



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: 2007/0106**

**Information Commissioner's Ref: FS50082420**

**Heard at Field House, London, EC4**

**Decision Promulgated**

**On Monday 17 March 2008**

**31 March 2008**

**BEFORE**

**DEPUTY CHAIRMAN**

**ROBIN CALLENDER SMITH**

**and**

**LAY MEMBERS**

**HENRY FITZHUGH**

**DAVID SIVERS**

**Between**

**MR A W TANNER**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**and**

**THE COMMISSIONERS FOR REVENUE AND CUSTOMS**

**Additional Party**

**Representation:**

For the Appellant: In person

For the Respondent: Mr James Boddy (Counsel on behalf of the Information Commissioner)

For the Additional Party: Ms Catrin Evans (Counsel on behalf of Her Majesty's Revenue and Customs)

## Decision

1.The Tribunal dealt with this matter under the provisions of Rule 10 of the Information Tribunal (Enforcement Appeals) Rules 2005. This appeal has been disposed of summarily.

2.This followed an oral pre-Directions hearing dated 2 December 2007 involving all parties and a full oral hearing in respect of the application for summary disposal – again involving all parties – heard on 17 March 2008.

3.The test used by the Tribunal in dealing with this application for summary disposal under Rule 10 has been the threshold test developed in Part 24 of the Civil Procedure Rules of the Supreme Court and considered by the Court of Appeal in **Swain v Hillman and Gay [2001] 1 All E R 91** in terms of any decision to make any Summary Order and, in particular, Rule 24.2.

4.In particular the Tribunal adopted the Court of Appeal test from that case that the words in Rule 24.2 “no real prospect of being successful or succeeding” spoke for themselves and meant that the Tribunal had to decide whether there was a “realistic” as opposed to a “fanciful” prospect of success.

## Reasons for Decision

### Introduction

5. Mr A W Tanner requested information concerning the number of complaints made against an individual employee of the Valuation Office Agency (VOA), a public body which is an Executive Agency of The Commissioners for Her Majesty’s Revenue and Customs (HMRC).
6. The VOA refused to confirm or deny whether the requested information was held in the belief that this would constitute a disclosure of personal data that would contravene the first Data Protection principle.
7. The Information Commissioner found that the VOA was correct in refusing to confirm or deny that the requested information was held, but that the refusal notice issued by the VOA was inadequate.
8. Although the VOA failed to comply with the procedural requirements of the Act in its refusal notice, The Information Commissioner decided that that breach did not necessitate remedial action.

9. Mr Tanner concluded that the Information Commissioner's decision notice failed to mention what he described as "the Valuation Office Agency's corrupt acts" against him.
10. He also asserted that the Information Commissioner had "gone out of his way to make calculated biased remarks in claiming that the VOA had been open and accountable in its dealings".
11. Also, he claimed, the Information Commissioner's notice "insinuated that our 4-year struggle against public sector corruption was 'unsubstantiated and malicious'". He felt that this was evidence of an abuse of the rule of law and of collusion between the Commissioner's Office and the VOA.
12. Following the oral pre-Directions hearing on 7 December 2007 Mr Tanner was given the opportunity ahead of the hearing on 17 March 2008 of making written representations and of making further oral representations at the hearing to consider summary disposal.
13. His written representations and oral representations effectively repeated the complaints listed above but did not challenge the applications by the Respondent and the Additional Party for summary disposal.
14. In his written representations dated 18 December 2007 he said: "We feel that the Commissioners (sic) as a senior government officer should have taken note of the broader picture and given protection to our case".

#### The Questions for the Tribunal

15. The Tribunal was asked to consider the matter by the Respondent and the Additional Party under the provisions of Rule 10 of the Information Tribunal (Enforcement Appeals) Rules. Those rules provide 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.

(6) The proper officer shall send to the appellant a notice informing him of-

(a) the time and place of any hearing under paragraph (5) above which, unless the appellant otherwise agrees, shall not be earlier than 14 days after the date on which the notice is sent, and

(b) the effect of rule 20 below.

(7) The Tribunal must, as soon as practicable, notify the appellant and any other party if, having given a notice under paragraph (2) above, it ceases to propose to determine the appeal under paragraph (1) above.

16. There is currently very little guidance provided for the Tribunal on the circumstances in which it will be appropriate to be dismissed on appeal summarily under Rule 10 (1). Section 4 of the October 2007 Practice Note merely provides:

“Where a Chair is of the opinion that an appeal is of such a nature that it can properly be determined by dismissing it forthwith, the Chair may

act pursuant to Rules 10(2) and 10(3), but the appeal may only be dismissed under Rule 10(1) by a full Tribunal.”

17. There are two published cases in which the Tribunal has dismissed appeals under Rule 10(1). These are **Higginson v Information Commissioner** EA/2005/0008 (2 May 2006) and **Ingle v Information Commissioner** EA/2007/0023 (29 June 2007). Neither of those cases enunciated guidance about the nature of the test to be applied under Rule 10 (1).
18. The Tribunal was asked to dismiss Mr Tanner’s appeal summarily because the appeal was misconceived and had no real prospect of success.
19. In particular it was noted that Mr Tanner did not in fact take issue with the analysis in the Information Commissioner’s Decision Notice of 30 July 2007 by which the Commissioner reached his decision to uphold the exemption claimed by the VOA under Section 40 (5) (b) (i) of the Act.
20. In addition the Information Commissioner and HMRC say that Mr Tanner’s appeal is based on a fundamental misunderstanding of the Information Tribunal’s role and that of the Commissioner. Mr Tanner is trying, they say, to seek redress against what he sees as the corrupt practices of the public authority to whom he issued his information request and also against the other public bodies who have been involved in his grievances such as the Parliamentary Ombudsman. Having run out of other avenues of complaint he is now seeking that redress through the Commissioner and the Tribunal.

### Conclusions

21. It was clear to the Tribunal hearing this application that it would be helpful to all parties – now and in the future - to have certainty about the test being used for Rule 10 (1) applications.
22. The Tribunal concluded that the appropriate test was analogous to the test under Part 24 of the Civil Procedure Rules 1998. This makes provision for a claim which has no real prospect of success to be summarily dismissed.
23. Guidance on the meaning of this test was provided in **Swain v Hillman** [2001] 1 All ER (CA) by Lord Woolf MR. He said that the words “no real prospect of succeeding” did not need any amplification as they spoke for themselves. The court must decide whether there is a "realistic", as opposed to "fanciful", prospect of success.
24. Applied to the facts and issues in this case, Mr Tanner plainly has no real prospect of succeeding. He has not challenged the substance of

the Information Commissioner's decision notice which upholds the exemption claimed by the VOA under Section 40 (5) (b) (i) of the Act.

25. It is not open to the Tribunal to act in the way in which Mr Tanner would like which is, in effect, to review all the administrative acts by various public bodies about which he complains.
26. The Tribunal understands that Mr Tanner considers that he has a grievance. He has misunderstood some of the language in the Decision Notice, feeling that it was somehow directed at him. Counsel for the Information Commissioner has been at pains to point out that the Information Commissioner has not and had never intended to suggest that Mr Tanner's complaints about the VOA were "unsubstantiated and malicious". That point was repeated and emphasized to Mr Tanner on a number of occasions during both hearings.
27. As was pointed out to him in questioning by the Tribunal, if Mr Tanner feels that any crimes have been committed it is open to him to report matters of corruption or fraud to the police for further investigation. This is something he admitted that he had not done at any stage on these issues.
28. The Tribunal notes that Mr Tanner conducted himself in a restrained and appropriate manner throughout the two hearings, despite the sense of unfairness and injustice he was seeking to articulate.
29. The Tribunal agrees that this appeal should be dismissed summarily under the provisions of Rule 10.
30. Our decision is unanimous.
31. No order was requested or made in respect of costs.

Signed

Robin Callender Smith

Deputy Chairman

Date 30 March 2008