



**IN THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)**

**EA/2015/0112**

**BETWEEN:**

**Appellant: Robert Latimer (“RL”)**

**First Respondent: The Information Commissioner (“the ICO”)**

**Second Respondent: The Department for Environment, Food and  
Agriculture (“DEFRA”)**

**The Tribunal’s Decision on an application for permission to appeal**

1. This application is made pursuant to Rule 42 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules, 2009.
2. The Tribunal declines to review this decision pursuant to Rule 44 because it is not satisfied that an error of law is involved, as required by Rule 44(1)(b).
3. The Tribunal finds that the application raises no arguable point of law and therefore refuses permission to appeal pursuant to Rule 43(2).

4. The request giving rise to this appeal was for a letter relating to the implementation by the UK of a decision of the European Court of Justice finding the UK in breach of a waste disposal directive.
5. In refusing disclosure, DEFRA relied on the exceptions enacted in EIR Reg. 12(5)(a) and (b), namely that disclosure would adversely affect international relations (with the EC) and the course of justice.
6. The DN concluded that the first exception was made out on a balance of probabilities and did not consider the second.
7. The Tribunal found in favour of RL as to the Reg. 12(5)(a) exception but for the respondents as to Reg. 12(5)(b). Such findings involve no inconsistency. The issues are not the same.
8. As he acknowledges, RL was forewarned of the Tribunal's intention to consider Reg. 12(5)(b) and to come to the hearing prepared to argue it.
9. A possible issue of law arose in relation to this exception. It is not referred to in the application but I will deal with it briefly anyway.
10. For the reasons stated at paragraph 20 of the decision, the negotiations on implementation of the ECJ judgment were part of the course of justice. I do not consider any contrary view to be properly arguable.
11. If that is right, the question whether disclosure of the letter would adversely affect that course of justice was a question of fact for the Tribunal. Timing was, in the Tribunal's opinion, a material factor in that

finding. That finding does not involve a reference to any provision of the EIR.

12. The Tribunal's findings in EA/2015/0111 were entirely irrelevant to this decision as were familiar criticisms of statistics provided to the EC by DEFRA and its predecessor in responding to the EC complaint prior to the judgment of the ECJ in 2012. The Tribunal was concerned solely with arguments as to the disclosure of a letter sent by the UK to the EC on 31<sup>st</sup>. March, 2014.

13. Having found that disclosure would adversely affect the course of justice, the Tribunal made the further finding of fact that the public interest, taking account of the Reg. 12(2) presumption, favoured withholding the letter at or about the time of the request (and probably for a significant period afterwards). It gave its reasons.

14. As to both these findings of fact, the Tribunal took account of the material factors and reached conclusions that were properly open to it. The views expressed in the letters produced by RL, which emanated from the EC, did not substantially diverge from DEFRA's stance, namely that a time would come when the UK's position must be made public in the interests of democratic debate but that that time was not ten days after the letter opening negotiations. Even if they had diverged, that would have been of little significance, since the UK had a legitimate interest in maintaining its negotiating position by avoiding instant publicity for its initial pitch.

15. For these reasons this application is refused.

David Farrer Q.C.

Tribunal Judge,

3<sup>rd</sup>. December, 2015