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FOI/EIR FOI Section/Regulation s50 Issue Referencing Select Committee opinions and parliamentary proceedings in decision notices.

Line to take:

Following the High Court judgement in Office of Government Commerce v the Information Commissioner & HM Attorney General on behalf of the Speaker of the House of Commons [2008] EWHC 737 (Admin), it is clear that neither the ICO nor the Information Tribunals should rely on the opinion of a Select Committee, since to do so would breach parliamentary privilege. However it is permissible to rely on uncontentious opinions or the terms of reference of such a committee.

Following the Information Tribunal's decision in Gordon v Information Commissioner & Cabinet Office & Speaker of House of Commons (EA/2010/0115), this principle also extends to any doubts or allegations expressed about parliamentary proceedings.

Further Information:

The High Court judgement in Office of Government Commerce v the Information Commissioner & HM Attorney General on behalf of the Speaker of the House of Commons [2008] EWHC 737 (Admin) concerned the subject of gateway reviews of identity cards.

Amongst other issues, the court found that the Information Tribunal had been wrong to rely on the opinion of a Select Committee; this was a breach of parliamentary privilege. The court said, however, that it would be acceptable to refer, for instance, to the terms of reference of a Select Committee or to uncontentious opinions expressed by it, as well as to uncontentious evidence submitted to such a committee.

The reasoning behind this is that if, for example, the Tribunal made a decision in favour of a complainant in which it stated its agreement with the opinion of a Select Committee, then for the public authority respondent to disagree with that decision it would in effect be disagreeing with the Select Committee.

Following Gordon v IC & Cabinet Office & Speaker of House of Commons (EA/2010/0115), the same principle applies to any issues arising from accusations about the truth, motive or good faith of statements made in Parliament; neither the Tribunal nor the Information Commissioner should place any reliance on these.

In more detail

Stanley Burnton J said in the OGC High Court case:

"If it is wrong for a party to rely on the opinion of a Parliamentary Committee, it must be equally wrong for the Tribunal itself to seek to rely on it, since it places the party seeking to persuade the Tribunal to adopt an opinion different from that of the Select Committee in the same unfair position as where it is raised by the opposing party. Furthermore, if the Tribunal either rejects or approves the opinion of the Select Committee it thereby passes judgment on it. To put the same point differently, in raising the possibility of its reliance on the opinion of the Select Committee, the Tribunal potentially made it the subject of submission as to its correctness and of inference, which would be a breach of Parliamentary privilege. This is, in my judgment, the kind of submission or inference, to use the words of 16(3) of the Parliamentary Privileges Act 1987, which is prohibited...."

"…….My conclusion does not lead to the exclusion from consideration by the Commissioner or the Tribunal of the opportunity for scrutiny of the acts of public authorities afforded by the work of Parliamentary Select Committees. They may take into account the terms of reference of Committees and the scope and nature of their work as shown by their reports. If the evidence given to a Committee is uncontentious, i.e., the parties to the appeal before the Tribunal agree that it is true and accurate, I see no objection to its being taken into account. What the Tribunal must not do is refer to evidence given to a Parliamentary Committee that is contentious (and it must be treated as such if the parties have not had an opportunity to address it) or to the opinion or finding of the Committee on an issue that the Tribunal has to determine. Nor should the Tribunal seek to assess whether an investigation by a Select Committee, which purports to have been adequate and effective, was in fact so".

In Gordon the case mainly concerned legal professional privilege. However part of the appellant's argument was that a Minister had misled Parliament during the passage of the Finance Act 2008 and that this was a public interest factor in favour of disclosure. As a result of these allegations the Speaker of the House of Commons intervened as he was concerned to ensure that there was no breach of Parliamentary privilege.

The Tribunal summarised: "the core of the Appellant's contentions is the fact that Parliament was in his words 'misled as to the reasons for the legislative change' and "no attempts were made to correct the error even though the error would have been immediately apparent to those advising the minister'. In those circumstances, the Appellant claims that the accuracy of statements made to Parliament 'is just as (if not more) essential to the legislative process as the instruction given to Parliamentary Counsel'". The Tribunal commented: "What is clearly in issue here is a challenge upon the truth, motive and good faith of what was said in the course of Parliamentary proceedings" and it concluded "the Tribunal simply cannot go into any public consideration which touches or concerns such an allegation". In relation to the PIT: "This Tribunal is not going to take into account in any way whatsoever the facts, consequences or possible repercussions of an allegation that a Minister has misled Parliament".

Source	Details
High Court	Office of Government Commerce v the Information Commissioner & HM Attorney General on behalf of the Speaker of the House of Commons [2008] EWHC 737 (Admin)
Information Tribunal	Gordon v IC & Cabinet Office & Speaker of House of Commons (EA/2010/0115)

Related Lines to Take

See ICO guidance on section 34

Related Documents
[2008] EWHC 737 (Admin), EA/2010/0115

Contact		VA	
Date	28/1/2013	Policy Reference	**CWAN 008**

- Information Commissioner's Office intranet