The Information Commissioner’s Office is appealing a decision by the First-Tier Tribunal, calling into question the Tribunal’s role under the Freedom of Information Act.

As part of a recent landmark decision, the First-Tier Tribunal (Information Rights) ruled that it was obliged to consider exemptions raised by a public authority for the first time before the Tribunal.

The ruling, in June, involved a case brought by the Home Office to maintain the secrecy of evidence which the UK Border Agency relied upon when section 12 of the Asylum and Immigration (Treatment of Claimants) Act, 2004 was presented to Parliament. The Home Office had cited sections 12 and 35 of the Freedom of Information Act 2000 in its refusal to supply the information. Subsequently, the Information Commissioner ruled that the exemptions could not be relied on by the Home Office. On appeal to the Tribunal, the Home Office invoked, for the first time, section 40 (personal data exemption) and section 42 (legal professional privilege), despite not raising these at the time of the ICO’s investigation.

The Tribunal found that it was obliged to consider the exemptions, even though they had not been raised at an earlier stage.

A spokesperson for the ICO told Freedom of Information “I can confirm that the ICO is appealing this.”

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