



JUDICIARY OF  
ENGLAND AND WALES

**Rob Evans v Information Commissioner**  
**12 October 2012**  
**SUMMARY TO ASSIST THE MEDIA**

The Upper Tribunal (Mr Justice Walker, Judge John Angel and Ms Suzanne Cosgrave) today publishes a procedural decision, along with an additional annex (“Open Annex 4”) to its decision of 18 September 2012 (“the September 2012 decision”).

In these documents the tribunal records that Mr Evans contended that the tribunal should impose a procedural bar, refusing to allow the Departments to seek redactions, even if the Act and the Regulations would permit them. The tribunal rejects that contention.

In the alternative, Mr Evans suggested a staged procedure. Neither the Commissioner nor the Departments lodged substantive submissions objecting to such a procedure. The tribunal has accordingly given directions for a staged procedure. This will enable Mr Evans to make submissions on redaction in context.

It will also mean that before the tribunal decides on redaction of personal data of any individual, there will be an opportunity for closer involvement of the individual in question in ensuring that relevant personal data are identified, and that the views of that individual, and relevant evidence which that individual can provide, are put before the tribunal.

The staged directions will be suspended if within appropriate time limits the Commissioner or the Departments seek permission to appeal.

**The Procedural Bar sought by Mr Evans**

In paragraph 3 of the Procedural Decision and Reasons the tribunal sets out the four reasons given by Mr Evans for seeking a procedural bar.

The tribunal explains in paragraph 4 why it refuses to impose a procedural bar:

- (1) Having allowed Mr Evans’s appeals, the tribunal thought it desirable that there be submissions on the question of redaction as regards individuals other than Prince Charles. The need to consider making such redactions arises under section 40 and regulation 13. There had been no submissions in that regard thus far, but “even if there had been earlier submissions to the tribunal by the Departments on whether there should be redaction as regards individuals other than Prince Charles, we would have directed in accordance with the overriding objective that this question should be reserved for later consideration if necessary.”
- (2) The tribunal did not accept that raising the issue now, rather than earlier, will cause additional expense to Mr Evans: “That expense would not have been avoided if the issue had been raised earlier.”
- (3) “It is important that the tribunal should not ride roughshod over the personal interests of any individual. ... in so far as the Act and the Regulations enable the personal interests of others to be protected, we should not harm those interests if the question whether they

are entitled to protection can be examined without substantial unfairness to others. Examining that question in the present case will not in our view, involve substantial unfairness to Mr Evans. ... In the absence of any appeal, the tribunal's procedural decision above requires that [the disclosable documents] be made available within 1 month, albeit that certain parts of certain documents will be subject to the provisional redactions."

### **The staged procedure for consideration of personal data of individuals other than Prince Charles**

In paragraph 8 of the Procedural Decision and Reasons the tribunal explains why it agrees with Mr Evans's proposal for a staged procedure: "In our view this will enable fairness to all concerned. It will enable Mr Evans to see the context, in the form of the specific document, and in that context to decide whether he is content to accept the provisional redactions. If he is not content, then he and the other parties will be able to suggest open and closed procedures which, having regard to the provisionally redacted documents, will best enable the tribunal to examine the Departments' contentions about them in a manner which is fair to all concerned."

The tribunal adds in paragraph 9: "We draw attention to the fact that personal data of an individual are not necessarily confined to the name of that individual. It seems to us desirable that more active consideration should be given to a closer involvement of the individual in question in ensuring that relevant personal data are identified, and that the views of that individual, and relevant evidence which that individual can provide, are put before the tribunal."

Paragraph 10 explains that the procedural decision contains provisions under which the staged procedure will be suspended if the Information Commissioner or the Departments make a timely application for permission to appeal. The Departments contended that this should also be the case if a certificate under section 53 were served on the Commissioner. The tribunal disagrees: "That section [section 53] provides that certain decision notices or enforcement notices shall cease to have effect if there is a timely certificate by an accountable person stating that on reasonable grounds the accountable person has formed the opinion that, in respect of the request or requests concerned, there was no relevant failure. In our view a certificate under section 53 is entirely different in character from any appellate process, and is not something that we need to anticipate. If there is a certificate under section 53, and any party considers that the certificate necessitates some change in anything we have said or done, then it will be open to that party to make an application to us on notice to other parties."

### **The new Open Annex 4 to the tribunal's decision of 18 September 2012**

In paragraph 3 of Open Annex 4 the tribunal summarises the considerations which have led it to take the Procedural Decision: "In essence they are that a procedural bar would be unfair to the individuals in question, while a staged procedure will in our view be fair to all concerned."

The tribunal explains in paragraph 6 that for all these reasons it determines "that principles governing redaction of personal data concerning individuals other than Prince Charles should be dealt with at a later stage, in accordance with [the staged procedure]."

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**This summary is provided to assist in understanding the tribunal's decision. It does not form part of the reasons for the decision. The only authoritative documents are Open Annex 4 and the Procedural Decision and Reasons.**