

PLP The Right to Know

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Campaign for Freedom of Information

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Clegg's £1.4bn fund to stimulate the economy yet to spend a single penny

A damning report by MPs claims that the 'dysfunctional' Civil Service is incapable of delivering the Government's reform agenda

Fox in the dock over links with 'bogus aide'

Illegal entry charges dropped in case of 'scared' Afghan interpreter

A sentencing farce to make rotten peers grin

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NHS 'to lose £200m' under civil costs reform

Furtive return of veal calf exports

Details of shipments, obtained under FoI laws, show that nearly 7,000 calves have been exported to the Continent this year

British arms exporters cash in on Arab Spring

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BCCI (1)

- Request: Remaining extracts 1991 BCCI
- Tribunal:
 - ▶ exempt s.27 (prejudice to international relations)
 - ▶ exacerbate old wounds with unnamed other country

there is considerable public interest in the public seeing the whole of the...Report so that it can be seen, not just what happened, but what role was played by the governments, institutions and individuals who were involved with an organisation guilty of what the authors of the...Report...described as "an enormous and complex web of fictitious transactions in what is probably one of the most complex deceptions in banking history"...

BCCI (2)

we do not think that the public interest is materially reduced by the appearance of much of the same information in other published reports. The public has an interest in seeing how each of those who carried out an investigation illuminated the facts and assessed the actions of those who were involved, whether they contributed to the problems, tried to resolve them or played a neutral role.

- First Tier Tribunal, Information Rights, EA/2010/0054, Sikka & Information Commissioner & Treasury

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Arms to Saudi Arabia

- Tribunal:
 - ▶ Good relations with Saudi Arabia prejudiced by disclosure
 - ▶ PI favours withholding except where:
 - ▶ "possible involvement of UK officials...in the payment of commissions or agency fees in connection with arms sales."

Information Tribunal, EA/2007/0071, 78 & 79, Gilby & IC & FCO
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Public interest & lobbying

- “there is a strong public interest in understanding how lobbyists...are attempting to influence government so that other supporting or counterbalancing views can be put....”
- Also there is a strong public interest in ensuring that there is not, and it is seen that there is not, any impropriety.”

Information Tribunal EA/2007/0072, BERR & IC & FOE

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Public interest & physical restraint



- ‘Distraction techniques’ used on young people in Secure Training Centres
- IC accepted exempt
 - prejudice prison security & endanger H&S
- PI favours disclosure because
 - 2 deaths in 2004
 - lack of scrutiny + ethical questions

Information Commissioner, FS50173181, Youth Justice Board

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Declaration of compatibility (1)

- H & S (Offences) Bill 2008 (now Act)
 - introduced imprisonment for H&S offences
 - reversed normal burden of proof
- Request:
 - legal advice on which DWP concluded that new legislation compatible with Article 6 ECHR

In any proceedings for an offence...consisting of a failure to comply with a duty or requirement to do something so far as is practicable...it shall be for the accused to prove...that it was not practicable...to do more than was in fact done to satisfy the duty or requirement.

Section 40, Health & Safety at Work etc Act 1974

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 6(2) ECHR

Declaration of compatibility (2)

...this court **has to consider** whether **a reverse burden of proof** provision in a statute creating offences **is compatible** with the presumption of innocence enshrined in **Article 6 (2)** of the ECHR...

We have concluded that the imposition of a legal burden of proof in section 40 of the Act is **justified, necessary and proportionate** for the reasons which we set out below...

Last but not least **the defendant** in cases where the **reverse burden of proof applies** does **not face imprisonment**...

Lord Justice Tuckey, [2002] EWCA Crim 2949

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Declaration of compatibility (3)

- If issue **not 'live'** would have found **PI for disclosure at least equal** to PI against
- Requester since made **wider request** to DWP
 - ▶ Advice **unlikely to be 'live'** at later time
 - ▶ Tribunal recommends DWP **reconsider**

FTT, EA/2010/0044, Fisher & IC & DWP

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Late claiming of exemptions

- **Late reliance on new exemption**
 - ▶ Authority can add new exemptions at any time
 - ▶ IC & Tribunal have **no discretion to refuse** (**appealed** to Court of Appeal)

Upper Tribunal in DEFRA/HO [2011] UK UT 17 and 39 AAC

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Late refusal on cost grounds

- Request: MOUs on rendition
- MOD:
 - ▶ Refused, **international relations exemption**
 - ▶ After year: need to search 7 depts – exceeds £600
- Upper Tribunal:
 - ▶ Act permits sequential requests after 60 days
 - ▶ 1 yr delay prevented **5 or 6 valid requests**
 - ▶ Later the claim, more the prejudice – distorts statutory scheme

Upper Tribunal, [2011] UKUT 153 (AAC), All Party Parliamentary Group on Extraordinary Rendition & IC & MOD, 15.4.11

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Parking attendants' Argos points

- Request:
 - ▶ criteria & statistics for **Argos points** and performance **payments**, including
 - ▶ no of **tickets issued, complaints & cancellations**
- Council:
 - ▶ we don't hold - NCP hold it
- s.3(2)(b) FOIA
 - ▶ Authority holds if **held on its behalf** by another person

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In the Commissioner's view, information would be held **on behalf of** the Council if the contractor was **contractually obliged** to **gather** that information or to **provide it** to the Council...

as a contracted business, NCP needs to hold information **for its own purposes** and information about its staff is clearly an example...

Having examined the contract, the Commissioner saw **no evidence of contractual obligations** upon NCP to provide...[the information]

the Commissioner concluded that the information was **not held**...by NCP **on behalf of** the Council

FS50162002, L B Islington, 9.6.2009

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NHS reforms & FOI

- **Services commissioned from**
 - ▶ **Independent** providers, or
 - ▶ **NHS bodies**
- **Commissioning bodies**
 - ▶ **will be** subject to FOI Act
- **Independent providers**
 - ▶ **Not subject to FOI Act**
 - ▶ **Will be contractually required to assist** commissioning bodies in answering FOI requests

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DH standard contract

Freedom of Information and Transparency

the Provider agrees that this Agreement and any other recorded information held by the Provider on the Commissioners' behalf for the purposes of this Agreement are subject to the obligations and commitments of the Commissioners under the FOIA

2011/12 Standard Terms and Conditions for Acute Hospital Services, Clause 27.5.1

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Schedule 5 – Information Requirements

All information gathered for the purposes of reporting is subject to the requirements set out in clause 27, (Data Protection, Freedom of Information and Transparency)

National requirements reported locally

1. Monthly **activity report**, as described in Schedule 3...
2. Monthly **Service Quality Performance Report**, as described in clause 33.1, and details of performance against the Quality Requirements
3. Report monthly on performance against the **Healthcare Associated Infection Reduction Plan**
4. **Equality** monitoring report
5. **Complaints** monitoring report
6. Report against performance of the **Service Development and Improvement Plan**
7. the Provider shall...demonstrate their measured progress on **climate change adaptation**, mitigation and sustainable development, including performance against carbon reduction management plans

mation

11.2 The Provider shall have sufficient **appropriately qualified** and experienced **medical, nursing** and other **clinical and non-clinical Staff** to ensure that the Services are provided in all respects and at all times in accordance with this Agreement. **If requested** by the **Co-ordinating Commissioner**, the Provider shall as soon as practicable and by no later than 20 Operational Days of receipt of such written request, **provide** the Co-ordinating Commissioner with **evidence** of the Provider's **compliance** with this clause 11.2.

5.2 The Provider shall ensure that the Services Environment is fit for the purpose of providing the Services and is **clean, safe, suitable, sufficient,** adequate, functional, accessible (making reasonable adjustments where required) and **effective.**

Disclosure log

Below please find the disclosure log of Freedom of Information requests to our Trust from the past two years.

 Complaints / Incidents

- 633 - [Complaints: English Language Skills](#)
- 634 - [Staff Suspensions](#)
- 638 - [Assaults by Patients](#)
- 658 - [Illegal Immigrants](#)
- 661 - [Incidents: Biological](#)
- 687 - [Staff Suspensions](#)
- 689 - [Maternity Unit Closures](#)
- 691 - [Maternity Unit Complaints](#)
- 700 - [Foreign Trained Locum Staff](#)
- 711 - [Bullying and Harassment](#)
- 762 - [Serious Unlawful Incidents](#)
- 874 - [SUI's and Epinephrine Auto-Injectors](#)
- 950 - [Stolen Drugs](#)
- 951 - [Drug Errors](#)
- 961 - [Alcohol / drug Incidents involving medical staff](#)
- 964 - [CRB Checks](#)
- 967 - [Slips, Trips and Falls](#)
- 968 - [Maternity Complaints](#)
- 974 - [Blood Transfusion Incidents](#)
- 983 - [Physical Assaults on Staff](#)

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