

Freedom of Information

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- FOI crisis in Australia, p.16

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FOI / EIR—differences resolved?

In a case involving a request made of Thanet District Council, the Information Tribunal has said that the Information Commissioner was wrong to treat a request for information on night flying as an FOI request.

The original request for a legal opinion on night flying policy at Kent International Airport had been treated as a FOIA request and refused on the grounds of the s.42 exemption for legal professional privilege.

The requester appealed to the Information Commissioner, who upheld the Council's refusal to supply the information. Both the Council and the Commissioner treated the request as an FOI request. How-

ever, the Information Tribunal said this was incorrect. The legal opinion requested, it said, related to the enforceability of an agreement between the Council and Planestation (which included requirements for the preparation of a night-time flying policy), land usage and other planning matters.

"If it was ever in doubt, it is now official—deciding whether the freedom of information regime or the Environment Information Regulations apply is a minefield," said Patricia Barratt, a lawyer with Clifford Chance. The Tribunal found that the agreement was an "environmental agreement" under the Town and Country Planning Act 1990

and Local Government Act 1972."

Entering into and extending such an agreement fell within the definition of 'environmental information,' as "likely to affect the elements and factors referred to in (a) [the state of the elements of the environment...] and (b) [factors such as substances, energy, noise, radiation, or waste...] as well as measures or activities designed to protect these elements." The Tribunal considered particularly that noise and emissions could affect the state of human health and safety.

Therefore, the Tribunal found that the request should have been dealt

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OPSI expects higher standard on 're-use'

In July 2006, the Office of Public Sector Information (OPSI) issued its first decision under the Reuse of Public Sector Information Regulations 2005.

The Regulations set down minimum standards of transparency and fairness to be followed by public sector bodies when licensing their copyright or database right protected material.

Intelligent Addressing (IA) complained to OPSI about Ordnance Survey's (OS) licensing of AddressPoint and the OS's own use of AddressPoint (an address

dataset). The complaint also raised issues relating to OS's compliance with the Information Fair Trader Scheme (IFTS), which is promoted by OPSI and of which OS is a member. This scheme aims to regulate those bodies which have delegated authority to licence Crown Copyright material.

OPSI decided that there was a lack of transparency and unfairness in OS's licensing—the process and documentation was complex and OS gave itself more rights to reuse the information than third

parties such as IA (for example, end user licences from IA were required to have a shorter term than those from OS).

On charging, OPSI's decision was that, although under the Regulations there is no limit on charges (other than a statement that there should be a "reasonable rate of return"), OS should have calculated its charges on a product by product basis. Finally, OPSI was asked to consider the OS's policy that it would not grant a licence if it would result in

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