The Department of Health (DoH) has decided to appeal the Information Tribunal’s unanimous decision that the government should publish data about the late abortions of disabled foetuses.

Back in July 2008, the Information Commissioner had ordered the DoH to release the figures requested by the Pro-Life Alliance. The DoH contested the disclosure on the basis that the information was “sensitive, personal and private,” and therefore fell within the section 40 (personal data) exemption in the Freedom of Information Act.

Recently in October, the Information Tribunal decided that the likelihood of a doctor being identified from the statistics was “remote” and a patient being identified as “very unlikely”.

Though the decision was unanimous, the Tribunal did indicate that the decision turned on the specific facts of the case. The judgment states “we would not wish this decision to be considered a general bar to withholding statistical information from public disclosure on grounds of protection of personal data. There may be cases where data subjects may be identified or reasonably identifiable from statistics, where different factors and circumstances may determine whether disclosure is unfair or unwarranted.

“Where statistics can be added to other information held by a public authority to identify an individual, consideration must in each case be given to the Data Protection Principles as required by Section 40(3) FOIA”.

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