

Message

From: Loraine, Paul [/O=DICKINSON DEES/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=LORAIN, PAUL]
Sent: 23/05/2016 16:08:46
To: Parsons, Andrew [GRO]
CC: Prime, Amy [GRO]
Subject: Official Secrets Act - paras 175 - 185 LoC
Attachments: rtf-body.rtf; RE: Official Secrets Act [BD-4A.FID26859284]

Andy

Amy has put together a helpful note on the Official Secrets Act – see attached.

As with the previous research tasks, I thought some headline points applying this research to the points raised by Freeths might be helpful.

Which version of the SPMR contract?

The drafting quoted by Freeths in paras 175-185 is from a version of the SPMR contract I have not seen. There is a fundamental point here about how this drafting has changed over time which we need to bottom out. My analysis below relates to the consolidated 2008 version we have on the general Horizon file.

Section 16 deals with “Divulgence of Official Information, Correspondence and Interviews”. The wording in the 2008 version, while slightly different to that quoted by Freeths, is materially the same for the purposes of the points they raise in the LoC.

What does the contract say?

· 16.1 states “the unauthorised disclosure, or use, of any info or document which has come to the knowledge of a SPMR or assistant through the work of his PO branch is forbidden, Any such disclosure may render the offender liable to prosecution.”

· 16.3.2 states “every SPMR...is on termination of his appointment required to sign a declaration to remind him that the provisions of the OSA continue to apply to him after he has left in respect of all the info which he has acquired or to which he has had access by virtue of his position as SPMR or assistant”.

· Another paragraph flagged by Freeths is para 11 which states that “no SPMR may without permission make an official document or a letter from the public or any other document that may come into his hands officially, the subject of legal proceedings.”

· Appendix 1 to s.16 contains a declaration about the OSA – in particular “Under the OSA, it is a criminal offence for a government contractor to...disclose unlawfully any information obtained as a result of such work without authorisation...”

· On the face of it, the contract purports to prevent the disclosure without permission of any information or document which a SPMR comes across in the course of their role.

What does the OSA say?

· The first point to make is that the OSA applies (mainly) to crown servants and government contractors. It appears from Appendix 1 to s.16 in the SPMR contract that SPMRs are “government contractors” (any person or body employed in the provision of goods or services for the Crown). For the

purposes of this analysis, I have assumed that to be correct but I would like to better understand how SPMRs plug into the definition at s.12 of the OSA.

. If the OSA does apply to SPMRs, the act makes it an offence to disclose information which falls within one of six specified categories but only if the disclosure is damaging to the national interest (details in Amy's note).

. The short point is that the OSA does not cover all information and documents which a SPMR comes to know by virtue of his/her position. Where the declaration (appendix 1 to section 16) says "any information" it should say "any information covered by the Act" (ie. info falling into one of the six categories set out in Amy's note).

What did Kate Steel / Paul Inwood say about s.16?

. Kate and I were both of the mind that this could be the product of some sloppy drafting (ie. the contract is supposed to cover just "official info" / "info covered by the Act" but unintentionally goes further) or it merges together the OSA provisions and the general confidentiality provision in a confusing way.

. Paul Inwood has confirmed he has never heard of an OSA case in 15 years (which supports the idea of a narrow application of the drafting in practice).

. Paul suggested that the OSA obligations apply very narrowly to modern SPMRs (the examples he gave were internal stakeholder info, eg. budget-related info like changes in vehicle excise and duty rates). Even with these examples, I don't see that they fit neatly into the categories of documents subject to the OSA.

. It seems to me that the old SPMR contract does not draw a clear dividing line between general confidentiality obligations (which apply to everything a SPMR sees) and the OSA requirements which apply to a narrow field of docs/info.

How do we respond to Freeths?

. We could argue that it is clear from the surrounding wording (ie. construing the contract as a whole) that the declaration is only supposed to cover "official information" - the first line of the declaration is "a person may be entrusted with info which is covered by OSA". It is implicit, therefore, that the provisions which follow aren't intended to cover every piece of info. In truth, the drafting is so confused and contradictory I'm not convinced this is our best option.

. We could respond very briefly by saying that POL will only take action/support action in respect of the OSA if the documents/info in question falls within the categories of documents covered by the OSA. This may be all we want to say as the contract is a mess on this point and we end up acknowledging that s.16 basically ends up inaccurately glossing the legislation.

Anyway, these are some initial thoughts for discussion when we come to put together our response on this section. I think there will be scope for more discussions with POL but I wanted to bring you up to speed before I go away.

Thanks

Paul