



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0251

BETWEEN

JOHN COLLINS

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Second Respondent

Tribunal

**Brian Kennedy QC
Paul Taylor
Dr. Henry Fitzhugh**

Hearing: 10 March 2015.

Location: Bedford House, Belfast..

Decision: Appeal Refused.

Subject Matter: The Freedom of Information Act 2000 ("FOIA") and reliance by the Second named Respondent ("the Public Authority") on Section 31(1)(d) in deciding not to release the requested information.

Introduction:

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the the Information Commissioner ("the Commissioner") contained in a Decision Notice ("the DN") dated 11 September 2014 (reference FS50532511) which is a matter of public record.
2. An oral hearing took place on 10 March 2015 where the Appellant appeared as a Litigant in Person, the Commissioner relied on his DN and his written Response dated 24 October 2014, to the Grounds of Appeal from the Appellant dated 7 October 2014 and the Public Authority was represented by Christina Michalos of counsel.

Background:

3. The Appellant wrote to the Public Authority on 3 December 2013 and his request for information was made in the following terms;
 - (1) Total number of fuel laundering operations (raids) carried out by the HMRC in County Armagh in 2013/14 to date?
 - (2) How many successful prosecutions were made in relation to those operations (raids in question (1) ?
 - (3) In relation to question one how many arrests were made?
 - (4) In relation to question one how many cases are pending in respect of fuel fraud?
4. On 23 December the Public Authority responded stating : *"I can confirm that HMRC holds information of the type specified in your request. However, we are withholding the information under section 31(1)(d) of the the FOIA. This allows public authorities to withhold information if its disclosure - - - would be likely to prejudice the assessment or collection of any tax or duty"*.
5. Following an internal review the public authority wrote to the Appellant on 24 January 2014. It upheld the original decision in relation to the exemption at section 31(1)(d) FOIA.

Scope of the Case:

7. The Appellant contacted the Commissioner on 10 February 2014 by way of complaint against the Public Authority's handling of his request for information.

Legislative framework:

8. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities which are: a) The duty to inform the applicant whether or not requested information is held and, if so, b) the duty to communicate that information to the applicant.
9. Section 31(1)(d) of the FOIA states that: *"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice - (d) the assessment or collection of tax or duty or any imposition of a similar nature."*

The Decision Notice:

10. The Public Authority's position is that the requested information is exempt information under section 31(1)(d) as disclosure of such area specific information in this instance would be likely to be used by those minded to undermine HMRC's strategy in dealing with fuel fraud and as such have a detrimental impact on its ability to assess and collect tax.

11. The Public Authority confirmed that it had previously released similar information to the Appellant for the financial year 2012 to 2013 but this was for Northern Ireland in its totality rather than a specific region.
13. The Commissioner, having viewed the withheld information and considered the matter found that the exemption was engaged. His view was that the request is specific to one area of Northern Ireland and the detail sought would be likely to aid those that are or would be involved in fuel laundering either in that locality or generally. The Commissioner accepted that the specifics sought would enable them to more effectively estimate how successful the Public Authority are in locating the said illegal activities and in pursuing prosecutions. This would, the Commissioner found, be a valuable aid in deciding how likely it is or is not that they will be apprehended and this may lead to more unlawful tax evasion and fuel laundering.
14. Section 31 is a qualified exemption so the public interest test set out in section 2(2)(b) must be applied. That is, the information can only be withheld if the public interest in maintaining the exemption outweighs the public interest the public interest in disclosure. The Commissioner referring to a Tribunal decision in “Hogan” (EA/2005/0026 and 0030) properly identifies and recognises that *“While the public interest considerations against disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption.”*
15. To quote the Commissioner in his conclusion at paragraph 18 of the DN,; *“On balance the Commissioner finds that the public interest favours maintaining the exemption. The Commissioner appreciates that releasing the information will enable the public to determine the effectiveness of HMRC in tackling this kind of fraud in County Armagh. However counter-poised against this is that such a release will facilitate and assist those that will commit the fraud in question. This in turn means that the financial loss to the public purse will increase and to make it more difficult in preventing the said loss. On balance these factors outweigh the somewhat relatively limited factors in favour of release.”*

The Grounds of Appeal:

14. The Appellant effectively argues that the Commissioner erred in finding the exemption under section 31(1) (d) was engaged with respect to the withheld information and further that he erred in concluding that the public interest in maintaining the exemption outweighed the public interest in disclosure.
15. The Appellant argues further that a request for information regarding such a large area as County Armagh would not be so clearly defined as could be used to undermine HMRC strategy in dealing with fuel fraud which would lead to a detrimental impact on its ability to assess and collect tax.

16. The Commissioner notes this argument from the Appellant but maintains that disclosure of the withheld information would set a precedent which the Public Authority would have to follow when dealing with similar requests in the future concerning other specific areas. This according to the Commissioners' reasoning means that the likely prejudicial effect of disclosure would come not just from the disclosure of the specific information for County Armagh, but rather from the matrix of information which could be developed following disclosure of such information for most, if not all counties over a similar time period.
17. The Commissioner accepts the arguments from HMRC that, given its limited resources, disclosure of the withheld information may assist those so minded to build up a picture of the Public Authority's operational activities and may help to complete a picture of the HMRC's overall national activities.
18. The Commissioner considered this aspect carefully and accepted the Public Authority's assertion that the withheld information would be a valuable aid to those involved in fuel laundering in deciding how likely it is or is not that they will be apprehended and that this may lead to more unlawful tax evasion and fuel laundering.
19. The Appellant argues further that the Public Authority on a regular basis discloses location specific information about their activities into the public domain on public websites, examples of which are listed in the grounds of appeal. However the Commissioner distinguishes the examples given as they relate to individual raids carried out. This, the Respondents argue is different to statistics which comprise the withheld information in this case.
20. The Commissioner then deals further with the Public Interest test issue raised in the Appellants Grounds of Appeal, at paragraphs 22 to 27 of his Response dated 24 October 2014 (See pages 23 - 25 OB).
21. This Tribunal accepts and adopts the reasoning of the Commissioner and finds the detailed and extensive evidence, of an experienced operative in the field, produced at the oral hearing fully supports the position taken by the Public Authority and the Commissioner in support of the application of the exemption in the circumstances of this case

REASONS

17. The Tribunal, like the Commissioner, have seen the closed material comprising the withheld information and accept that this information per se would not add significantly to the public interest, as perceived by the Appellant, on disclosure of same.
18. Even if there were any doubt about that, this Tribunal have had the advantage of hearing the evidence of both the Appellant and Mr. Michael Parkinson, acting Assistant Director of Criminal Investigation Directorate.

19. The appellant himself gave evidence. He failed to persuade the Tribunal that the Commissioner was wrong in his assertion that there was little weight to be given to public interest by disclosure of any of the requested information. The Appellant was unable to demonstrate at the hearing any significant benefit to be attached to disclosure in terms of the public interest test.
20. Submissions by Counsel made on behalf of the Public Authority can be summarised thus: a) The withheld information is fact specific - the details sought would be likely to aid those and would be a valuable tool for criminals. b) the disclosure would set a dangerous precedent, c) allowing those intent on crime to create a Mosaic effect of data with information already published (which was demonstrated to be voluminous and significant) through the statistical equivalent of a jig saw effect. Other submissions included the risk to the safety of employees of the Public Authority by the use of the withheld information by criminal gangs to undermine their detection operations.
18. If there were any doubt about the veracity and sound reasoning given by the Commissioner in his DN and in his Response to the Grounds of Appeal, the Tribunal then had the advantage of hearing the evidence of Mr. Parkinson. He is an experienced officer with service in the detection of fuel laundering fraud. Perhaps the most significant and weighty evidence from this expert in crime detection was the concern of disclosure of specific detail that would allow the professional career criminals to gain intelligence into the Public Authority's operations to detect crime and bring prosecutions. He indicated also that serious threats of violence from those criminals involved was a matter of significant concern and risk assessments to staff safety were also issues of raising further concern to him. Of most relevance he confirmed that disclosure of the specific nature in this request on a specific County basis would in his opinion allow criminals to piece together intelligence that they could use to their advantage in their criminal activities. He gave evidence that he was firmly of the view that disclosure of the disputed information was not in the public interest.
22. We repeat, accept and adopt the reasoning of the Commissioner as set out in the DN and his Response to the Grounds of Appeal as supported by the detailed submissions by counsel on behalf of the Public Authority based also on the evidence of Mr. Parkinson.
23. For the above reasons we refuse the appeal herein.

Brian Kennedy QC

8th April 2015.