires a judgment to be made, document by document, balancing the various criteria we have identified, then we believe that much, if not all, of the process should be regarded as retrieving from each document the information which requires to be disclosed and therefore properly included in the cost estimate."

This case shows that the considerations about fees and costs estimates are by no mean straightforward. What is extraction to one person may be simple redaction to another depending on knowledge and capability. Expect more arguments to come on this point.

The second decision in Roberts also examines section 40 which we will come to later.

Section 19 – Publication Scheme Data

In episode 20 we discussed the Commissioner's decision in:

Case Ref: FS50208722
02/09/2009
Backwell Parish Council

Where he stressed the importance of ensuring that information contained in a publication scheme is normally is disclosed as a matter of course if it is requested.

The complainant made a request to the Council for copies of bank statements for a four month period. The Commissioner agreed with the council that disclosure of some of the statements would identify individuals who had been party to the settlement of an Employment Tribunal claim and so was exempt under section 40 of the Act (being third party personal data).

The Council's bank statements were though listed within its publication scheme at the time of the request. The Commissioner's view was that it is possible for there to be exempt information contained within a class of information listed in an authority's publication scheme. However in this case, by initially refusing to disclose the information in response to a request, even in redacted form, the Council failed to fulfill its commitment to publish information in accordance with its scheme, and accordingly breached of section 19(1)(b) of the Act.

On appeal the Tribunal agreed with this approach **(Thomas Wilson v IC EA/2009/0082 15/06/2010)** . At paragraph 39 its states:

"The fact remains that nothing in section 19 or indeed in any other provision of FOIA, prohibits or in any way prevents a public authority from relying on one or more exemptions in Part II of FOIA. In relation to information falling within a class included within the public authority's publication scheme it follows that, in the Tribunal's judgment, the Commissioner was entirely justified in finding that the Council in this case could continue to rely on the terms and effect of section 40(2)."

On publication schemes generally it is interesting to note that in March 2010, the ICO published a second publication schemes monitoring report looking at police forces and police authorities (the first report looked at central government). A brief follow-up report has now been produced, which looks at developments since the publication of the main report.

According to the ICO the most disappointing aspect of its findings was that out of the 90 authorities monitored some 26 (or approximately 30%) were found not to be operating an approved publication scheme. They found various reasons for this. These included missing a class of information out of their adopted scheme (therefore only publishing six classes of information rather than the seven in the model scheme), using an old scheme which was no longer approved and not having any sort of publication scheme in operation.

Bearing in mind the ICOs announcement recently of a tougher approach to enforcement (http://www.ico.gov.uk/upload/documents/pressreleases/2010/enforcement_policy_200710.pdf) , all public authorities need to ensure that they meet the requirements imposed by section 19 of FOI.

Section 11 and 43 – What Do they Know. Com

Many public authorities receive requests via the website whatdotheyknow.com. Its fair to say that this website is viewed with some mistrust by many FOI officers who see it as encouraging vexatious requests or just as encouraging requests to be made. Many object to having to respond through the site as all requests and responses are automatically published. Can a public authority refuse to deal with such requests? Unless such a request is vexatious, it seems not…

07/06/2010
Ref: FS50276715
House of Commons

The complainant made a request for information to the House of Commons via his account on the www.whatdotheyknow.com website. He requested a copy of a document, to be provided in electronic form. The House expressed its willingness to provide the information to the complainant by way of an alternative email address, however claimed that it would not be reasonably practicable for it to provide the information to the email address generated by the website, as to do so would raise copyright implications as the information provided to that address would be automatically published on the website.

The Commissioner noted that Section 50(1) of the Copyright, Designs and Patents Act 1988 Acts provides that –

> "Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright."

The Commissioner found that responding to a valid address, in compliance with FOI is not a breach of copyright. The subsequent publication of the information by the website automatically can still be addressed separately by the House as a copyright issue, outside of the FOI jurisdiction.

The House also relied on section 43 but only in the event that the information requested must be disclosed to the whatdotheyknow.com email address. The House did not consider that the information would be exempt if it were to be provided to the complainant by way of an alternative email address or in hard copy.

The Commissioner considered that an exemption may only apply to the specific information in question and that the same conclusion must be reached regardless of the intended address for correspondence. As the House would not seek to apply the section 43(2) exemption to the information if disclosed to a different email address, it cannot apply to the information if this is to be communicated to the complainant via the whatdotheyknow.com email address. The Commissioner has therefore rejected the House's application of section 43.

The Commissioner ruled that the public authority should provide the requested information to the complainant to the whatdotheyknow.com email address that was used to make the request.

View PDF of Decision Notice FS50276715

This decision suggests to me that it is perfectly legitimate for a person to use WDTK.com to make an FOI request. Authorities cannot simply refuse a request because of the way it is made. They must apply the exemptions in a balanced way regardless.

Section 22 – Draft Reports

There is no exemption under the Freedom of Information Act for drafts or unfinished documents unlike under the Environmental Information Regulations 2004 (EIR). However where a draft contains information, which is held by a public authority with a view to publication in the future, it can be withheld from disclosure pursuant to the exemption under Section 22. In order to demonstrate that the exemption is engaged, a public authority must have an intention to disclose the precise information requested (not general documents) at a future point and it must be able to demonstrate what information within the scope of the request it intends to publish.

Case Ref: FS50275058
05/08/2010
Neath Port Talbot County Borough Council
View PDF of Decision Notice FS50275058

The complainant requested a report prepared by Counsel in relation to the "reorganisation / structure of the West Glamorgan Joint Child Care Legal Service". The council stated that the report was not concluded and was in draft form. Following the Commissioner's involvement in the case, it subsequently stated that the report was in draft and intended for later publication. As such section 22 of the Act was engaged and that the public interest did not favour disclosure.

The Commissioner found that the public authority did not provide sufficient evidence to support its view that section 22 of the Act was engaged and accordingly ordered disclosure. He felt that the intention was not to disclose the initial report in its entirety but to disclose certain "key parts" of any final report. If this were the case then section 22(1) exemption would not be engaged because it demonstrated that the Council did not intend to publish all of the information within the scope of the request.

The ICO also emphasised the importance of raising relevant arguments and evidence to back up any exemptions claimed. He noted that he may only consider the provisions of the Act when reaching his decisions and he does not consider that, in general, his role is to assume arguments on behalf of a public authority or to introduce exemptions that might be more relevant to the disputed information.

Section 31 – OSC Reports

In the light of the many instances of controversial use of surveillance by councils under the Regulation of investigatory Powers Act (RIPA), the media often make FOI requests to public bodies for copies of Office of Surveillance Commissioner (OSC) inspection reports. The OSC inspections are designed to ensure that public authorities are complying with Part 2 of RIPA when doing covert surveillance. The OSC has confirmed that the decision to disclose an OSC report rests with the public authority. There is no single exemption which covers such reports and often they will be disclosable in their entirety as they will contain no specific information about surveillance operations as such to jeopardise investigations.

However where the request is for wider information about surveillance activity or where the report contains details that may jeopardise investigations or operations, the section 31 exemption (law enforcement) may be claimed.

Case Ref: FS50188663
06/05/2010
BBC
View PDF of Decision Notice FS50188663

The complainant requested a copy of the 2006 OSC inspection report relating to the BBC. He also requested a copy of the OSC's covering letter and the BBC response to the report.

The BBC disclosed a redacted copy of the report citing section 31 (the Law enforcement exemption). The redactions included the following types of information in relation to the BBC's enforcement activity against those who do not hold a TV license:

- The number of RIPA authorisations granted for the use of equipment in 2006
- The process undertaken when investigating unlicensed premises, and
- Information about detection equipment.

The Commissioner considered that the withheld information, in the context of television licensing, is extremely sensitive and was satisfied that disclosure would be likely to undermine the tactical advantage and ability of the BBC's monitoring officers to effectively use covert surveillance. He was therefore satisfied that the exemption in section 31(1)(a) was engaged. He went on to rule that the public interest in maintaining the exemption outweighed the public interest in disclosure.

Section 36

The section 36(2) exemption is the only FOI exemption which requires a qualified person to give his/her opinion that disclosure of the requested information would have a prejudicial effect on the subject of the exemption i.e. that it would inhibit free and frank advice, deliberations or would prejudice the effective conduct of public affairs.

The qualified person will usually be the head of the public authority or, in the case of local authorities, the monitoring officer. In investigating whether the section 36 exemption is engaged the Commissioner will undertake the following process:

- Ascertain who is the qualified person for the public authority
- Establish that an opinion was given
- Ascertain when the opinion was given

- Consider whether the opinion was reasonable in substance and reasonably arrived at.

In first decision in **Roberts v IC & DBIS (EA/2009/0035, 20th November 2009),** the Tribunal held that because information could only be withheld if it was exempt at the time of the request (or more precisely at the time the request was being responded to), it followed that an opinion which was reached after the Refusal Notice was sent out could not constitute a valid opinion for the purposes of section 36(2).

This approach has recently been approved in the case of **Chief Constable of Surrey Police v IC (EA/2009/0081)**. In the light of these decisions, public authorities should aim to ensure that, wherever possible, any section 36 opinion is obtained prior to the release of the Refusal Notice.

In the Surrey Police case the Tribunal also emphasised the importance of keeping records about the opinion of the qualified person. It effectively held that a public authority will struggle to rely on the exemptions afforded under s. 36(2):

(a) if it does not keep a record of the opinion which has been reached and, further
(b) if, in the context of any record which it has made, it fails to identify the particular sub-sections of s. 36(2) which the qualified person has concluded are engaged.

Notably, in reaching this conclusion, the tribunal confirmed that it was not the function of the Commissioner to speculate about or forage around for opinions which might have been reached by the qualified person where there was no good evidence that such opinions had in fact been formed at the time the request was being responded to (see in particular paragraphs 54-59 of the decision).

In coming to this conclusion the Tribunal followed the decision in **University of Lancashire v IC (EA/2009/0034 18th December 2009)**, where the Tribunal highlighted the degree of rigour which must be applied when the relevant qualified person is seeking to formulate an opinion which engages section 36 which we discussed in episode 21.

Release of Staff Manual

Does FOI require the names of staff and their contact details to be disclosed? This question is often the subject of debate (and worry) amongst public sector professionals, especially in local authorities, who regularly receive requests to disclose the contents of the internal staff directory. The leading decision on this topic is one from the Information Tribunal decision dated 20th July 2007 involving the **Ministry of Defence v Information Commissioner and Rob Evans** clarifies the situation. It involved a request made by a journalist for a staff directory which included the names and contact details of individuals working for the Defence Exports Services Organisation (DESO). (see episode 8)

The Tribunal ruled that that the MoD could only withhold names of staff if they are particularly junior (below Civil Service B2 Level), not immediately responsible for the requested information and their name is not already available elsewhere (or would be expected to be through their performing a public-facing duty); or there is a clear and demonstrable threat to that individual's health and safety if their name is made public.

The Tribunal was not minded, however, to sanction the disclosure of all telephone and email contact details of staff, save for those contact details which appear in the Civil Service Year Book and similar publications. If there is a public interest inherent in the public's ability to contact anyone, even those above B2 level directly by email, the same is outweighed by countervailing risks of disclosure such as the speed of disruption, the fact that there is likely to be continuous interruption and the risk of inadvertent loss or leakage of information.

This decision was followed by the Commissioner recently in :

Case Ref: FS50184497
24/06/2010
Ealing Council
The complainant requested the names, job titles, departments and telephone numbers of all the council's employees excluding school and manual staff. The council supplied some of the information but refused disclosure of the remainder claiming the exemption, amongst others, in s36(2)(c) where disclosure would prejudice the effective conduct of public affairs. The Commissioner decided that the public interest in maintaining the exemption at s36(2)(c) outweighed the public interest in disclosure i.e. that disclosure would prejudice the effective conduct of public affairs.

View PDF of Decision Notice FS50184497

In the Commissioner's view, access to over 3500 employees' email addresses in the public domain could lead to a rise in the random direction of emails to all members of staff. This could result in council officers having to deal with a substantial expansion in irrelevant enquiries. He also recognised the potential exponential rise in the copying in of numerous officers into emails that this would assist and the consequent increase in disruption to the council that would accompany this.

Further more he considered that the mass release of employees' details into the public domain is likely to attract blanket targeting of those employees by commercial organisations for marketing purposes. The cumulative distraction caused to council staff would have a detrimental impact on efficiency and service levels to the public.

The wholesale release of employees' details into the public domain would also be likely to increase the exposure of the council technological systems to IT viruses. This threat and that posed by the greater expansion in email bombardment resulting from such disclosure could seriously disrupt the authority's IT systems.

On balance the Commissioner felt that there is a strong public interest in restricting access to staff contact details on a need to know basis in order to mitigate all the above risks and their impact on service levels.

This decision provides welcome clarification for many local authorities having had similar requests. There is no absolute rule that names should never be disclosed. The seniority of the persons involved, the availability of the information elsewhere and any credible risks to the subject are relevant considerations when deciding whether to releases the names. With regard to contact details, it seems that unless the details have been made publicly available, they can be withheld if there is a likelihood of possible disruption that could be caused from staff being e mailed and telephone directly as opposed to going through normal contact channels such as switch boards etc.

Section 40 – Personal Data Revisited

Section 40 provides an exemption from disclosure of personal data about the requestor as well as that of third parties. With regards to the latter the public authority must show that disclosure would breach of one of the data protection principles.

In **Bryce v IC & Cambridgeshire Constabulary (EA/2009/0083),** the request concerned a Report that had been produced following an inquiry undertaken after the Appellant and two other individuals raised concerns about the way in which the police had investigated the death of the Appellant's sister who had been killed by her husband in September 1996. The Report addressed the adequacy of the criminal investigation, as well as with the way in which the complainants.

This judgment is important because it looks at the controversial issue of the definition of personal data as well the approach to adopt when a request contains information about a number of people.

The first question is whether the information being requested is personal data. Much has been written over the years about the significance of the Durant decision (Durant v Financial Services Authority [2003] EWCA Civ 1746)) which seems to have substantially narrowed the definition of personal data. In the words of Auld J:

"…not all information retrieved from a computer search against an individual's name or unique identifier is personal data within the Act... … It seems to me that there are two notions which may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject's involvement in a matter or an event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured…"

The Tribunal applied the Durant approach to the concept of 'personal data' rather than the arguably more liberal approach embodied in the Commissioner's guidance: 'Determining What is Personal Data'. It concluded that not all the information requested contained personal data e.g. in the glossary, executive summary or background info.

This is not the first time that the Tribunal has preferred the Durant definition over the Commissioner's view. Back in 2008 the Information Tribunal (in **Harcup v Information Commissioner and Yorkshire Forward (5 February 2008)**) did the same when it ruled that Yorkshire Forward was not entitled (under the section 40 exemption) to withhold the names of the individuals that had attended events or corporate hospitality organised by it as these did not constitute personal data.

These decisions prove that the Commissioner's interpretation of personal data is not the final word on the matter. It is worth noting that the Commissioner has not revised his Technical Guidance Note ("Determining what is personal data", published in August 2007) on which much of his arguments before the Tribunal in these decisions were based. This shows that he still thinks Durant is wrong and not in accordance with the European Data protection Directive. This is a view shared by some data protection specialists as well as the European Commission.

The next question for the Tribunal in Bryce was whether disclosure of the personal data would be fair and lawful in accordance with the first DP principle. Apart from Ms Bryce's own personal data, which was exempt from disclosure under s. 40(1) FOIA, the Tribunal approached this question to the remaining data by conducting a discrete analytical exercise in respect of each different person's personal data.

It is clear from the Tribunal's analysis that it was of the view that very different considerations applied, for example, in respect of officers' data as compared with the data relating to the husband's family. A public authority cannot simply adopt a blanket 'one size fits all' approach to information comprising different types of personal data.

The Tribunal's second decision in the case of **Alasdair Roberts v IC and Department for Business, Innovation & Skills (EA/2009/0035)** provides more guidance on section 40 particularly when considering the First DP principle. The two main points are, firstly, when considering whether the processing would be fair; senior civil servants (Grade 5 or above) do not have a reasonable expectation of anonymity in respect of any document, no matter how sensitive. More junior civil servants might have reasonable expectations: this will be less cogent where the job is "public-facing" (such as a Job Centre manager), and more cogent where the information is controversial (such as information about animal testing).

Secondly when considering whether there is justification to disclose under a schedule 2 condition, paragraph 6 allows disclosure where it is in the legitimate interests of 'parties to whom the data are disclosed'. The Tribunal found that the requester's strong individual interest (for research purposes) was not sufficient to override the fact that this information was of very little interest to the world at large (to whom disclosure is, in the eyes of FOI, to be made).

The section 40 exemption continues to be the subject of many decisions. It will be interesting to see the outcome of the recent Ministry of Justice call for evidence on the operation of the Data Protection Act and whether it has any impact on section 40 particularly where the definition of personal data is concerned.

Section 41

Section 41 exempts information where disclosure would lead to an actionable Breach of Confidence. When it comes to request for commercial information it is often used in conjunction with section 43 (commercial interests). These exemptions were invoked by:

Case Ref: FS50236080
04/05/2010
Mid Yorkshire Hospitals NHS Trust
View PDF of Decision Notice FS50236080

when it received a request for a PFI Project Agreement including the Financial Model. The complainant later explained that he would be satisfied if he could have the cash-flows which related to published Internal Rates of Return.

The Commissioner was satisfied that the Trust applied the section 41 exemption appropriately to both the Financial Model and the cash-flows. He gave weight to the sensitivity of the information, the existence of a confidentiality clause in the project agreement, the usefulness of the information to competitors, the fact that the information was still current and that the information would not be of great assistance to the public when assessing value for money. Interestingly the Commissioner drew assistance from a number of decisions on the same issues made by the Scottish Information Commissioner under the Freedom of Information (Scotland) Act 2002. Of course these are not binding on the Information Commissioner but do seem to be persuasive in similar fact cases.

This decision notice is currently under appeal to the Tribunal. The outcome should provide more guidance on the application of section 41 to financial information about PFI projects.

The End

That concludes episode 23 of the FOI podcast. The next podcast will be in November 2010. Before then you can always catch up on the latest developments in information as well as surveillance law by attending one of my FOI update workshops and downloading my free web seminars. Both carry CPD credits. More details at www.actnow.org.uk

Don't forget Act Now Training is now one of the UK's leading providers of courses leading to the ISEB Certificate in Freedom of Information. The next course starts in November in Manchester. There are just a few places left so if you would like to know more please email info@actnow.org.uk

We are now on LinkedIn as well as Twitter. Follow us for the latest information law developments delivered for free direct to your desktop or smart phone.

FOI Helpline

Act Now Training also offers an FOI Helpline service. This is designed to supplement your internal FOI expertise by acting as a "sounding board" or "signpost service" for you to discuss your FOI/EIR requests and possible responses. Through the helpline I will be available to guide you through the relevant area of law, discuss possible exemptions and how to deal with any complaints.

At a time of increasing pressure on public sector budgets, the Act Now FOI Helpline is the most cost effective solution for your FOI problems.

Thank you for listening.   Until the next time – Goodbye.

EXPERT TRAINING AND LEGAL ADVICE

Ibrahim Hasan is available for legal advice and in house training on all aspects of information law particularly freedom of information, data protection and surveillance law.
For more information see www.informationlaw.org.uk
Email: ih@informationlaw.org.uk

FOI DECISION UPDATE WORKSHOP BY IBRAHIM HASAN

A workshop examining the latest decision of the ICO and IT on FOI. Cost £275 plus vat for this full day workshop which includes lunch. Venues include London, Manchester and Belfast. More information: www.actnow.org.uk