

B E T W E E N:

Brian Higginson

Appellant

and

The Information Commissioner

Respondent

J U D G M E N T

- 1 So far as material to this appeal, Rule 10 of the Information Tribunal (Enforcement Appeals) Rules, 2005, provides as follows :

“ 10. - (1) Where, having considered-

(a) the notice of appeal, and

(b) any reply to the notice of appeal,

the Tribunal is of the opinion that the appeal is of such a nature that it can properly be determined by dismissing it forthwith it may, subject to the provisions of this rule, so determine the appeal.

(2) Where the Tribunal proposes to determine an appeal under paragraph (1) above, it must first notify the appellant of the proposal.

(3) A notification to the appellant under paragraph (2) above must contain particulars of the appellant's entitlements set out in paragraph (4) below.

(4) An appellant notified in accordance with paragraph (2) above is entitled, within such time as the Tribunal may reasonably allow-

(a) to make written representations, and

(b) to request the Tribunal to hear oral representations

against the proposal to determine the appeal under paragraph (1) above. “

(5) Where an appellant requests a hearing under paragraph (4)(b) above the Tribunal shall, as soon as practicable and with due regard to the convenience of the appellant, appoint a time and place for a hearing.

- 2 On 6th. January, 2005, the Independent Police Complaints Commission (the “ IPCC “) received a request from the Appellant for full copies of the files relating to earlier complaints made by the Appellant to the Police Complaints Authority (the “ PCA “). The IPCC refused this request by letter dated 23rd. March, 2005, relying on s. 44(1) of the FOIA which provides that information is exempt from disclosure by the public authority if its disclosure : -

“ (a) is prohibited by or under any enactment “

Exempt here means absolutely exempt, that is to say that no balancing of public interests arises. The refusal asserted that disclosure was prohibited by section.80 of the Police Act, 1996 which, with certain exceptions which do not come into the reckoning here, provides that information received by the PCA in connection with any of its functions shall not be disclosed and that improper disclosure is punishable by a fine. That prohibition is extended to the IPCC, its successor, in relation to information received by the PCA.

- 3 Section 80 (1)(c) permits the provision of a limited summary of such information, which does not identify informants. The IPCC supplied such a summary to the Appellant, together with certain other information which the PCA had not received in connection with its functions.
- 4 The Appellant complained to the Respondent by latter dated 29th. March, 2005.
- 5 By a Decision Notice dated 20th. July, 2005, the Respondent upheld the IPCC `s refusal on the ground that it was entitled to withhold disclosure by virtue of FOIA s.44(1).
- 6 The Appellant lodged notice of appeal dated 26th. July, 2005. In it he disputed the applicability of s. 80 of the Police Act, 1996, partly on the ground that one of the exceptions to the prohibition was to be construed as a precondition to the prohibition.
- 7 Upon considering that notice and the Respondent `s reply, the Tribunal was minded to exercise its powers under Rule 10(1) cited above. We were of the opinion that section 80 plainly amounted to a prohibition on disclosure in this case and that the Appellant had wholly misinterpreted the exceptions as preconditions. FOIA s. 44(1) therefore provided an unanswerable objection to disclosure.
- 8 Unfortunately, there were difficulties in communicating with the Appellant who had moved temporarily from Smethwick. We emphasise that no

criticism in relation to this attaches to the Appellant. It simply explains the delay which occurred. That delay has had no bearing on the procedure adopted nor the outcome of this appeal in any event.

- 9 The Tribunal eventually served notice on the Appellant under Rule 10(2) of its proposal to determine this appeal forthwith on 7th. February, 2006. As required by Rule 10(3), that notice alerted him to his rights to make representations under Rule 10(4).
- 10 The Appellant replied out of time from Smethwick on 17th. February, 2006, referring to his wife`s unfortunate disability and his travel problems. He reiterated, as we understand it, the arguments previously advanced as to the irrelevance of section 80. We did not regard his letter as a request for an oral hearing under Rule 10(4)(b). It contained nothing to alter our provisional view that the Appellant`s case was unarguable.
- 11 We therefore exercise our power under Rule 10(1) and dismiss this appeal forthwith.

David Farrer Q.C., Chairman

Suzanne Cosgrave,

Ivan Wilson

2nd. May, 2006