



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2012/0186
Appellant: Dr Andrew Murrison MP
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. In this case, the Information Commissioner (ICO) has applied for the appeal to be struck out on the ground that it has no reasonable prospect of succeeding. The appellant has been invited to comment on the application but has not done so. It must be comparatively rare for an information requester's appeal to be struck out on this ground in a case which concerns Regulation 12 Environmental Information Regulations 2004 (EIR) which, in balancing the public interests, applies a presumption in favour of disclosure. Nevertheless, having reviewed the material before me, I have concluded that this is just such a case and I have therefore decided to strike out the appeal.
2. Bath and North East Somerset Council (BANES) decided to impose a weight restriction on the A36 for an 18 month trial period. The appellant considered that this action was "questionable" given that the A36 is a trunk road and thus the responsibility of the Highways Agency. There is also EU legislation concerning access to the primary road network for large vehicles. The appellant asked BANES to disclose a copy of the legal opinion they had received from a barrister before announcing their proposed action. BANES refused to disclose the opinion relying eventually on Regulation 12(5)(b) EIR and, in a carefully analysed decision notice, the ICO has upheld that decision. There is now an appeal to the Tribunal.
3. I am satisfied on the material before me that giving full weight to the arguments in favour of disclosure, quite properly advanced by the appellant, it is inevitable given the freshness of the local controversy, which must include the possibility of litigation, and given the general importance of the freedom to obtain privileged legal advice, that a Tribunal would find that these factors heavily outweighed those favouring disclosure.
4. Before reaching this conclusion I have re-read the decision of the Upper Tribunal in *Department for Communities and Local Government v the ICO (2012) UKUT 103 (AAC)*. This decision is not referred to in the ICO reasoning but does nothing to

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weaken, to put it no more highly, the approach adopted by the ICO. I have not looked at the copy of the barrister's opinion which has been supplied by the ICO to the Tribunal office as it appeared to me proportionate to proceed to reach this decision without first going through the procedure under Regulation 14 General Regulatory Chamber Procedure Regulations.

(Signed on the original)**NJ Warren****Chamber President****Dated 31 October 2012**