

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2012

Public Authority: Intellectual Property Office
Address: Concept House
Cardiff Road
Newport NP10 8QQ

Decision (including any steps ordered)

1. The complainant has requested the UK Government's submissions to the Court of Justice of the European Union ("CJEU") in Case C-34/10 *Brüstle v Greenpeace eV* (the "Brüstle case"). This case dealt with the patenting of procedures relating to human embryonic stem cell research. The Intellectual Property Office ("IPO") refused to provide this citing the FOIA exemptions for court records, for likely prejudice to international relations and for the formulation and development of government policy as its basis for doing so. It subsequently disclosed the information to the complainant after the CJEU issued its judgment in the Brüstle case.
2. The Commissioner's decision is that in failing to provide the requested information within 20 working days, the IPO contravened the requirements of section 10(1) of the FOIA.

Request and response

3. On 2 March 2011, the complainant (a representative body) wrote to the IPO and requested information in the following terms:

"Our membership is interested to know the UK Government's position in relation to the questions referred to in the Court of Justice in Case C-34/10 [the "Brüstle case"]. We should therefore like to request please pursuant to the Freedom of Information Act 2000

- (a) *confirmation whether or not a submission was made on behalf of the UK Government in this case;*

(b) *if a submission was made, a copy of the written submissions, or as much detail of any submissions as you are able to provide.*

We are happy to receive the submissions in the form of an electronic (pdf) document."

4. The IPO responded on 23 March 2011. It confirmed that it held information within the scope of the request. It went on to argue that the information was exempt from disclosure under FOIA by virtue of sections 32(1)(a) (Court records), 27(1)(c) and (d) (Prejudice to International Relations) and 35(1)(a) (Formulation/Development of Government Policy).
5. Following an internal review the IPO wrote to the complainant on 17 June 2011. It upheld its original position.

Scope of the case

6. On 5 September 2011, the complainant contacted the Commissioner to complain about the way his request for information had been handled. It argued that the exemptions cited did not apply and that, if wrong on that point, the public interest (where applicable) favoured disclosure.
7. On 18 October 2011, judgment was delivered in the *Brústle* case¹.
8. On 14 December 2011, the IPO disclosed the requested information to the complainant on a voluntary basis having reviewed the change in circumstances. It reiterated its view that the pleadings to the CJEU attracted the court records exemption even after proceedings in a case had come to an end. However, it said that in the circumstances of this particular case it was now prepared to disclose the withheld information and would therefore not continue to rely upon the court records exemption in this instance. It said that where it received requests for information of a similar nature in future, it would consider each on a case by case basis.
9. In light of the disclosure, the Commissioner asked the complainant if it was prepared to withdraw its complaint. The complainant said that it was not prepared to do so.

¹ <http://www.bbc.co.uk/news/health-15350723>

Reasons for decision

Section 10(1)

10. Section 10(1) of FOIA requires that a public authority complies with section 1(1) promptly and in 20 working days at the latest. Section 1(1) requires a public authority to confirm or deny whether it has relevant recorded information and either provide it or rely on an appropriate exemption.
11. Although IPO wrote to the complainant to explain reliance on exemptions within 20 working days of receiving the request, it later disclosed the information in question outside the statutory timetable for compliance with requests.
12. The Commissioner has concluded that this is a contravention of the requirements of section 10(1) of the Act.

Right of appeal

13. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jo Pedder
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