



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

Tribunal Reference: EA/2014/0012
Appellant: Jonathan Corke
Respondent: The Information Commissioner
Second Respondent: Crown Prosecution Service
Judge: NJ Warren

DECISION NOTICE

A. The Tribunal Decision

1. On 3 June 2014 the Tribunal gave a decision on an appeal made by Mr Corke. Mr Corke had requested information from the CPS about decisions made not to prosecute the late Sir Cyril Smith. The disputed information consisted of two minutes prepared by a CPS lawyer in 1998 and 1999. The Information Commissioner (ICO) was the respondent to the appeal. The CPS was not a party.
2. The Tribunal directed that the disputed information should be disclosed but gave specific directions about the redaction of some of the material which consisted of personal information about individuals.

B. Correspondence from the CPS

3. On 30 June 2014 the CPS wrote to the Tribunal. They indicated that they did not wish to appeal the decision of the Tribunal. They were concerned, however, that the redactions directed by the Tribunal did not go far enough. They applied to be made a party to the appeal “to the extent this is necessary to advance the concerns”. They also asked for the effect of the Tribunal’s decision to be suspended until the Tribunal has given a further ruling.

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4. At issue are CPS internal references and telephone numbers; five items in the 1998 minute and five items in the 1999 minute. Mr Corke is aware that the application has been made but he has not seen a copy of the CPS correspondence. I direct that for the moment, the Tribunal will receive the email message dated 30 June 2014 on the basis that it is not disclosed to anyone except the ICO. This is because, in its present state, it discloses some of what was the disputed information. To reveal it now would defeat the purposes of the present application. If and when the case is considered further, the Registrar and the Judge will ensure that a more detailed gist of the letter's contents is given to Mr Corke.

C. Can the CPS apply to be made a party to the appeal after the Tribunal has given its decision?

5. It is convenient to explain the practice of the Tribunal when it receives an appeal against a decision notice issued by the ICO under the Freedom of Information Act (FOIA).
6. As required by the Rules, the Tribunal sends the appeal to the ICO. The Tribunal and the ICO have agreed a form of letter which the ICO sends out to the "third party" concerned. If the appeal is made by the public authority, this will be the person who requested the information; and vice versa. The letter tells the recipient that an appeal has been lodged and explains the procedure to be followed should they wish to apply to join in the proceedings. Such an application is invariably granted.
7. It is arguable that if the appellant is the person requesting the information then the public authority should always be a party. This is because the GRC procedural rules define the respondent to an appeal as follows:-

- “(a) In proceedings appealing against or challenging a decision, direction or order, the person who made the decision, direction or order appealed against or challenged;
- (b) A person against whom an appellant otherwise brings proceedings; or

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(c) A person added or substituted as a respondent under Rule 9 (addition, substitution and removal of parties);”

I have not detected any clamour from public authorities to be routinely made a party to proceedings under sub paragraph (b). If any extra information is required from a public authority, it is often more convenient and cost effective for the ICO to obtain it and to present it to the Tribunal. Nevertheless, there are cases in which the Tribunal finds it necessary to add a public authority as a party under Rule 9, even when they have declined the invitation issued to them when the proceedings began.

8. In this case, the Tribunal has given its decision and, subject to any appeal to the Upper Tribunal, or applications to correct or set aside its decision for procedural error, the proceedings are complete. It is arguable that it is too late for the CPS to join the proceedings as a party because, to use an old fashioned phrase, the Tribunal is “functus officio”. Its job is done. Rule 2(3)(b) GRC Procedural Rules requires me to interpret Rule 9 in a way that seeks to give effect to the overriding objective of the rules. The overriding objective is to enable to Tribunal to deal with cases fairly and justly. Examples of what this means are set out in Rule 2(2).
9. It seems to me that there can be genuine reasons for a public authority, or indeed a person who requests information, to become concerned about the way proceedings have developed even at the late stage of the Tribunal decision. An application to the High Court for a Judicial Review would be an expensive alternative. There may, in particular, be acute problems for a public authority if it considers that the directions given by the Tribunal conflict with its duty as data controller under the Data Protection Act. No one deliberately wants to put a public authority in the position where they believe that they are compelled under one statute to do something which they believe to be unlawful under another. Again, there is virtue in avoiding High Court proceedings should the ICO have to take enforcement action against a public authority.
10. In these circumstances therefore, I consider it right to interpret Rule 9 so as to allow an application even at this late stage. I add the CPS to the proceedings as second respondent.

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D. What happens next

11. The Tribunal has given its decision. It is too late for the CPS to make any representations about the merits of that decision. If the CPS consider that the Tribunal decision may be erroneous in law in that it compels them to behave contrary to the Data Protection Act, then they may apply to the Tribunal for permission to appeal against the decision dated 3 June 2014. The time limit for the receipt of any such application will be 7 August 2014. As much as possible of any application must be “open” and copied to Mr Corke.
12. The application will then be placed before the Tribunal Judge. If and only if it seems that there is an error of law in the Tribunal decision, will the Tribunal then invite representations from the parties on the question of whether the decision dated 3 June 2014 should be reviewed.

E. Application for suspension

13. Given that the CPS does not contest the general merits of the Tribunal decision; and in the absence of any application for permission to appeal from the ICO; I do not consider that it would be right to suspend the Tribunal decision in full. Instead, I suspend the effect of the Tribunal decision only in so far as it affects the matters referred to in para 4 above and specified in the CPS email dated 30 June. The rest of the material should be disclosed now in accordance with the Tribunal decision.
14. Any party may apply to vary this ruling within seven days.

NJ Warren**Chamber President****Dated 4 July 2014**