



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

**Tribunal Reference:** EA/2014/0058  
**Appellant:** Edward Durant  
**Respondent:** The Information Commissioner

### **Decision Notice**

Judge Shanks has reviewed the Registrar's decision in this case dated 29/4/14 not to strike out the Appellant's appeal in so far as it seeks to challenge the Commissioner's decision at paras 25-27 (in effect) not to undertake a criminal investigation with a view to a prosecution against Companies House under section 77 of FOIA.

The relevant right of appeal given to Mr Durant by FOIA is a right of appeal against a "decision notice" (see section 57). A "decision notice" is, by definition, a decision as to whether a public authority has dealt with a request for information in accordance with Part I of FOIA (see section 50(1) and (3)). Section 77 creates a criminal offence of altering or destroying records and provides that no criminal proceedings for such an offence can be instituted other than by the Commissioner or by or with the consent of the DPP (section 77(4)). It is quite clear that the Tribunal has no jurisdiction in relation to the question whether any offence has been committed under section 77 or whether the Commissioner ought to institute criminal proceedings. The fact that the Commissioner includes a decision about those matters in a document which is headed "decision notice" makes no difference.

In the circumstances Judge Shanks strikes out the appeal in so far as it relates to section 77.

**Murray Shanks**

**(Signed on the original)**

**Tribunal Judge, dated 1 May 2014**