

Freedom of Information

Volume 13, Issue 2

November / December 2016

Headlines

- Government consults on statutory bar on disclosure of health service investigations, p.18
- Scotland's government proposes two tier FOI regime, p.19

Contents

Expert comment	2
<i>The fall and rise of the publication scheme</i>	4
<i>Do fishing expeditions truly undermine FOIA's objectives?</i>	8
<i>Recent decisions of the Commissioner and Tribunal</i>	10
<i>FOIA — why do governments bother?</i>	14
FOI news	17

European Court establishes human right to FOI

The Grand Chamber of the European Court of Human Rights has ruled that Hungarian police violated the Hungarian Helsinki Committee's right to freedom of expression when refusing to disclose the names and details of appointments of defence counsels.

The judgment is the first occasion that the Grand Chamber, consisting of 17 judges, confirmed that the European Convention on Human Rights protects the right of access to information.

The dispute stems from the alleged corruption inherent in the Hungarian system of appointing defence counsels. Certain police headquarters tended to appoint defence counsels that would not 'make the investigation more difficult'. This resulted in the defendants' right to effective defence being compromised.

The Hungarian Helsinki Committee ('HHC') pursued the cases it took against the police bodies withholding information to the European Supreme Court, which ruled that the data requested were the

personal data of the appointed defence counsels and therefore protectable.

The HHC said that this conclusion violated the right to freedom of expression in Article 10 of the European Convention on Human Rights and in 2011, submitted applications to the European Court of Human Rights ('ECtHR').

Interestingly, the case was heard by the Grand Chamber after the respective Chamber (a lower court) relinquished

(Continued on page 17)

Government still considering removal of FOIA appeals

It appears that the government is intending to move ahead with its controversial reforms of the FOI appeals process.

In a recent publication, the government states it is 'carefully considering' whether to remove the First-Tier Tribunal from the appeals process, meaning FOI appeals can only be made to the Upper Tribunal and on points of law.

The abolition of the appeal stage has been under discussion since March 2016.

The government's recent response to the Justice Committee's Second Report of session 2016/17, on courts and tribunal fees stated: "We see no reason to disagree with the view of the Independent Commission on Freedom of Information that legislation should be introduced to remove

the right of appeal to the First-tier Tribunal against an Information Commissioner decision."

Bob Satchwell, Executive Director of the Society of Editors, said: "Any idea of restricting the right of appeal in FOI cases must be resisted.

"After the long and torturous review of FOI earlier this year, government ministers

(Continued on page 17)