



Tribunals Service
Information Tribunal

Appeal under section 57 of Freedom of Information Act 2000

Information Tribunal Appeal Number: EA/2009/0060
Information Commissioner's Ref: FS50222887

Determined on papers
2 October 2009

Decision Promulgated
7 October 2009

BEFORE

CHAIRMAN

Murray Shanks

and

LAY MEMBERS

Jenni Thompson and Malcolm Clarke

Between

MELVYN BLUCK

Appellant

and

INFORMATION COMMISSIONER

Respondent

Ruling

The notice of appeal discloses no reasonable grounds of appeal and the appeal is therefore struck out.

Subject areas covered:

Application for striking out, Rule 9

Reasons for Ruling

1. The Appellant, Mr Bluck, requested the Parliamentary and Health Service Ombudsman¹ under the Freedom of Information Act 2000 to provide him with a copy of the professional advice she had obtained from an independent actuary in connection with an investigation she had conducted regarding the state earnings related pension. In a letter dated 9 November 2006 The Ombudsman refused to supply the advice on the basis that its disclosure was prohibited by section 11 of the Parliamentary Commissioner Act 1967 and that it was therefore absolutely exempt under section 44(1)(a) of the 2000 Act. A copy of section 11 of the 1967 Act was supplied to Mr Bluck; it was rightly pointed out to him that that section prohibits the disclosure of information obtained by the Ombudsman in the course of or for the purposes of an investigation except in very limited circumstances (none of which applied to his case).
2. Mr Bluck complained to the Information Commissioner under section 50 of the 2000 Act. The Commissioner issued a full decision notice dated 9 July 2009 in which he upheld the Ombudsman's decision.
3. Mr Bluck appealed to the Tribunal on 23 July 2009. In his notice of appeal under the heading Grounds of Appeal he stated:

I dispute the Information Commissioner's notice since the matter concerns public interest in how the SERPS are calculated. It was stated by Edward Leigh Chairman of the Commons Public Accounts Committee that six million people are affected at a cost estimated at £12 bn. The public interest is best served by disclosure not confidentiality.

¹ Her statutory title is "Parliamentary Commissioner for Administration"; we shall refer to her as the Ombudsman.

4. The Commissioner in his Reply pointed out correctly that section 44 provides an “absolute exemption” under the 2000 Act (see section 2(3)(h)). The effect of the exemption being an absolute one is that the information is exempt regardless of whether it would otherwise be in the public interest for it to be disclosed (see section 2(2)(a)). Since Mr Bluck’s appeal appeared to be based solely on the public interest which he says would be served by disclosure of the advice, the Commissioner properly applied for it to be struck out on the basis that the notice of appeal disclosed no reasonable grounds of appeal. The Tribunal issued directions on 5 August 2009 for that application to be decided on the papers on or around 24 September 2009 and provided that Mr Bluck could send the Tribunal written representations against the application.
5. Mr Bluck has written four letters to the Tribunal since 5 August 2009 (dated 18, 26 and 28 August and 24 September 2009). None of them address the point relied on by the Commissioner which we consider to be unanswerable. In the circumstances it is clear that the appeal is hopeless and must be struck out.
6. In case there is any doubt in his mind we wish to assure Mr Bluck that we have read and considered the material he has put before us and we wish to address some of the points he makes:
 - (1) He complains that the appeal will be decided at a “secret meeting”. In fact all appeals are decided by the members of the Tribunal at a private meeting after they have received submissions and evidence from the parties in writing and/or orally. The rules of procedure provide for an appeal to be determined without an oral hearing where the Tribunal consider that it can be properly determined in that way. In this case we have no doubt that the appeal can properly be determined without the trouble and expense of an oral hearing since Mr Bluck has indicated no basis for an arguable appeal.
 - (2) He complains that the Commissioner is the only other party to the appeal and that the Ombudsman who holds the information in question is not a party. The Commissioner who made the decision that Mr Bluck does not like is the proper respondent to his appeal. Although it is open to the Tribunal to join the public authority as an additional party to the appeal if it thinks fit, the

Tribunal does not consider that any useful purpose would be served by taking that step in this case.

- (3) He complains about the length of time the Commissioner took to deal with the complaint made under section 50. This delay, although clearly unsatisfactory, unfortunately provides no basis for an appeal. We note that the Commissioner in his decision notice at paragraph 8 provides some explanation and an apology for the delay.
- (4) He complains that the Commissioner is trying to prevent him obtaining information rather than helping him to obtain information the disclosure of which he believes to be in the public interest. We appreciate that the position is frustrating but the fact is that the Commissioner is simply applying the law as passed by Parliament and as it still stands, namely that the Ombudsman can only disclose information she obtains in an investigation for certain limited purposes, which do not include a request under the Freedom of Information Act. The only remedy for this is a change in the law.

Signed

Murray Shanks

Deputy Chairman

Date: 7 October 2009