



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

**Tribunal Reference:** EA/2012/0208  
**Appellant:** Peter Martin  
**Respondent:** The Information Commissioner  
**Second Respondent:**  
**Judge:** NJ Warren

**DECISION NOTICE**

1. I strike out this appeal because it has no reasonable prospect of succeeding.
2. I have reviewed the notice of appeal with its enclosures; the Information Commissioner's Office (ICO) response which contains a strike out application; and extra information supplied by Mr Martin in response to the strike out application. I have also considered the judgement of the Court of Appeal dated 10 May 2012 in Mr Martin's case. He will of course be aware of the content of that judgement.
3. About 20 years ago Mr Martin was wrongfully convicted of an offence. The conviction was overturned on appeal. There followed an investigation by Dorset Police. That led to four police officers being prosecuted. Last year Mr Martin was convicted of a different criminal offence. He was sentenced originally to nine years imprisonment but this was reduced to seven years by the Court of Appeal.
4. After the conviction but before the appeal hearing Mr Martin wrote to the Crown Prosecution Service (CPS) asking for a copy of the Dorset Police report and of information held in respect of the prosecution of the four police officers. The CPS refused to produce the police report on the ground that they didn't have it. They refused to confirm or deny whether they held material in respect of the four police officers.
5. In his appeal to the Tribunal Mr Martin does not refer specifically to the police report. Extensive searches were made at the time of his 2011 trial but it was not found. The inevitable conclusion is that the CPS do not have it.
6. In respect of the other material the ICO have analysed the legal position, in the context of the original grounds of appeal, in their response to the appeal and strike out application. In my judgement the arguments there put forward are unanswerable and must lead to the appeal failing. The information requested is

sensitive personal data to which schedule 3 Data Protection Act 1998 applies through section 40 Freedom of Information Act.

7. When asked to comment on the strike out application Mr Martin added a further ground of appeal under para 6, schedule 3 Data Protection Act 1998. He submitted that the processing was necessary for the purpose of or in connection with legal proceedings. Those proceedings were his pending appeal to the Court of Appeal Criminal Division. He submitted grounds 1 and 4 of his notice of appeal as being relevant. (Those grounds in fact referred mostly to the police report rather than to the papers for the subsequent prosecution but, in the absence of the police report, that probably makes no difference.)
8. It is obvious that the CPS did not consider that disclosure of the material was necessary for the proceedings before the Court of Appeal. Otherwise they would have been disclosed either to Mr Martin or to the Court. Referring to this issue the Court of Appeal said at para 21:-  
  
“ It appears that the prosecution initially believed that it was possible for them to obtain the report and refused to disclose it on the grounds that it was irrelevant. It now emerges that it cannot be found, although underlying documents still exist. The appellant was seeking to establish that the police were probably responsible for contaminating the cash some of which had gone missing. There was no basis for the judge to discharge the jury nor for disclosure of the report had it existed. We refuse the application to appeal on this ground”.
9. In principle, whether or not disclosure of evidence is necessary for the conduct of proceedings is a question for the judge in those proceedings. Para 6 schedule 3 simply supplies a defence to the data processor. Especially in the light of the finding by the Court of Appeal, it seems to me impossible to conclude that the First Tier Tribunal might hold that para 6 of schedule 3 was satisfied.
10. For those reasons and for the reasons given by the ICO in his response, it follows that this appeal must fail and I therefore strike it out.

**(Signed on the original)**

**NJ Warren**  
**Chamber President**

**5 December 2012**