

## **JUDICIAL REVIEW AND INFORMATION RIGHTS**

### **Public Law Project Workshop 24<sup>th</sup> June 2010**

What is the interaction between information rights and judicial review? In particular:

- How can judicial review assist in enforcing information rights?
- How can information rights support the process of judicial review?

See generally Maurici in *Judicial Review* Vol 14 Issue 4, 311-326

### **INFORMATION RIGHTS**

The main rights are these:

- Freedom of Information Act 2000

General right of access to information on request: section 1

But subject to: exemptions in Part II (absolute and qualified); costs limit (section 12);  
exclusion for vexatious/repeated requests (section 14)

- Environmental Information Regulations 2004

Right of access on request to environmental information: regulation 5

Subject to exceptions in Part 3

- Data Protection Act 1998: subject access, section 7
  - Only extends to your own personal data
  - Available against all data controllers (public and private sector)
  - Extends to all recorded information held by public authorities

- Audit Commission Act 1998

Right of access in connection with audit: section 15

Remedies in relation to information rights:

- FOIA/EIR: complain to Commissioner; appeal to Tribunal
- Problems of delay
- DPA: request assessment from Commissioner (DPA section 42); complain to Court (DPA section 7)
- Difficult overlap of FOI/DPA where requests engage both statutes
- Weakness of enforcement of the DPA subject access right
- Audit Commission Act: no statutory enforcement mechanism

### **JUDICIAL REVIEW IN SUPPORT OF INFORMATION RIGHTS**

- FOIA/EIR: little role for judicial review since there are already statutory remedies

See e.g. *R (Alison Hardy) v Milford Haven Port Authority* [2007] EWHC 1883 Admin; [2007] EWCA Civ 1403

- DPA: *R (Lord) v Secretary of State* [2003] EWHC 2073 (Admin)

- Audit Commission Act: role for judicial review
  - *R (HTV) v Bristol City Council* [2004] 1 WLR 2717 (Admin)
  - *Veolia v Nottinghamshire County Council* [2009] EWHC 2382 (Admin)

### **INFORMATION RIGHTS AS AN AID TO JUDICIAL REVIEW**

Limitations of disclosure in judicial review:

*Tweed v Parades Commission* [2006] UKHL 53

Pre-action disclosure? See CPR 31.16.

Possible use of FOI/EIR in support of judicial review:

*Bard Campaign, David Bliss v Secretary of State* [2009] EWHC 308 (Admin)

But limitations: delay; cumbersome decision-making process

No FOI/EIR fast-track for information that may be relevant to litigation: should there be?

Cf the general promise by the Coalition Govt to strengthen FOI

**CHANGING APPROACHES TO DISCLOSURE OF POLICY-RELATED MATERIAL  
OR ADVICE TO MINISTERS**

Changing approach to disclosure of this kind of material in judicial review proceedings:

*R (NASH) v Secretary of State* [2005] EWCA Civ 154

Cf the willingness to disclose this kind of material under FOIA/EIR:

- *DfES v Information Commissioner* EA/2006/  
Section 35 exemption in FOIA for policy-related information
- *Baker v Information Commissioner* EA/2006/0043  
EIR disclosure of submissions to Minister re a planning application
- *Cabinet Office v Information Commissioner* EA/2008/0073  
Policy advice re A8 accession

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