

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Brown's (Patrick) Application (Leave Stage) [2015] NIQB 76

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW BY PATRICK BROWN

O'HARA J

Introduction

[1] This is an application for leave by Patrick Brown. The position is that his brother was killed by members of the security forces in June 1978. An inquest was held in 1980. The applicant and other relatives seek a fresh inquest in order to more fully investigate the circumstances of the death. In order to advance the same they have asked the police for disclosure of information relating to the investigation by the Historical Enquiries Team into the events of June 1978.

[2] That request was treated by the police as a request for information within Section 8 of the Freedom of Information Act. The police confirmed that they held documents of the nature requested but declined to disclose them on the basis of three exemptions which the police accept are not absolute exemptions. Since they are not absolute, the police refusal to disclose the documentation is based on the police's balancing test of the public interest. Mr Brown disagrees with the outcome, contending both that the wrong balance has been struck and that this was not actually a request under the Freedom of Information Act in any event. The police response to the pre-action protocol letter sent on behalf of the applicant was to invite him to seek a review of the police decision, as he is entitled to do. In the event that that step proved unsuccessful he was advised to exercise his right to appeal to the Information Commissioner under Section 50 of the Act.

[3] Leave was resisted by the police on the basis that this statutory process is an alternative and more appropriate remedy. I accept that submission. I reject the contention advanced on behalf of Mr Brown that the police response is misconceived and unfounded because he did not present his request for the documents under the Freedom of Information Act. The Act is deliberately framed to apply to or to catch requests such as the present so as to protect and assist individuals who do not know how to use the statutory language. The fact that an application is not couched within the statutory terminology does not mean that it falls outside the statute.

[4] On that basis the application for leave is dismissed although I do note that the "live investigation" exemption which was originally relied on as part of the basis for resisting the application for the documents appears not to be valid in light of correspondence which has been provided to the court. For completeness I add that I would not have dismissed the application on the basis of delay if it had come to that issue. While applications should be made promptly the nature of this one is not such that delay should defeat it. And also for completeness I accept the respondent's submission that the applicant does not have any legal standing, whether through Article 2 or otherwise, which adds to or builds on his rights under the Freedom of Information Act in the absence of a decision having already been taken to hold an inquest. Accordingly, the application for leave is refused.