JUDGMENT OF THE COURT (Third Chamber)

28 July 2011 *

In Case C-71/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom (United Kingdom), made by decision of 27 January 2010, received at the Court on 8 February 2010, in the proceedings

Office of Communications

v

Information Commissioner,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby, R. Silva de Lapuerta, E. Juhász (Rapporteur) and T. von Danwitz, Judges,

* Language of the case: English.

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 January 2011,

after considering the observations submitted on behalf of:

— the Information Commissioner, by C. Lewis, Barrister, instructed by M. Thorogood, Solicitor,

— the United Kingdom Government, by S. Ossowski, acting as Agent, and by D. Beard, Barrister,

— the Swedish Government, by A. Falk and C. Meyer-Seitz, acting as Agents,

— the European Commission, by P. Oliver and C. ten Dam, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 4 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

2 The reference has been made in proceedings between the Office of Communications and the Information Commissioner concerning an application for information relating to the precise location of mobile phone base stations in the United Kingdom.

Legal context

EuropeanUnion law

3 Recital 1 in the preamble to Directive 2003/4 is worded as follows:

'Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.'

4 Recital 8 to Directive 2003/4 states:

'It is necessary to ensure that any natural and legal person has a right of access to environmental information held by or for public authorities without his having to state an interest.'

5 Recital 16 to that directive states:

'The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. The reasons for a refusal should be provided to the applicant within the time-limit laid down in this Directive.'

6 Article 3(1) of Directive 2003/4 provides:

'Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.'

7 Under Article 4(1) and (2) of that directive:

'1. Member States may provide for a request for environmental information to be refused if:

(a) the information requested is not held by or for the public authority to which the request is addressed. In such a case, where that public authority is aware that the information is held by or for another public authority, it shall, as soon as possible, transfer the request to that other authority and inform the applicant accordingly or inform the applicant of the public authority to which it believes it is possible to apply for the information requested;

(b) the request is manifestly unreasonable;

(c) the request is formulated in too general a manner, taking into account Article 3(3);

(d) the request concerns material in the course of completion or unfinished documents or data;

(e) the request concerns internal communications, taking into account the public interest served by disclosure.

Where a request is refused on the basis that it concerns material in the course of completion, the public authority shall state the name of the authority preparing the material and the estimated time needed for completion.

2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

(a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;

(b) international relations, public security or national defence;

(c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;

(e) intellectual property rights;

(f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law;

(g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;

(h) the protection of the environment to which such information relates, such as the location of rare species.

The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

Within this framework, and for the purposes of the application of subparagraph (f), Member States shall ensure that the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [OJ 1995 L 281, p. 31] are complied with.'

The dispute in the main proceedings and the question referred for a preliminary ruling

8 At the request of the Department of Health, an independent investigation was conducted by experts into the risks connected with mobile phones. Their report, entitled 'Mobile phones and Health', identified as matters of public interest the location of base stations and the procedures for authorisation of those stations.

9 Subsequently, the United Kingdom Government set up a website called 'Sitefinder', which has been operated since the end of 2003 by the Office of Communications, in order to provide information on the location of mobile phone base stations in the United Kingdom. The site is constructed from information voluntarily provided by mobile phone operators from their databases. It makes it possible for any individual to search a map square, by inputting a postcode, town or street name, for information about the base stations within it.

10 The Sitefinder website shows the approximate location in each square of each base station, but does not show either the precise location of the base station to within a metre; nor does it show whether the base station has been mounted at street level or concealed within or on top of a structure or building.

11 On 11 January 2005, an Information Manager for Health Protection Scotland, which is a branch of the National Health Service, asked the Office of Communications for the grid references for each base station, apparently for epidemiological purposes.

12 The Office of Communications refused the Information Manager's request, both initially and on review, relying on two grounds for refusal. First, the Office of Communications claimed that disclosure of that information would adversely affect public security within the meaning of Article 4(2)(b) of Directive 2003/4, as disclosure of the location of the sites would have included the location of the sites used to provide the police and emergency service radio network and could therefore be of use to criminals. Secondly, the Office of Communications relied on the adverse effect of disclosure of that information on the intellectual property rights of the mobile phone operators who had provided the information.

13 The official of Health Protection Scotland subsequently referred the matter to the Information Commissioner, who ordered the Office of Communications to disclose the information. The Office of Communications then appealed to the Information Tribunal.

14 The Information Tribunal held, in relation to the first ground for refusal, that public security might be adversely affected if part of the mobile phone network failed as a result of criminal activity. However, it considered that, given the amount of information already available to the public, the effect on public security was not significant and did not outweigh the public interest in disclosure of the information. The public interest in disclosure was clear from the recommendations of the expert report, the general importance attaching to the dissemination of environmental information and from the particular importance of disclosure of this particular information for epidemiological purposes to the public, whether as individuals or as members of the interested group.

15 In relation to the second ground for refusal, the Information Tribunal acknowledged that mobile phone operators have database rights in respect of all the information provided to the Office of Communications, on the basis of which the Sitefinder website was set up. However, the tribunal found that the adverse effect on those intellectual property rights could not outweigh the public interest in disclosure of that information.

16 As there was no ground for refusing to disclose the environmental information sought by the official of Health Protection Scotland, the Information Tribunal ordered that it be disclosed.

17 The High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), upheld the Information Tribunal's decision and pointed out that there was a general duty to disclose. According to the High Court, the exceptions to that duty are tightly drawn and the wording of Directive 2003/4 suggests that they must

be considered 'exception by exception', which is consistent also with the purpose of that directive.

18 However, on a further appeal, the Court of Appeal (England & Wales) (Civil Division) reached the opposite conclusion. In its view, references to 'an exception' had to be read as being to 'one or more exceptions' and the wording of Directive 2003/4 supported that conclusion.

19 The Supreme Court of the United Kingdom, which hears appeals against decisions of the Court of Appeal, holds that, in order to provide an answer in the case before it, it is necessary to know the Court of Justice's interpretation of the provisions of Directive 2003/4 relied on.

20 In those circumstances, the Supreme Court of the United Kingdom decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Under [Directive 2003/4], where a public authority holds environmental information, disclosure of which would have some adverse effects on the separate interests served by more than one exception (*in casu*, the interests of public security served by Article 4(2)(b) and those of intellectual property rights served by Article 4(2)(e)), but it would not do so, in the case of either exception viewed separately, to any extent sufficient to outweigh the public interest in disclosure, does the Directive require a further exercise involving the cumulation of the separate interests served by the two exceptions and their weighing together against the public interest in disclosure?'

Consideration of the question referred for a preliminary ruling

21 By its question, the national court asks in essence whether a public authority, where it holds environmental information or such information is held on its behalf, may, when weighing the public interests served by disclosure against the interests served by refusal to disclose, in order to assess a request for that information to be made available to a natural or legal person, take into account cumulatively a number of the grounds for refusal listed in Article 4(2) of Directive 2003/4, or whether it must weigh the interests served by refusal to disclose, one at a time, against the public interests served by disclosure.

22 It should be noted that, as is apparent from the scheme of Directive 2003/4 and, in particular, from the second subparagraph of Article 4(2) thereof, and from recital 16 in the preamble thereto, the right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information only in a few specific and clearly defined cases. The grounds for refusal should therefore be interpreted restrictively, in such a way that the public interest served by disclosure is weighed against the interest served by the refusal.

23 It should be observed that, according to the introductory wording in Article 4(2) of Directive 2003/4, 'Member States may provide for' exceptions to the general rule that information must be disclosed to the public. That provision does not specify any particular procedure for examining the grounds for refusal in cases where a Member State has provided for such exceptions on that basis.

24 In that regard, it should be noted, first, that the second sentence of the second subparagraph of Article 4(2) provides that '[i]n every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal'. As the Advocate General stated in her Opinion, that sentence has an independent function, separate from that of the first sentence of the same subparagraph. The first sentence of the second subparagraph sets out the duty to weigh each of the grounds for refusal

against the public interest served by disclosure of the information. If the sole purpose of the second sentence of the second subparagraph of Article 4(2) of Directive 2003/4 were to establish that duty, that sentence would be no more than a redundant and unnecessary repetition of the meaning conveyed by the first sentence of the same subparagraph.

25 Secondly, it should be observed that, when the interests involved are weighed, a number of separate interests may, cumulatively, militate in favour of disclosure.

26 Recital 1 to Directive 2003/4 sets out the various reasons for disclosure; they include, in particular, 'a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and … a better environment'.

27 It follows that the concept of 'public interest served by disclosure', referred to in the second sentence of the second subparagraph of Article 4(2) of that directive, must be regarded as an overarching concept covering more than one ground for the disclosure of environmental information.

28 It must accordingly be held that the second sentence of the second subparagraph of Article 4(2) is concerned with the weighing against each other of two overarching concepts, which means that the competent public authority may, when undertaking that exercise, evaluate cumulatively the grounds for refusal to disclose.

29 That view is not undermined by the emphasis placed in the second sentence of the second subparagraph of Article 4(2) on the duty to weigh the interests involved '[i]n every particular case'. Such emphasis is intended to stress that interests must be weighed, not on the basis of a general measure, adopted by the national legislature for example, but on the basis of an actual and specific examination of each situation brought before the competent authorities in connection with a request for access to environmental information made on the basis of Directive 2003/4 (see, to that effect, Case C-266/09 *Stichting Natuur en Milieu and Others* [2010], not yet published in the ECR, paragraphs 55 to 58).

30 Moreover, the fact that those interests are referred to separately in Article 4(2) of Directive 2003/4 does not preclude the cumulation of those exceptions to the general rule of disclosure, given that the interests served by refusal to disclose may sometimes overlap in the same situation or the same circumstances.

31 It should also be pointed out that, since the various interests served by refusal to disclose relate, as in the case in the main proceedings, to the grounds for refusal set out in Article 4(2) of Directive 2003/4, taking those interests into consideration cumulatively when weighing them against the public interests served by disclosure is not likely to introduce another exception in addition to those listed in that provision. If weighing such interests against the public interests served by disclosure were to result in a refusal to disclose, it would need to be acknowledged that that restriction on access to the information requested is proportionate and accordingly justified in the light of the overall interest represented jointly by the interests served by refusal to disclose.

32 In those circumstances, the answer to the question referred is that Article 4(2) of Directive 2003/4 must be interpreted as meaning that, where a public authority holds environmental information or such information is held on its behalf, it may, when weighing the public interests served by disclosure against the interests served by refusal to disclose, in order to assess a request for that information to be made available

to a natural or legal person, take into account cumulatively a number of the grounds for refusal set out in that provision.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 4(2) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC must be interpreted as meaning that, where a public authority holds environmental information or such information is held on its behalf, it may, when weighing the public interests served by disclosure against the interests served by refusal to disclose, in order to assess a request for that information to be made available to a natural or legal person, take into account cumulatively a number of the grounds for refusal set out in that provision.

[Signatures]