



In the matter of an intended appeal by William McMaster against the Decision Notice issued by the Information Commissioner under reference number: FS50365422

Ruling

1. On 30 December 2011 Mr McMaster lodged with the Tribunal a Notice of Appeal form in respect of a Decision Notice issued by the Information Commissioner on 14 December 2011 and bearing reference number FS50365422.
2. On 2 January 2012 the Tribunal sent Mr McMaster a letter from one of the Tribunal Judges, Chris Ryan, which was in the following terms:

“I have read the Decision Notice and the Notice of Appeal. The Notice of Appeal seems to set out Mr McMaster’s reasons for being dissatisfied with the Information Commissioner’s decision in both section 3 and section 6 of the form. Strictly, section 3 is the place to set out the reasons why an out-of-time appeal should be accepted. However, I have considered the combination of sections 3 and 6 as together setting out Mr McMaster’s reasons for challenging the Decision Notice.

“Even combining the two sections in this way I am not satisfied that the Notice of Appeal sets out valid grounds for appeal. It records a number of matters on which Mr McMaster is dissatisfied, but that on its own is not enough. The effect of section 58 of the Freedom of Information Act is that the Tribunal may allow an appeal only if the Decision Notice is “not in accordance with the law” or the Tribunal is satisfied that the manner in which the Information Commissioner exercised a discretion was wrong. In the process of reaching a decision on either of those issues the Tribunal may review any finding of fact made by the Information Commissioner.

“In his Decision Notice the Information Commissioner decided the following two issues:

1. *that the exemption provided by FOIA section 36 applied; and, having decided that it did*
2. *that the public interest in maintaining the exemption (keeping confidential the withheld information identified in paragraph*

14 of the Decision Notice) outweighed the public interest in disclosure.

“The Notice of Appeal therefore needs to identify at least one error in the Decision Notice which resulted in the Information Commissioner’s conclusions being wrong on one or both of those issues.

“In reaching his decision that the exemption did apply (issue 1. above) the Information Commissioner considered each of the four questions listed in paragraph 17 of his Decision Notice. The Notice of Appeal does not appear to include a challenge to the conclusion reached on any of those questions. Not does it appear to assert that there was any other error in the Information Commissioner’s decision on this first part of the decision. I therefore require Mr McMaster to clarify his Notice of Appeal by stating whether or not he accepts that the exemption was properly applied and, if not, stating what his reasons are for saying that it was not.

“As to issue 2, the Notice of Appeal does include some indications that the Appellant believes that there are public interest factors in favour of disclosure. However I require him to clarify whether his case is that the reasons for maintaining secrecy, as set out in paragraphs 35 and 36 of the Decision Notice, carry no weight, or whether his case is that they have some relevance but not such as to outweigh the public interest in disclosure. I also require him to clarify whether or not he relies on the public interest factors in favour of disclosure, as set out in paragraphs 32 -34, in addition to the points he has made in his Notice of Appeal.

“Finally, the Notice of Appeal appears to include a number of complaints about the behaviour of PONI and certain individuals. But it is not clear to me what relevance those complaint have to either issue 1 or issue 2 in the Decision Notice. Mr McMaster is accordingly required to clarify his Notice of Appeal by explaining how each of the complaints he has mentioned are relevant to one or both of those issues.

“Mr McMaster is required to write to the Tribunal providing the clarification requested within 14 days from the date of this letter.”

3. The time limit for replying was extended, at Mr McMaster’s request until 20 January 2012.
4. By a letter sent to the Tribunal under cover of an email dated 20 January 2012 Mr McMaster made the following points:

- (a) The case put forward for refusing his information request was “clutching at straws”. However he did not explain why he considered that to be the case.
- (b) There was a risk of the section 36 exemption being abused, particularly if “not properly divined and set out clearly”. No detail was provided to indicate whether he considered the application of the exemption was an abuse in this case and, if so, why.
- (c) The Information Commissioner was not himself a qualified person and was not therefore in a position to decide whether the opinion of a qualified person under section 36 was reasonable or not.
- (d) It was accepted that there may be times when information should be withheld under the Freedom of Information Act but asserted that this should only happen “in a well-divined and unbiased criteria.” In this case “It well could be argued that section 36 is being applied not in its proper function, but one used to cover embarrassing remarks made by one person or another? (sic)” No information or argument was deployed in support of this possible argument.
- (e) Mr McMaster does not concede that this case is one of those where information should be withheld.
- (f) The public authority is sufficiently resilient to cope with the disclosure of the requested information.

5. Mr McMaster has not addressed the points to which he was directed in the letter of 2 January 2012. Although point (d) above may be seen to address one possible aspect of one side the public interest balance, none of the others comes near to identifying an argument that is relevant to the issues covered by the Decision Notice. Points (a) and (e) simply assert that Mr McMaster does not accept the Information Commissioner’s decision, without identifying any error that it is said to contain. Point (b) identifies a perceived risk of abuse without drawing any connection to the Decision Notice in question, let alone identifying any perceived error in it. Point (c) clearly represents a misunderstanding of the role given to the Information Commissioner under the appeal system incorporated into the Freedom of Information Act 2000. Point (d) is similar to point 2, in that it suggests that section 36 could be used for the improper purpose of withholding embarrassing information but gives no indication as to why Mr McMaster believes that this is what has occurred on this occasion.
6. On 31 January 2012 the Tribunal wrote to Mr McMaster in the following terms:

“I explained to Mr McMaster, in [the communication set out above] the issues that I considered the Information Commissioner had decided in the Decision Notice in this case. I made it clear to Mr McMaster that, for an appeal to proceed, he would have to identify those issues on which he challenged the Information Commissioner’s decision and his reason for saying

that the Information Commissioner's decision on the issue was wrong.

"The communication from Mr McMaster dated 19 January 2012 does not set out any coherent challenge to any of the issues I had identified. In those circumstances I should consider whether the Appeal should be struck out under Rule 8(3)(b) and/or (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chambers) Rules 2009. Before I do so, however, I am required by rule 8(4) to give notice to Mr McMaster that this is my intention and to give him an opportunity to make representations in relation to the proposed striking out.

"Mr McMaster therefore has until close of business on 13 February 2012 to deliver written representations to the Tribunal as to why I should not strike out his appeal.

"A copy of the whole of Rule 8 is attached."

7. No communication has been received from Mr McMaster in response to that notice. For the reasons set out above I do not believe that the materials provided to the Tribunal by Mr McMaster disclose a case that has any reasonable prospect of succeeding. I accordingly strike the appeal out under Rule 8(3)(c). I make no decision as to whether it might also have been struck out under Rule 8(3)(b).

.....Mr Chris Ryan Tribunal Judge
9 March 2012