



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No EA/2011/0242

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50389448
Dated: 27 September 2011**

Appellant: ANBANANDEN SOOBEN

Respondent: INFORMATION COMMISSIONER

On the papers: 20 January 2012

Date of decision: 9 February 2012

Before

ROBIN CALLENDER SMITH
Judge

REPRESENTATIONS:

For the Appellant: Mr A Sooben
For the Respondent: Ms C Nicholson

Subject matter: FOIA 2000

Absolute exemptions

- Court records s.32

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DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 27 September 2011 and, by virtue of Rule 8 (3) (c) of the Tribunal Rules, strikes out the appeal on the basis that there is no reasonable prospect of it succeeding.

REASONS FOR DECISION

Introduction

1. The Appellant has had on-going litigation in respect of certain individuals. In essence, he wants to know their whereabouts on certain dates. He made six information requests about those individuals to the Ministry of Justice between 28 December 2010 and 5 January 2011.
2. The Ministry of Justice provided responses to numbers 1, 3 and 5 of those requests but refused the other three requests on the basis that the information was exempt under section 32 (1) and section 40 (2) FOIA. In respect of the information that was disclosed to the Appellant, the Ministry of Justice explained that it had provided that information on a "discretionary basis outside of the FOIA".
3. In April 2011 the Appellant complained to the Information Commissioner (IC). The IC's decision notice dealt only with requests 2, 4 and 6 (because of the Ministry of Justice's discretionary disclosure in relation to requests 1, 3 and 5).

4. Those requests were:

(2) If Benn Cameron [Solicitors] were representatives for appeals, was [a named individual] the representative appointed?

(4) Did Mr [named individual], representative of Benn Cameron Solicitors represent an appellant on 10 November 2009 as he claimed in his fax to Wandsworth County Court?

(6) Did Mr [named individual] represent any appellant on behalf of Benn Cameron Solicitors or other firm on 10 November 2009 at AIT Hatton Cross, York House, Feltham, as he has informed Wandsworth County Court (or any other AIT venues)?

5. The IC concluded that this information, if held, fell within the scope of section 32 (1) (c) (ii) FOIA and that section 32 (3) applied.

The appeal to the Tribunal

6. In his appeal to the Tribunal the Appellant complains of two particular points:

(1) He believes it is in the interests of justice that the Ministry of Justice exercises its discretionary powers to provide him with the names of the individuals and the dates on which each of them represented clients at Tribunals.

(2) He also believes that it is in the public interest that the information requested by him is provided because – he alleges – one of the individuals is involved in fraudulent activity.

The questions for the Tribunal

7. The Tribunal must consider, having regard to all the evidence before it and the points and submissions made by the Appellant, whether the substance of the IC's decision notice is correct and, in addition, whether the Appellant's appeal has any prospect of success.
8. Judge Melanie Carter, in her Directions of 29 November 2011, gave the IC and the Appellant until 3 January 2012 to respond further if they wished to the IC's request that the appeal be struck out.
9. The Appellant's response was faxed on 2 December 2011.

Conclusion and remedy

10. I note that the Appellant has attached nine determinations of hearings in respect of on-going litigation that were released to him by the Ministry of Justice on the discretionary basis and outside the exemption provided in section 32 FOIA.
11. In essence he is saying: "If the Ministry of Justice can use its discretion in these instances, why can it not continue to do so in respect of the additional information that I am seeking".
12. He believes that the clients that certain individuals have represented were misled and, further, that courts and tribunals were equally misled. He wants to prevent these individuals making further misrepresentations.
13. While the Appellant may wish to expose further the matters that trouble him the fact is that the Ministry of Justice is entitled to rely on the

absolute exemptions as and when it chooses providing it does so lawfully.

14. The whole point about releasing information on the discretionary basis – outside FOIA – is that the exercise is just that: discretionary.

15. The IC provided the information to the Tribunal – as directed – that he held from the Ministry of Justice in respect of the withheld information and which is identified at Paragraph 11 of the Decision Notice.

16. I have been able to consider this additional information in the round in dealing with this application to strike out the Appellant's appeal.

17. I am satisfied to the required standard, the balance of probabilities, that the Appellant's appeal has no prospect of success. The IC's decision notice correctly upholds the application of section 32.

18. For those reasons the Appeal will be struck out.

19. There is no order as to costs.

Robin Callender Smith

Judge

9 February 2012