

## HOME OFFICE CAN'T EXCLUDE PRIVACY CHIEF ON NATIONAL SECURITY GROUNDS, SAYS HIGH COURT

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An attempt by the Home Office to refuse the release of information on national security grounds and exclude the Information Commissioner from the appeals process has failed.

The ruling means that the Commissioner can challenge a minister's judgment on whether the release of information would jeopardise national security.

The High Court has backed the Information Tribunal's quashing of a certificate from former Home Secretary David Blunkett ordering that a batch of information be kept secret. However, another certificate can be signed by current Home Secretary John Reid. That certificate could bar the Commissioner from viewing the information, but would only relate to the specifics of a single case.

An individual had requested that the Home Office provide copies of all information held on him, a request allowed by the Data Protection Act. The Home Office refused on national security grounds and the Information Commissioner began acting for the anonymous person behind the request.

The Home Office continued to refuse to release information or even to confirm or deny its existence. Eventually the Home Secretary signed a special certificate which the Act says can act as proof that the release of withheld data would be a threat to national security.

The Commissioner wanted to view the information in order to make a judgment on whether it was covered by the national security exemption in the Act and argued that his office had the right to see that information.

His office lodged an appeal against the certificate to the National Security Appeals Panel of the Information Tribunal.

The Home Office argued that it did not even want to release information for assessment to the Commissioner. It said that its certificate related to the data subject and that it did not affect the Commissioner, who therefore could not appeal.

The Tribunal ruled that in signing the certificate the Home Secretary had not made that argument, and that it should be quashed, but said that the Home Secretary could sign a new certificate specifically related to the Commissioner, which the Commissioner could then appeal.

The High Court has backed the Tribunal, quashed the certificate and said that the Commissioner had every right to appeal the certificate.

"Mr Supperstone, on behalf of the Commissioner ... submits that the functions of the Commissioner set out in section 51 must include the power to challenge the say so of a

Minister as to whether or not material is exempt under section 28 in order to give effect to domestic law," wrote Lord Justice Latham in his High Court ruling. "I have unhesitatingly come to the conclusion that the Tribunal and Mr Supperstone are right."

**05/12/2006 Editor's note:** This story originally referred to the subject access request being made under the Freedom of Information Act. It should have referred to the Data Protection Act. It has been corrected today.

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