



Tribunals Service

Information Rights

IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal Nos. EA/2010/0069 & 0076

BETWEEN:-

(1) FISH LEGAL
(2) EMILY SHIRLEY

Appellants

And

(1) THE INFORMATION COMMISSIONER

Respondent

And

(2) UNITED UTILITIES WATER Plc
(3) YORKSHIRE WATER SERVICES Ltd
(4) SOUTHERN WATER SERVICES Ltd

Additional Respondents

RULING

1. On 14 May 2010 the First-tier Tribunal (FTT) gave directions that these appeals and appeal EA/2010/ 0079 Reeve v Information Commissioner be stayed pending the decision in lead case EA/2010/0077 Smartsorce Drainage and Water Reports Ltd v Information Commissioner and a Group of 19 Water Companies (Smartsorce). Smartsorce was transferred to the Administrative Appeals Chamber of the Upper Tribunal under Rule 19(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended. The Upper Tribunal issued a decision using reference GI 2458 2010 on 23 November 2010.
2. The issue referred for the Upper Tribunal to determine was whether water and water and sewerage companies operating in England and Wales were public authorities under the Environmental Information Regulations 2004.
3. The Upper Tribunal determined that the water and sewerage companies were not public authorities under the 2004 Regulations.
4. Following the decision, the FTT sent a copy to the parties to the other three appeals inviting them to let the Tribunal know how they wished to proceed with their appeals.

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5. Since then the Tribunal has received a number of submissions as to the way they wished to proceed.
 6. Mr Reeve decided to withdraw his appeal.
 7. Osborne Clarke on behalf of the three water companies, namely United Utilities Water Plc, Southern Water Services Ltd and Yorkshire Water Services Ltd, applied to be joined in any continuing appeals.
 8. The Tribunal held a preliminary hearing on 7 February 2011 by way of a telephone conference to decide how to proceed which was attended by Mrs Shirley, David Wolfe on behalf of Fish Legal, Richard Bailey on behalf of the Information Commissioner and Tom De La Mare on behalf of the three water companies.
 9. At the hearing I ordered that the three water companies be joined as additional respondents. I also lifted the stay in the directions dated 14 May 2010.
 10. Prior to the hearing all the parties provided detailed submissions on the matters they wished the FTT to decide.
 11. Mr De la Mare applied for the above appeals to be struck out on the basis that they had no reasonable prospect of succeeding following the Upper Tribunal decision.
 12. Mr Wolfe applied for the two remaining appeals to be transferred to be heard in the Upper Tribunal under rule 19(2) in the same way as the Smartsources case. Mr Bailey eventually supported this application. This was after withdrawing his application to have the appeals struck out, which was partly in response to a letter from the European Commission dated 17 January 2011 expressing concern about the implications of Smartsources decision.
 13. After some discussion it was considered by the parties that one appropriate way of dealing with the appeals was to dismiss them. Therefore at the hearing I decided to dismiss the appeals, the parties having no objection to me disposing of them in this way. I made this decision having taken into account, among other things, that Smartsources had been directed to be the lead case and because the FTT is bound by the decision of the Upper Tribunal in that case.
 14. An appeal against this decision to the Upper Tribunal may be made by a party. A person seeking permission to appeal must make a written application to the FTT for permission to appeal within 28 days of the date of this decision. Such an application must identify the error or errors of law in the decision and state the result the party is seeking. Relevant forms and guidance for making an application can be found on the Tribunal's website at www.informationtribunal.gov.uk.

Signed:

John Angel
Principal Judge

Dated: 14 February 2011