



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

EA/2011/0045 and
EA/2011/0035

B E T W E E N:-

WILLIAM THACKERAY

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

THE BRITISH BROADCASTING CORPORATION

Second Respondent

RULING

The parties are referred to as the “Appellant”, the “Commissioner”, and the “BBC”, respectively

INTRODUCTION

1. The purpose of this Ruling is to address an issue raised by the BBC, as to whether the Appellant’s Notices of Appeal fail to comply with the requirements of Rule 22(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber)

Rules 2009 (the “Rules”), and if so, what the consequences of that are.

2. The parties have had a full opportunity to put forward their submissions on this issue which I have considered, together with the authorities that have been lodged. In brief, the BBC and Commissioner say that the Notices of Appeal are invalid. The Appellant says that they are not defective, and that even if they are, this does not render them invalid.
3. These two appeals have not been formally consolidated. However, this single ruling is issued for convenience since it applies equally to both appeals.

BACKGROUND

4. In September 2010, the Appellant made two requests for information to the BBC under the Freedom of Information Act 2000 (“FOIA”). The first request was for a copy a Panorama Programme from 1987 entitled “Scientology – The Road to Total Freedom”, and for a transcript of the programme.
5. The second request was for a copy of all communications sent to and from Carter-Ruck LLP, about the making of the Panorama programme on Scientology. The Appellant also requested that the BBC release all other communications sent to or from Carter-Ruck LLP or any other Scientology representative that concerned John Sweeney, Panorama or Scientology.
6. Both requests were refused on the basis that the information, if held, was held for the purposes of journalism, art or literature, and that therefore the duty of disclosure under section 1(1) of FOIA did not arise regardless of how compelling the public interest in disclosure may be.
7. The Appellant complained to the Commissioner. In Decision Notices dated 3 February and 14 February 2011, respectively, the Commissioner upheld the BBC’s refusals. The Appellant has appealed to the Tribunal against the Commissioner’s Decision Notices.

THE APPELLANT’S NOTICES OF APPEAL

8. The Appellant’s Notices of Appeal give his address as follows:

[address redacted for publication]

9. They also provide an email address for the Appellant, although no telephone number. They indicate that he is not represented.
10. The Appellant has said that the address he has provided is a residential address, but he has refused to confirm that it is his address (his e mail of 15 June refers). He says that there is no requirement for him to supply his residential or home address. Elsewhere (for example in his e mail dated 14 April 2011), he has expressly refused to provide his home address.
11. The Appellant has said that he will not provide his home address because he is afraid of harassment against himself and his family from the “Scientology organisation”. The Appellant has not provided evidence to substantiate this fear. However, the Tribunal has not directed him to do so, bearing in mind the obvious risks of embarking on satellite litigation on an issue unrelated to the Appellant’s request for information.

ISSUE AND FINDINGS

What is the nature of the address the Appellant has provided?

12. As already noted, the Appellant has not explained what the address he has provided is. Such explanations as he has given are unclear, and at times, contradictory. He has said, at different times, that he has met the requirements of Rule 22(2)(a), that he refuses to provide his home address, that he refuses to confirm whether the address provided is his residential or home address, and that the address provided meets the requirement (which he says should apply), of being his “usual or last known address” without explaining how it does.
13. I am satisfied, from the fact that the Appellant has made it clear, repeatedly, that he does not want to give his personal address because the risks he feels would arise, that the address he has given is not his home address. I find it likely that it is the address of a third party, although there is no evidence before the Tribunal as to whose address it is, nor what relationship, personal or commercial, the Appellant has with the owner or occupier of that address.

Has the Appellant complied with Rule 22(2)(a)?

14. To the extent relevant, Rule 22 provides as follows:

(2) The notice of appeal must include –

(a) the name and address of the appellant;

(b) the name and address of the appellant's representative (if any);

(c) an address where documents for the appellant may be sent or delivered;

15. These requirements apply to all appellants. Sub-paragraphs (a) – (c) clearly distinguish between three addresses, namely, the address of the appellant, the address of the appellant's representative, and the address for service of documents. They do not have to be three different addresses, however. For example, the address for service could be the same as the representative's address or the appellant's address.

16. The key issue in the present case is what is meant by "address of the appellant" in sub-paragraph (a). The term is not defined, but the fact that Rule 22(2) distinguishes between the "address of the appellant" and "an address where documents for the appellant may be sent or delivered", leads to the inescapable conclusion that the former must be the Appellant's own address, whereas the latter can be any address. This interpretation is reinforced by the reference in sub-paragraph (a) to the address "of" the appellant, in contrast with sub-paragraph (c) which refers simply to "an address".

17. In most cases "address of the appellant" will be the appellant's home address. There may be cases, of course, where matters are not that straightforward, for example, where an appellant has multiple residences. In some cases, it may be necessary to look more closely, for example, at whether the appellant is registered at a particular address for tax and other official purposes, how many days he resides at that address or whether he has any legal status as owner or occupier of the premises. However, those are not issues that arise to be addressed in the present case. I have already found it likely that the address the Appellant has given is the address of a third party. As such, it can meet the requirements of Rule 22(2)(c), but not Rule 22(2)(a).

18. The Appellant has put forward a number of arguments as to why this is not the conclusion the Tribunal should reach. I have not found his arguments to be persuasive. In particular, he has said:

- that the Council on Tribunals' document headed "Guide to Drafting Tribunal Rules" (page 198, draft rule 106), provides useful context for the proper meaning of the term "address". However, as the Appellant acknowledges, the Guide does not form part of the Rules. Even if it did, I consider that it would not assist the Appellant. The provision which the Appellant relies on reads as follows:

(5) The proper address of any person, body or authority to whom any document is required or authorised to be delivered is-

(a) in the case of a secretary or clerk of an incorporated or other body registered in the United Kingdom, that of the registered or principal office of the company or body;

(b) in the case of the person authorised to accept it on behalf of a company or other body incorporated outside the United Kingdom, the address of the principal office or place of business of that company or other body in the United Kingdom;

(c) in the case of the Registrar or the Tribunal/the appellate tribunal, the address of the office of the Tribunal/the appellate tribunal; or

(d) in the case of any other person, the usual or last known address of that person.

This provision deals with the address for delivery of documents. The equivalent is Rule 22(2)(c) not 22(2)(a). Also, it refers, in the case of an individual, to his "usual or last known address". In my view, this implies the address where the person lives or usually lives, or if his address is not known, then the last known address where he lived. This is not what the Appellant has provided (leaving aside the fact that "last known address" has no applicability in cases where it is an appellant himself who is required to provide the address rather than where documents may need to be sent by another party to him).

- that "address" should not be taken to mean a residential address or a home address, since if the appellant was a corporate entity, there would be no such address.

- that the FOIA regime is intended to be applicant – blind so the identity of the applicant should not matter. I would note that a requester does not have to provide his address when he is making a request for information to a Public Authority. Section 8 of FOIA requires a requester only to provide his name and “an address for correspondence”. This is in contrast with Rule 22(2)(a) which requires an appellant to provide his address in the Notice of Appeal (as distinct from an address for service). This does not mean that Rule 22(2)(a) brings a requester’s motives into play. Rather the distinction highlights the fact that when lodging a Notice of Appeal, a person (and of course it will not always be the requester who is appealing), is embarking on a different process. He is initiating legal proceedings and quite properly, different considerations apply. (This is something I will address further below).
- that the BBC has acted contrary to the overriding objectives set out in Rule 2 by applying, on various grounds, to have the Appellant’s appeal struck out. The Tribunal has not yet ruled on any other application. but in my view, there is nothing on the face of them to suggest that they are spurious or that by making them, the BBC is acting contrary to the overriding objectives
- that it is not practical for the Tribunal to check the “validity” of an appellant’s address, particularly since it need not be in the UK. That is clearly right, but it does not follow that such information does not therefore have to be provided. There are many pieces of information put forward by any party in proceedings that are accepted at face value, unless an issue arises, as it has here, which calls for closer examination. If it were otherwise, the judicial process would grind to a halt.
- that to require an appellant to disclose his address discriminates against those who do not have a permanent residential address. However, the Appellant is not being asked to provide a permanent address and there is no suggestion that he does not have a residential address.

19. In short, I find that the Appellant's Notices of Appeal do not comply with Rule 22(2)(a). I am not persuaded otherwise by the arguments the Appellant has put forward.

Implications of Non-Compliance

20. The question that then arises is as to what the implications are if a Notice of Appeal does not comply with Rule 22(2)(a). The BBC and the Commissioner say that non-compliance renders the Notice of Appeal invalid. I do not agree that that is automatically the effect. Rather, it is a matter for the Tribunal's discretion under Rule 7(2).

21. Rule 7(2) provides as follows:

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include-

- (a) waiving the requirement;*
- (b) requiring the failure to be remedied;*
- (c) exercising its power under rule 8 (striking out a party's case);*
- (d) exercising its power under paragraph (3); or*
- (e) barring or restricting a party's participation in the proceedings.*

22. It is clear from this the Tribunal has the discretion to do a number of things, including to waive the requirement for the Appellant to provide his address. The question is whether it should do so.

23. The Appellant says that technical rules should not be allowed to derail an otherwise valid FOIA appeal. In my view, however, there are strong policy as well as practical reasons for why a party seeking to avail himself of the jurisdiction of a Court or Tribunal should identify himself. A name, email address, or even an address for service, does not do this. An appeal by Mr John Smith with an e mail address of John.Smith@hotmail.com and a post box for where documents are to be sent, does not identify who Mr John Smith is from amongst the many thousands of John Smiths there may be. It is the combination of the name with a personal address that identifies a party in any meaningful way.

24. By initiating legal proceedings (which is what lodging a Notice of Appeal does), an appellant is submitting to the jurisdiction of the

Court or Tribunal in question. He is seeking the remedies it has the power to grant, and is agreeing to comply with its rules of procedure and to abide by its decisions, even where they are adverse to his interests. If his identity is not known, the risk is that a party can initiate proceedings, but can easily escape the responsibilities and liabilities that may follow. In the example above, were a Court or Tribunal to find Mr John Smith to be in contempt, or to make a costs or other order against him, it is not hard to imagine the difficulties that could arise in enforcement if there is no certainty as to which John Smith the appellant is. Such a situation would have the effect of undermining both the dignity and effectiveness of the judicial process. The Appellant says that those situations would not arise in the present case. However, the issue is not whether, in the circumstances of an individual case, those scenarios are likely to arise. It will often be very difficult in any event to know that at the time a Notice of Appeal is lodged.

25. It is also necessary to consider the position of the other parties. Initiating legal proceedings against a party is a serious step. The defendant or respondent, as the case may be, has no choice in the matter. Once proceedings are initiated, with few exceptions the defendant or respondent becomes subject to the jurisdiction of the Court or Tribunal, and becomes involved in what can be protracted and costly proceedings, having to defend himself against any claims made against him. It is only right and proper that such party should know the identity of the person at whose behest those proceedings have been brought.
26. I have considered the reasons the Appellant has given for why he does not want to provide his address. He says that has a legitimate concern for the personal safety of himself and his family. As already noted, the Tribunal has not sought to make any specific findings on whether those concerns are well- founded. However, even if they are, the appeal can still proceed if the Appellant were to provide his address only to the Tribunal. I consider that it is within the Tribunal's powers under Rule 7(2) to permit this, even where the other parties object, as the BBC has done here. The Tribunal is, of course, accustomed to handling confidential information. The Tribunal would hold any such address in confidence and not provide it to the other parties unless a situation arose causing the Tribunal to consider it appropriate to disclose the Appellant's address, whether on application by the parties or for any other reason. The Tribunal would, in such a situation, give the Appellant an opportunity to make submissions before any such disclosure is made, and if appropriate, to appeal against the Tribunal's ruling, if it is adverse

27. There are two further things I should mention, for completeness. First, I am aware that the Appellant has and has had several other appeals before the Tribunal, some of which are still pending. In some cases (for example EA 2010/0088), his Notices of Appeal were not admitted on the basis that he had provided no address at all. It may be that in other cases, the appeals have proceeded without the issue having been brought to the attention of the Tribunal. In the present case, the issue has been specifically brought to the Tribunal's attention, and the Tribunal has been called upon to rule on it.
28. Finally, the Appellant has said that he should be allowed to substitute another party in his place. However, no such application to substitute a party has in fact been made. No substitute party has been identified, much less has any such prospective party indicated its consent.

DECISION

29. I find that the Notices of Appeal are not valid and I rule that they should not be admitted.

Ms A Dhanji

20 July 2011

Judge