



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2007/0105
Information Commissioners Ref: FS50084354

FREEDOM OF INFORMATION ACT 2000

**Heard at the Finance and Tax Tribunal
on 8 and 9 April 2008**

**Decision promulgated
on 27 May 2008**

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Anisa Dhanji

and

LAY MEMBERS

Jacqueline Blake and Pieter De Waal

BETWEEN

ENNIS McBRIDE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

**THE MINISTRY OF JUSTICE
(FORMERLY THE PRIVY COUNCIL OFFICE)**

Additional Party

Representation:

For the Appellant:

In person

For the Respondent:

Ms. Jane Oldham, Counsel

For the Additional Party:

Mr. James Eadie, Counsel

FREEDOM OF INFORMATION ACT 2000

SUBSTITUTED DECISION NOTICE

27 May 2008

Name of Public Authority: The Ministry of Justice

Address of Public Authority: 2 Carlton Gardens, London, SW1Y 5AA

Name of Complainant: Mr Ennis McBride

Nature of Complaint:

The Public Authority has not complied with the Freedom of Information Act 2000 in relation to the Appellant's Requests 1, 2 and 5, made on 3 March 2005.

Date of Decision Notice Substituted:

23 April 2007.

Action Required:

Within 20 working days from the date of promulgation of the Tribunal's determination, the Public Authority must communicate to the Complainant, the information requested coming within the scope of his Request 1, as identified in paragraph 2 of the determination, except for the information referred to in paragraphs 35 and 36 of the determination.

Signed

Date: 27 May 2008

Deputy Chairman

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr. McBride (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), dated 23 April 2007. The Decision Notice relates to a number of requests for information made by the Appellant to the Privy Council Office (the “PCO”) (now the Ministry of Justice), under the Freedom of Information Act 2000 (“FOIA”).
2. Since the date of the request, the responsibilities of the PCO have become subsumed into the new Ministry of Justice (“MoJ”). Accordingly, the MoJ now stands in the place of the PCO, as the Additional Party. For convenience, however, we will refer to the Additional Party as the PCO in this determination, since it has been referred to as such by the parties throughout this appeal.

The Request for Information

3. On 3 March 2005, the Appellant wrote to the PCO requesting the following information:
 - “(1) Copy of the contents of my Visitor (University of London) file ref 563(120) – not including the material already sent to me – and any other material relating to me.*
 - (2) Details of all interests declared by Baroness Amos under the Ministerial Code of conduct or otherwise.*
 - (3) Details of all work undertaken for the PCO by Roy Beldam and all payments made to him by or on behalf of the PCO since 1998.*
 - (4) Details of all work undertaken by the PCO for the University of London from 1999-date and all payments made to the PCO in that period by or on behalf of the University of London.*
 - (5) Details of circumstances in which bonuses, performance related pay or any other addition to basic salary is paid to senior staff, in particular the clerk and deputy clerk of the PCO.*
 - (6) Details of any such payments made 2000-date.*
 - (7) Details of all visitor cases involving the University of London 1999-date.*
 - (8) Number of visitor cases heard 1999 to date, outcomes of each, number in which a hearing was (a) requested and (b) granted.”*
4. The PCO provided some of the information requested. In respect of the rest, it relied on various exemptions under FOIA, or said that no information had been found.

5. Following an internal review carried out at the Appellant's request, the PCO substantially upheld its previous decision. However, the PCO provided certain additional information in response to Request 2.

The Complaint to the Commissioner

6. On 20 July 2005, the Appellant made a complaint to the Commissioner that the PCO had failed to provide him with the information he had requested. Subsequently, in his letter of 13 December, 2005, the Appellant elaborated on why he disagreed with the PCO's position.
7. The Commissioner undertook inquiries. During the course of these inquiries, Mr Alex Galloway, the Clerk to the Privy Council, wrote to the Commissioner on 10 April 2006 to say that the PCO had reconsidered its position on Request 1. Although the PCO had initially relied on the exemptions in sections 35 and 40, it said that its position now was that since Baroness Amos' role as University Visitor was unconnected with her role as a Minister or member of the Privy Council, that information was not held by the PCO for the purposes of FOIA.
8. Following his inquiries, the Commissioner issued a Decision Notice setting out *inter alia*, the following findings:
 - The PCO had dealt with the requests relating to the University Visitor, in accordance with section 1(1)(a). The information covered by the Requests 1, 7 and 8, was not held by the PCO for the purposes of FOIA. However, in failing to advise the Appellant that it did not hold the information for the purposes of FOIA, the PCO was in breach of section 1(1)(a).
 - The PCO had correctly applied the exemption in section 41 (information provided in confidence) in relation to Request 2.
 - The PCO could not rely on section 40(2) in relation to details of payments made to senior staff in respect of Requests 5 and 6, and was required provide the information requested, but as overall cumulative totals, without reference to the identities of the individual members of staff.

The Appeal to the Tribunal

9. By a Notice of Appeal dated 12 September 2007, the Appellant appealed to the Tribunal against the Decision Notice. There has been no cross-appeal by the PCO.
10. In his Grounds of Appeal, the Appellant says that the Commissioner was wrong in law as to the status of and relationship between the Privy Council, the Privy Council Office, and the Visitor; that he wrongly allowed a claim for exemption under section 41; that he wrongly allowed a claim for exemption under section 40 in relation to payments to staff; and that he wrongly failed to take account of the Appellant's request under the DPA.
11. In a separate document, the Appellant has expanded on his Grounds of Appeal by setting out his comments on the individual paragraphs of the Decision Notice. Most

of these comments are more in the nature of submissions and we have considered them as such.

The Tribunal's Jurisdiction

12. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law or, to the extent that it involved an exercise of discretion by the Commissioner, the Tribunal considers that he ought to have exercised that discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
13. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Decision Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, the Tribunal will often receive evidence that was not before the Commissioner.

The Appeal Hearing

14. There was an oral hearing of this appeal over a two day period.
15. We heard evidence from Mr. Alexander Galloway. He was the Clerk to the PCO from 1998 to 2006 which means that he was in office during the period relevant to this request, and was therefore able to give evidence from his own knowledge. He had submitted both open and closed Witness Statements. His evidence in relation to the latter was heard in a closed session.
16. We will refer to the relevant aspects of Mr. Galloway's evidence, below, together with our findings. The closed evidence was quite limited and we can deal with it in this determination, without the need for a closed Annex, although certain details may need to be excluded. There were no other witnesses.
17. We have considered all the documents, received from the parties (even if not specifically referred to in this determination), in particular, the documents contained in the agreed bundle of documents, the supplementary bundle of documents submitted by the Appellant just prior to the hearing (for which leave was granted at the hearing), as well as the documentary evidence submitted at and after the hearing in accordance with directions made at the hearing.

Questions for the Tribunal

18. The key issues to be determined by the Tribunal in this appeal are in relation to Requests 1 and 2. The issues are as follows:

Request 1: Is the information which is in the possession of the PCO in relation to the University Visitor file, held by the PCO for the purposes of FOIA?

Request 2: To the extent that they have not already been provided to the Appellant, are the details of all interests declared by Baroness Amos under the Ministerial Code of Conduct or otherwise, exempt from the disclosure requirements of FOIA by reason of section 41?

19. It was common ground between the parties at the hearing that Requests 3, 4, 7 and 8 are not live, either because the information has been provided to the Appellant, or because the Appellant is not pursuing these points. However, Requests 5 and 6, raise some issues that we will need to deal with, at least briefly.

Evidence and Findings

Request 1

20. The right of access established by FOIA applies only to information held by the public authority to which the request is made. If the information is not held by it, there is no duty of disclosure.
21. FOIA does not define what is meant by “held”. It does not use terms such as “power, possession or control” that are found in other legal contexts, nor does it adopt the language in The Environmental Information Regulations 2004 which provide that “held” means information that “is in the authority’s possession and has been produced or received by the authority.” What it does do, however, is to exclude from the disclosure requirements of FOIA, information that is held by a public authority on behalf of another person. By virtue of section 3(2), such information is not “held” by the public authority for the purposes of FOIA. Of course, information that a public authority holds on behalf of another person may be subject to disclosure if that other person is a public authority, but that would have to be as a result of a request made to that public authority.
22. Section 3(2) provides as follows:
- (2) For the purposes of this Act, information is held by a public authority if-*
- (a) it is held by the authority, otherwise than on behalf of another person, or*
- (b) it is held by another person on behalf of the authority*
23. In the present case, the PCO does not dispute that it has the information requested in its possession, but says that it holds this information on behalf of another, namely, the University Visitor. We are not called upon in this appeal to make any findings as to whether the University Visitor is itself a public authority. It has not been argued that it is, and more importantly, the request in issue here was made to the PCO, so it is only the PCO’s obligations under FOIA that are in issue.
24. It may be helpful at this juncture to explain briefly what a University Visitor is. Until 2004, each of the long-established Universities in England and Wales were overseen by a “Visitor” whose role it was to determine disputes arising between the University and its members. So for example, students who were dissatisfied with their teaching or felt they had been unfairly treated by the University, could petition the Visitor of that University. The Visitor had exclusive jurisdiction over such disputes. In law, the Courts had very limited scope to review a Visitor’s decisions (see **R v. Lord President of the Privy Council (on appeal from R v. Hull University Visitor) [1993] AC 682**). On 1 January 2005, the office of the University Visitor was effectively abolished with the role being assigned to the Office of Independent Adjudicator for Higher Education, under the terms of the Higher

Education Act 2004. These developments have no bearing on this appeal, but we mention them for completeness and to explain why we may use the past tense in some instances.

25. This appeal is concerned only with the Visitor for the University of London. Prior to the changes referred to in paragraph 24, the statutes of the University of London provided that the Visitor was the Sovereign, acting through the Lord President of the Council (ie, the Privy Council). The person holding the position of Lord President of the Council at the relevant time, was Baroness Amos. The evidence is that although the Queen was informed of decisions taken by the Visitor, for practical purposes, the Visitor was the Lord President of the Council. For the purposes of this determination, all references to the Visitor are intended to be references to Baroness Amos in her capacity as Visitor.
26. We return now to the central question of whether information in the Appellant's Visitor file was held by the PCO for the purposes of FOIA. This is the file containing information in relation *inter alia*, to the Appellant's grievances against the University of London which had formed the subject matter of two Petitions by him to the Visitor.
27. Many of the arguments put forward by the parties have focused on the particular status of the Privy Council, the Privy Council Office, and the Visitor. In our view, the issue before us is not one that turns on their status. It is also not an issue that turns on who owns the information, nor on whether the PCO has exclusive rights to it, nor indeed on whether there is any statutory or other legal basis for the PCO to hold the information. Rather, the question of whether a public authority holds information on behalf of another is simply a question of fact, to be determined on the evidence.
28. The evidence in this case shows that the PCO performed all the administrative and management functions in relation to the office of Visitor as detailed in Mr Galloway's open Witness Statement. Whether it was the proper function of the PCO, and a proper use of taxpayers' money for the PCO to undertake that work, are issues which the Appellant has raised during the course of this appeal, but they are not issues that fall within this Tribunal's jurisdiction. We do not mean by this to imply any wrongdoing. What we are concerned about, however, is the reality of what was actually being done, rather than what should or could have been done.
29. Specifically, and of particular relevance to the present case, the PCO dealt with all Petitions to the Visitor. In fact, Petitioners were told to address their Petitions to the PCO. The PCO communicated with the Petitioners as to process and timing. All correspondence was sent out on the PCO's headed paper and signed by PCO staff. Senior civil servants in the PCO recommended to the Visitor what decisions should be taken on the Petitions. They also drafted the decisions except where they considered it appropriate to instruct external Counsel to do so. These decisions were usually approved by the Visitor, with only minor changes.
30. The staff who undertook this work was the same staff that did other PCO work and their time was not separately accounted for. All staff costs and other expenses were paid for from the PCO's budget. Indeed, we note that this work was included in the PCO's Departmental Plan alongside all other work carried out by the PCO, and PCO staff was appraised in relation to this work. There was also no confidentiality

agreement, service agreement, nor any cost-recharging arrangement between the PCO and the University Visitor.

31. On this evidence, we are entirely satisfied that the PCO held the information in Request 1 on its own behalf. As a matter of practice and perception, it is clear that the PCO's role in relation to Visitor cases was integral to its functions. We consider it telling in this regard that when it first received the Appellant's request, the PCO's response did not suggest that it held the information on any other person's behalf. This is not a situation where the information was simply on the PCO's premises because, for example, the Visitor had left it there. The PCO managed and controlled the information, and in fact the PCO itself produced much of the information contained in Visitor files. The PCO could edit or delete the information, and it could decide whom to send it to or whom to withhold it from. Indeed, in response to the Appellant's requests, it could have provided the information to the Appellant, and in fact, did provide some information. It has not been suggested that it did not have the authority to do so.
32. We recognise that our finding means that an applicant may be entitled to information in relation to this Visitor, but not in the case of others where equivalent information is not held by other public authorities. However, that does not detract from our reasoning. FOIA is not a guarantee that different public authorities will hold the same type of information; it simply provides a regime where applicants can access the information that a given public authority does actually hold.
33. Since we find that the PCO holds the information requested, it follows that it must provide the information to the Appellant, unless it can properly rely on any exemptions in FOIA. As already noted, when the PCO first refused the request, it did so citing sections 35 and 42. Subsequently, during the course of the Commissioner's enquiries, Mr. Galloway informed the Commissioner that the PCO had proceeded on an erroneous legal basis. From that point onwards, the PCO did not seek to rely on any exemptions, even as an alternative basis for its refusal.
34. This means that if it did not succeed in persuading us that the information was held on behalf of another, disclosure would be required. Although this was self-evident, it was only when we made it clear at the hearing that this would be the result that the PCO said that it expected the Tribunal to deal with the issue of whether the information was held on behalf of another as a preliminary matter. If that ruling went against the PCO, it should then have an opportunity, at a later date, to address any applicable exemptions. We found this to be a surprising position for the PCO to take. There had been no indication sought from or given by the Tribunal that it would proceed in this way, and clearly the hearing had been convened as a full hearing to dispose of all the issues.
35. In the event, the issue was resolved for all practical purposes because the PCO conceded that it could not justify relying on section 35. Plainly, that exemption has no real relevance to this request, and it is unfortunate that the PCO ever sought to invoke it. It is something that seems to have caused the Appellant concern, because quite rightly, he was not able to see how that exemption could be engaged.

36. To the extent that Request 1 covers information that may fall within the scope of the exemption in section 42, the Tribunal asked to see that information at the hearing and was shown a file comprising a number of documents relating to the Appellant's applications for Judicial Review. The PCO confirmed at the hearing that this is the only information in respect of which it relies on section 42. The Appellant, in turn, confirmed that he was not seeking disclosure of any information relating to his applications for Judicial Review. That being the case, we do not need to consider section 42 further.
37. There is one final point in connection with Request 1 that we wish to record. The information within the scope of this request includes correspondence between the PCO and Sir Roy Beldam. The PCO has said that it wishes to redact Sir Roy's personal address, the brief reference in the PCO's letter of 9th October 2003 to a matter personal to Sir Roy's family, as well as any references to petitions other than the Appellant's. The Appellant stated at the hearing that he has no objection to these redactions being made. The information sought to be redacted may, in any event, be exempt under section 40, but given the Appellant's agreement, we do not need to address this further.

Request 2

38. Under Request 2, the Appellant has asked for details of all interests declared by Baroness Amos under the Ministerial Code of Conduct or otherwise. In its letter of 12 April 2005, the PCO provided the information coming within the scope of Request 2 which is recorded in the House of Lords' Register (in other words the information that is in the public domain), but withheld other information on the basis of section 41.
39. In his evidence, Mr. Galloway explained the process by which the information requested was obtained by the PCO from Baroness Amos. He also explained how the disclosure obligations operate for Members of the House of Lords and for Ministers.
40. In brief, his evidence was that:
- Members of the House of Commons and House of Lords are required, under their respective Codes of Conduct, to register "relevant interests". These interests are declared publicly, through the Register of Members' Interests and Register of Lords' Interests, respectively.
 - The House of Lords' Code of Conduct provides that Members must register all relevant interests in the Register of Lords' Interests. The test of "relevant interests" under paragraph 9 of the Code is whether the interests might reasonably be thought, by the public, to affect the way in which a Member discharges his or her parliamentary duties. The test is not whether a Member's actions in Parliament will be influenced by the interest, but whether the public might reasonably think that this might be the case. Relevant interests include both financial and non-financial interests. The Code contains a non-exhaustive list of financial and non-financial interests which must always be registered, as well as those interests which may be relevant depending on their significance.

- Because Ministers exercise executive responsibilities, they are required to disclose a wider range of interests than other MPs and Peers.
- When Baroness Amos was appointed as Lord President of the Council in October 2003, Mr. Galloway sent her a letter, in line with established practice, inviting her to discuss her interests with him with a view to identifying any potential areas of difficulty. The letter expressly stated that the information she provided to him would be kept confidential. In reply, she provided him with details of her interests. Mr Galloway says these were very straightforward and it was clear to him that there was no conflict between her interest and her official duties. He says that most of her interests were then listed on the Register of Peers' interests. The few that were considered not to be "relevant interests" were not listed and are described in Mr Galloway's closed Witness Statement.
- He has been informed that all correspondence between him and Baroness Amos was shredded in August 2007, on the machinery of government changes. However, he has clear memory of his exchange with her in 2003 as described above. Baroness Amos' letter to him setting out her interests has survived and is appended to his closed Witness Statement.

41. At the hearing, Mr. Galloway confirmed that the letter he wrote to Baroness Amos inviting disclosure, was a standard form of letter. Although that particular letter has been destroyed, he produced a letter which he identified as a template of the letter he had sent to her. We note that this template letter sets out the types of interests the addressee ought to disclose, and gives an assurance that the information provided will be "handled in strictest confidence". In addition, it confirms that any advice given by the writer will remain confidential.

42. We turn now to consider whether the information which the PCO has withheld in relation to Request 2, is exempt under section 41 of FOIA.

43. The relevant part of section 41 provides as follows:

41 (1) Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

44. Both the Commissioner and the PCO have put forward a number of arguments as to why section 41 is engaged. Some of these arguments are about why it is in the public interest that this information should not be disclosed. That is not, however, strictly relevant, because section 41 is an absolute exemption. In order for the information to be exempt, section 41(1)(b) requires that disclosure should constitute an actionable breach of confidence. Public interest may be a relevant consideration in assessing whether there is likely to be a defence to such an action, but the public interest relevant there is the public interest in disclosure, rather than the public interest in withholding the information.

45. It is clear that the requirements of section 41(1)(a) are met because the information was obtained by the PCO from another person, here, Baroness Amos. The next question is whether the requirements of section 41(1)(b) are also met, i.e., whether disclosure of the information in question by the PCO would constitute a breach of confidence actionable by Baroness Amos (there being no suggestion that it would be actionable by anyone else). This would not entail Baroness Amos bringing proceedings against herself as Lord President of the Council, as the Appellant has suggested. The information was disclosed by her personally, and any action for breach of confidence would be brought by her in her personal rather than in her public capacity.
46. Since the appeal was heard, the Tribunal has had the benefit of the High Court's decision in **Secretary of State for the Home Department v. British Union for the Abolition of Vivisection and the Information Commissioner [2008] EWHC 892 (QB)**. Although its focus was the interplay between sections 41 and 44 in the context of The Animals (Scientific Procedures) Act 1986, the High Court makes a number of helpful observations on the law of confidence which we have borne in mind, including its comments as regards the relevance of Articles 8 and 10 of the European Convention on Human Rights ("ECHR").
47. We are satisfied that an obligation of confidence does arise in the present case and that any disclosure would be actionable, both because of the nature of the information in issue, and because of the circumstances in which it was imparted to the PCO. The information in issue relates to Baroness Amos' financial interests. We have had sight of the information. It comprises brief entries under the headings "Financial Interest" and "Property". The information is clearly private in nature. Baroness Amos provided Mr. Galloway with full details of her interests, beyond what she might have been expected to list on the public register, on his express assurances of confidentiality. The information was imparted in circumstances which clearly gave rise to an expectation of confidentiality, if not an express agreement, that it would be kept confidential.
48. If and to the extent that for a breach of confidence in respect of private information to be actionable, it is also necessary to show detriment arising from its disclosure, we consider that the very nature of the information which relates to Baroness Amos' private financial interests, would compromise her private life, which is also protected by Article 8 of the ECHR.
49. We have taken into account that in claims for breach of confidence, the law recognises, in some cases, a defence of public interest. However, in our view, the private interests of Baroness Amos in the withheld information outweigh any public interest in disclosure, and also outweigh the qualified right to freedom of expression under Article 10 of the ECHR. The Code of Conduct sets out a framework for disclosure of interests that might give rise to a potential conflict or a perception of such conflict. Those interests that were considered to be "relevant interests" were publicly declared by Baroness Amos. The ones that were not declared and which the Appellant is seeking disclosure of, were considered not to be relevant to her public role. There is no suggestion that the test of "relevant interests" was not correctly applied, and no reason to find, on the facts of this case, that the test of public interest as reflected in the Code of Conduct falls short of what a Court would apply in an action for breach of confidence.

50. For all these reasons, we find that the information within the scope of Request 2 is exempt under section 41.

Requests 5 and 6

51. In Request 5, the Appellant asked for “*details of circumstances in which bonuses, performance related pay or any other addition to basic salary is paid to senior staff, in particular the clerk and deputy clerk of the PCO*”. In Request 6, he asked for “*details of any such payments made 2000-date*”.
52. In relation to Request 5, the PCO said that the information was already in the public domain and they referred the Appellant to where it could be found. As regards Request 6, they said that details of payments made to senior staff were exempt under section 40 (personal data).
53. In his complaint to the Commissioner, the Appellant does not appear to have taken further issue with the PCO’s response on these requests, except as we have set out in paragraphs 54 to 57 below. However, in his Decision Notice, the Commissioner did deal with the PCO’s reliance on section 40 in respect of payments made to senior staff. He agreed with the PCO that those details constitute “personal data”. However, he considered that the PCO should have asked itself whether disclosure would contravene any of the data protection principles. He then went on to find that there was a legitimate public interest in the details of the payments being made available to the public and he required the information to be provided to the Appellant, as overall cumulative totals, without reference to the names of any individuals. This information was sent to the Appellant on 15 June 2007.
54. We have some misgivings about the Commissioner’s analysis. He did not identify which data protection principle he considered would be breached. Also, pursuant to section 2(3)(f)(ii), where disclosure would contravene any of the data protection principles, section 40(2)(b), read in conjunction with section 40(3)(a)(i), gives rise to an absolute exemption (albeit that the application of the data protection principles may involve striking a balance between competing interests). However, since the information has been provided to the Appellant, the issue is academic for the purposes of this appeal.
55. A separate issue arises in relation to Request 5 that we do need to address. During the course of the Commissioner’s investigation, the Appellant requested copies of the performance appraisals of Mr Galloway and of Mr Graham Donald, the former Deputy Clerk. The PCO says that this information was not part of the Appellant’s requests of 3rd March 2005, and it has therefore dealt with it as a new request.
56. The PCO refused the request on 7 February 2008. It considered that the information was exempt under section 40(2) of FOIA because it constituted personal data. At the hearing, Mr Galloway explained that he was not formally appraised, although Mr Donald was. He also explained that Mr Donald’s appraisal was conducted by reference to a particular appraisal form, and that the PCO had provided a copy of a blank form to the Appellant.
57. All the parties acknowledged, at the hearing, that even if section 40(2) was engaged, parts of the appraisal form might fall outside its scope. However, as the

parties also acknowledged, the Tribunal only has jurisdiction to deal with this request if the information falls within the scope of the requests that are the subject of this appeal, in particular, Requests 5 and 6.

58. Having considered the completed appraisal form, we are satisfied that the information does not come within the scope of Requests 5 and 6; the appraisal form makes no reference to pay or bonuses. Therefore, it is not within the Tribunal's jurisdiction, as part of this appeal, to order disclosure, whether in redacted form or otherwise.

Decision

59. We allow the appeal in respect of Request 1.
60. We dismiss the appeal in respect of Request 2.
61. The Tribunal has no jurisdiction as part of this appeal to make any order with respect to the performance appraisal requested by the Appellant.
62. The Panel's decision is unanimous.

Signed

Date: 27 May 2008

Deputy Chairman