[IE] Restrictions on Freedom of Information and Media Reporting

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In a recent judgment with implications for all sections of the media, the High Court of Ireland granted an appeal by the Minister for Education and Science against a decision of the Information Commissioner ordering the disclosure of certain information.

The Information Commissioner had decided that three newspapers should, under the terms of the Freedom of Information Act, 1997 (see IRIS 1997-10: 8), be given access to certain Department of Education records relating to the results of the Leaving Certificate Examination (the State examination which takes place at the end of the second-level education cycle) held in 1998. The Minister, however, appealed this decision on a number of grounds.

One basis for the Minister's refusal to allow the newspapers access to the information in question was Section 53 of the Education Act, 1998. This section empowers the Minister - "notwithstanding any other enactment"to "refuse access to any information which would enable the compilation of information (that is not otherwise available to the general public) in relation to the comparative performance of schools in respect of the academic achievement of students enrolled therein..."

The High Court ruled that the Information Commissioner had erred in law in his construction and/or application of Section 53. The Court found that even though the Education Act was passed after the Freedom of Information Act, the former Act was retroactive (not retrospective). The Commissioner had said that results for 1998, i.e. after the Freedom of Information Act came into force but before the Education Act 1999 did, should be released, subject to certain safeguards to protect the privacy of individual students. If the government were to include similar provisions in other legislation, the Freedom of Information Act could conceivably be deprived of much of its vigour.

The significance for the media of the overturning of the Commissioner's decision is that the judicial interpretation of Section 53 confirms that the effect of the section is to cordon off an entire vista of information that is of great potential interest to the public. The Court explicitly stated that the provisions of the Freedom of Information Act could not "be construed as granting a vested right in

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favour of an Applicant although the Act is framed in a manner such as to confer prima facie entitlement to information."

In his recently-published Annual Report 2000, the Information Commissioner stressed that the "sensible use of freedom of information by the media represents a very real contribution to the creation and maintenance of open and accountable government." The report also noted that there had been a 58% increase in the number of requests for information from journalists between 1999 and 2000. This represents a total of 19% of all requests received in the course of the year 2000.

In the Matter of the Freedom of Information Act 1997 and in the Matter of an Appeal Pursuant to Section 42(1) of that Act (The Minister for Education and Science v. The Information Commissioner), Judgment of the High Court of 31 July 2001 (1999 No. 99MCA - as yet unreported)

Annual Report of the Information Commissioner 2000, 29 May 2001

http://www.irlgov.ie/oic/report00/Pub.htm

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