Neutral Citation No. [2013] NIQB 85 | *Ref:* **HOR8895**

Judgment: approved by the Court for handing down | *Delivered:* **03/06/2013**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Re JR 75's Application [2013] NIQB 85

IN THE MATTER OF AN APPLICATION BY JR 75 FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE SECRETARY OF STATE FOR NORTHERN IRELAND

HORNER J

Background Information

[1] This application forms part of the proceedings relating to the judicial review of a decision by the Secretary of State whereby he communicated or confirmed on 26 June 2012 the dismissal of the application against the decision of the Chief Constable to refuse to renew and vary the applicant's firearm certificate. There was also a claim for an order of mandamus requiring the Secretary of State to set out the public interest grounds upon which he had based his refusal to release information as to why he had turned down the application.

[2] A certificate of Public Interest Immunity ("PII") was issued by Mr Penning MP, Minister of State for Northern Ireland on 17 March 2013 whereby he refused to disclose material referred to by Katrina Barr at, inter alia, paragraph 3(ix), (x) and (xviii) of her affidavit. The certificate of the Minister of State does not say why the information should be protected from disclosure other than conclude that:

> "the overall balance of public interest favours non-disclosure of the material referred to by Katrina Barr …".

The Learned Trial judge, Treacy J, has asked me to deal with the challenge to the PII certificate and the fact that the applicant claims that he has "not the slightest idea as to why I am no longer considered to be a fit person" to hold a firearm certificate.

Legal Discussion

[3] It was claimed in this case that:

(a) the application engages the applicant's A1 P1 rights because the revocation of his previous licence means that the applicant has had to give up two existing firearms; and

(b) further common law fairness requires that he should have the right to know why he is no longer considered fit to hold a firearms certificate.

[4] In Kennedy v Chief Constable of the PSNI [2010] NIQB 57 Hart J set out the four stages that should be considered where discovery was resisted on PII grounds. These have been summarised by Mr Scoffield QC who acts for the applicant, as follows:

> "(i) The court should consider whether the documents possess sufficient possible relevance to the issues in each action by applying the well-known Peruvian Guano test (namely whether it may enable a party either directly or indirectly to advance his own case or damage that of his adversary).
>
> (ii) The court should then consider whether the documents, if relevant, are discoverable by virtue of their disclosure being necessary either for disposing fairly of the proceedings (i.e. whether they will give substantial assistance to the court in determining the facts in which the decision in the cause will depend) or for saving costs.
>
> (iii) If so, the court would then inspect the redacted portions or undisclosed documents.
>
> (iv) Finally, the court must then carry out the public interest balancing exercise established by the authorities for itself, that is to say, reaching its own assessment of where the public interest in non-disclosure outweighs the public interest in disclosure."

I accept that this is the proper approach.

The present application

[5] It is clear that in this case steps 1 and 2 set out in the judgment of Kennedy v Chief Constable of the PSNI are satisfied. Neither party disputed this. Accordingly, I then considered the documents, the subject of the PII, and cross questioned the officer from the PSNI so that I fully understood the nature of the documents, how they were compiled and the risks that would arise should the documents be disclosed.

[6] I also noted that no gist of the reasons for the refusal to disclose the confidential information had been given to the applicant. I agree with the submission of the applicant set out at paragraph 20 of his skeleton which states:

> "The court is respectively urged to carefully and specifically scrutinise any suggestion that the provision of even a gist of the confidential information would compromise a source (if that be concern) or methods of police or security services operation. A convincing explanation would have to be provided as to how there was a risk of harm to the public interest by disclosure of even a gist of the information."

[7] I again asked questions to try and understand why no gist had been given. Following the answers to those questions I suggested a number of alternatives to the representative of the PSNI which would allow a gist of the information to be given to the applicant. It was agreed that these would be considered over the weekend. On Monday I was informed that, on reflection, it had been agreed that a gist could be provided of the import of the confidential information in the following terms, namely:

> "The Police have reasonable grounds for believing that JR 75 has links with a paramilitary organisation."

[8] I approved this formula as I consider it properly meets the complaint that no gist has been provided by the Secretary of State. It also alerts the applicant as to why the Secretary of State (and the Chief Constable) reached the decision he did.

Conclusion

[9] I should say that I am acutely conscious that the principle of open justice should be upheld, if at all possible. Further, a party must have a right to know the case against him except in the most exceptional of circumstances. In this instance I

have decided it is not in the public interest for the applicant to be shown the material upon which the Secretary of State and the Chief Constable have relied. However, while not completely satisfactory, the gist which has now been provided should allow the applicant to know the basis upon which the Chief Constable and the Secretary of State have acted not only in refusing to disclose certain documents to him or his legal advisers but also in making the decisions they did.