



Freedom of Information

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Headlines:

- University of East Anglia breached FOIA, p.17
- Council withholds information from whistleblowers, p.18
- Cabinet Office to disclose peer's residency, p.19
- SIC issues guidance on validity of FOI requests, p.20

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Supreme Court refers question on EIRs to European Court

The Supreme Court has referred a question on the construction of Directive 2003/4/EC on public access to environmental information ('the Directive') to the European Court of Justice ('ECJ') after failing to agree unanimously on an interpretation of the UK's implementing statute, the Environmental Information Regulations 2004 ('EIRs').

The decision is the latest in a lengthy line of rulings on a case brought by Ofcom, which had been asked for information on the locations of mobile phone masts.

Initially, the Information Commissioner had ordered Ofcom to disclose the information. On appeal to the First Tier Tribunal (previously the Information Tribunal), that panel decided that Regulations 12(5)(a) and (c) of the EIRs (exemptions for 'public security' and 'protection of intellectual property rights') were engaged, but there was a stronger public interest in disclosure than that alleged by Ofcom.

Subsequently, the administrative court took the same view as the Tribunal, and the

Court of Appeal decided in favour of Ofcom, before the matter was referred to the Supreme Court.

The legal issue being referred is whether, when two or more exceptions to disclosure under the EIRs apply, the public interest test should be considered in the aggregate, taking all of the relevant exceptions together, or only separately in respect of each relevant exception.

The Supreme Court, which noted that the UK's exceptions are

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Re-organisation of Information Tribunal

The appeal functions of the Information Tribunal have now transferred to the General Regulatory Chamber within the First tier Tribunal, in a new two tier Tribunal system.

The move is part of a complete reform of the national Tribunal structure, which has seen the transfer of a number of other Tribunals into the two tier system and which aims to create a more unified and streamlined procedure.

With effect from 18th

January, appeals against the decisions of the Information Commissioner are generally heard by the First tier Tribunal (Information Rights), and appeals against the First tier Tribunal heard in the Administrative Appeals Chamber of the Upper Tribunal, rather than the High Court.

In the case of particularly complex, unusual or important issues, it is possible under the new system for appeals to be dealt with by the Upper

Tribunal in the first instance. All appeals relating to the issue of a national security certificate will automatically be dealt with by the Upper Tribunal.

The Tribunal has issued new guidance on how to appeal to the First tier Tribunal and has also produced a guide for individuals representing themselves. Both are available on the Tribunal website at www.informationtribunal.gov.uk

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