



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2009/0030
Information Commissioner's Ref: FS50083726

Decision Promulgated
30 April 2009

BEFORE

DEPUTY CHAIRMAN

David Marks QC

Between

THE FOREIGN AND COMMONWEALTH OFFICE

Appellant

and

INFORMATION COMMISSIONER

Respondent

Decision

The Tribunal rules that the notice of appeal contained in and evidenced by the Foreign and Commonwealth Office's letter of 8 April 2009 to the Information Tribunal otherwise standing as a notice of appeal albeit served out of time under Rule 5(1) of the Information Tribunal (Enforcement Appeals) Rules 2005 be the subject of an extension of time and be deemed to have been served within time pursuant to the provisions of Rule 5(2) of the said Rules.

Reasons

1. This is a complicated matter based on a Decision Notice involving a request made to the Appellant, namely the FCO on 1 January 2005 with regard to any information sought under the Freedom of Information Act 2005 (FOIA) in connection with a published report in the Lancet magazine regarding the number of deaths caused by military action in Iraq. The matter has been the subject of an extensive Decision Notice issued by the Information Commissioner (“Commissioner”) dated 5 March 2009 in which a number of documents featuring within the request were ordered to be disclosed.
2. The FCO acting by a member of its Iraq Directorate, an FCO Official, claims in an email submission to the Tribunal that the FCO received the said Decision Notice only on 12 March 2009. The Tribunal has no reason to disbelieve that assertion.
3. Rule 5(1) of the Tribunal’s Rules provides that a notice of appeal must be served on the Tribunal within 28 days of the date on which the notice in relation to the disputed decision was served on or given to the Appellant. That would mean that a notice of appeal in this case would have to have been served on the Tribunal within 28 days of 12 March.
4. The Tribunal only received a letter dated 8 April 2009 sent by an FCO Official on 14 April 2009 as evidenced by the Tribunal’s Received stamp featuring on the front of the document. In that letter which for present purposes can be treated as a notice of appeal the FCO stated that it wished to appeal regarding one particular document ordered for release by the Commissioner being a document numbered 29.
5. The Tribunal is not entirely clear that the description afforded to document 29 in the letter of 8 April, the description being “draft written statement by the Foreign Secretary”, corresponds to the description afforded to document 29 in the schedule appended to the Decision Notice which describes the document in question as “internal FCO emails”. Nonetheless that document was ordered to be disclosed and the Tribunal is happy to assume that the thrust of the notice of appeal in the aforesaid letter with regard to a document which the FCO regards as being particularly sensitive.

6. The FCO Official in an email to the Tribunal of 28 April 2009 accepts that the lodging of the appeal in the form of the letter was, as he puts it “over the deadline”. It seems that he understood the timing applicable to disclosure on the face of the Decision Notice, being 35 calendar days as being applicable to the time in which an appeal had to be lodged. The Tribunal is prepared to view this as a genuine oversight. Rule 5(2) of the Tribunal Rules states that the Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) “if it is of the opinion that, by reason of special circumstances, it is just and right to do so.” The Tribunal is particularly impressed by the point alluded to above, namely that the FCO regards this appeal as involving an issue of some importance since the document in question (whether document 29 or not) purports to be a draft written ministerial statement, the release of which could, as the FCO Official maintains, have “serious implications to how Government and Parliament works”. The Tribunal also accepts that the amount of time by which an appeal was lodged belatedly in this case is relatively minimal.
7. The Tribunal respectfully suggests that the FCO lodge a fresh notice of appeal more in keeping with the standard form employed before the Tribunal setting out in detail the grounds on which an appeal is made with regard either to the document in question or whatever to other documents which are sought to be not disclosed. The Tribunal notes in particular that the FCO Official is not on the face of the correspondence a lawyer.
8. For all the above reasons the Tribunal is content to extend time to the date on which the notice of appeal in the 8 April letter was served on the Tribunal subject to the indication made above that proper grounds of appeal should be provided with regard to the appeal in this case within 14 days of the date of this decision.

Signed:

David Marks QC

Deputy Chairman

Date 30 April 2009