

Neutral Citation No: [2014] NIQB 83

Ref: TRE9316

Judgment: approved by the Court for handing down  
(subject to editorial corrections)\*

Delivered: 10/06/2014

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Johnston's (Geoffrey) Application [2014] NIQB 83

GEOFFREY JOHNSTON FOR JUDICIAL REVIEW

TREACY J

Introduction

[1] The applicant in this case is Conscape Ltd and the application is brought on behalf of Conscape Ltd by Mr Geoffrey Johnston who is the Director of Conscape Ltd which is an environmental services company.

[2] There was some doubt or confusion as to who the applicant actually is, as to whether it is Mr Johnston in his personal capacity or whether it is Conscape Ltd and although I have not received full argument on the matter it seemed to me that there would be an issue as to whether or not Mr Johnston, in his own name, as applicant, would have locus standi to make this application, but he informs me that he is taking the application on behalf of the Company, so I take that to mean Conscape Ltd.

[3] The applicant in this case seeks declaratory relief against the Department of Regional Development Road Service ("DRD") arising from its alleged concealment of information in response to the applicant's Freedom of Information Request. The applicant also seeks an Order of Mandamus requiring the second proposed respondent, the Information Commissioner's Office, (pursuant to Section 77 of the Freedom of Information Act 2000 and/or Regulation 19 of the Environment Information Regulations 2004) to take proceedings against the DRD, for an alleged offence of blocking or concealing records and information.

[4] The amended Order 53 Statement in breach of the requirements of Order 53 does not state any grounds upon which relief is required. Whilst the applicant appears without a lawyer, it or he, depending on who the applicant actually is, are not thereby absolved from complying with the requirements to identify the grounds which are relied upon. That is a fundamental feature of making an application for judicial review, indeed without grounds being specified it is difficult to see how the matter is properly before the court. When asked about this the applicant produced a document which identified three grounds upon which he relied. These grounds are as follows:

- (i) That DRD have not complied in their statutory duty pursuant to Section 1 of the Freedom of Information Act 2000 and/or Regulation 5 of the Environmental Regulations 2004 not to block and/or conceal records and information requested which was held by that authority and which the applicant would have been entitled.
- (ii) That DRD have not complied in their statutory duty pursuant to the same legal provisions not to block and/or conceal records and information requested which was held by that authority of which the consolidated Information Tribunal appeals was lawfully required to provide.
- (iii) That the Information Commissioner Office is failing in his statutory duty to apply as a matter of their public duty to implement their authority which statute has sanctioned upon them to do either under Section 77(1) of the Freedom of Information Act 2000 and/or Regulation 19(1)(a) of the Environmental Information Regulation 2004 in which no proceedings for an offence under this section shall be instituted in Northern Ireland except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

[5] Mr Sharp for the first proposed respondent contended that the application against the second respondent, the Information Commissioner's Office, was a civil cause or matter. The applicant did not suggest otherwise. In any event, even if it were a criminal cause or matter, all the parties represented before the court agreed this court should nonetheless hear the case. The court has had the benefit of three written arguments from respectively the applicant, the DRD and the Information Commissioner's Office.

[6] The applicant agreed that paragraph 23 of the DRD's skeleton argument correctly summarised his case:

"The applicant is alleging that the Department deliberately concealed and/or blocked the minutes of the meeting held on 31 March 2010 that this was unlawful and that the Department committed a criminal offence

under Section 77(1)(a) of the Freedom of Information Act 2000 and/or Regulation 19(1)(a) and (b) of the Environmental Information Regulation 2004 and which offence the Information Commissioner failed to investigate and institute prosecution.”

[7] I do note however it appears that the complaint of concealment also extends to a diary entry of 5 May 2010 and minutes of 15 April 2011. All of these documents were I understand, furnished to the applicant in October 2012. The Information Commissioner at paragraphs 26 to 30 of its written submission deals with the investigation and prosecution of offences pursuant to either section 77 of the Freedom of Information Act or Regulation 19 of the Environmental Regulations. Both the DRD and the Commissioner noted that the relevant time for making a complaint of an offence under Section 77 or Regulation 19 is 6 months from the commission of the offence. The relevant time limit is contained within Article 19(1)(a) of the Magistrates’ Courts Order (Northern Ireland) 1981. An offence under Section 77 or Regulation 19 can only be dealt with as a summary offence and Article 19(1)(a) of the 1981 Order, entitled “Time within which complaint charging offence must be made to give jurisdiction” provides:

“Where no period of limitation is provided for by any other enactment a Magistrates’ Court shall not have jurisdiction to hear and determine a complaint charging the commission of a summary offence other than an offence which is also triable upon indictment unless the complaint was made within 6 months from the time when the offence was committed or ceased to continue.”

[8] Therefore, as submitted by the DRD and the Commissioner even if the Commissioner had looked into Conscape’s concerns the Commissioner would not have been able to take any formal action even if he had considered such action warranted for the prosaic reason that the 6 month time limit from the alleged commission of the offence had clearly passed. (At the latest time ran from the provision of the material in October 2012).

[9] I accept the submission that the applicant’s case against the Information Commissioner, namely that he should be compelled by this court to bring proceedings against the Department, is , legally unobtainable since no complaint was made within the 6 month time limit. For that reason alone there is a compelling argument that this case should not be permitted to go further.

[10] As far as the declarations against the DRD are concerned those applications must be dismissed for a number of reasons. First, I accept the submission of the DRD at paragraphs 25-30 of their written Skeleton that no arguable case of concealment has been made out. Secondly, the nature of the declarations sought would necessarily entail the imputation of criminal non-disclosure without the usual

Article 6 guarantee of a criminal process. It would also involve circumventing the prosecutorial process contained within, inter alia, Section 77 of the Freedom of Information Act 2000. Thirdly, the documentation grounding the allegation of concealment was disclosed in October 2012. These proceedings were issued well outside the 3 month time limit provided for in Order 53 Rule 4. In the court's view there is no good reason for extending time.

[11] So for all of these reasons the applicant has failed to make out an arguable case that has any reasonable prospect of success as well as being out of time and for these reasons the application is dismissed.