

Day 4 – Thursday, 29 November 2007
Parallel Sessions – Session 3B 11.00am-12.30pm

Speaker: Graham Smith

Position: Deputy Information Commissioner

Organisation: Information Commissioner's Office, United Kingdom

Presentation Title: Accountability and challenges to Commissioners' decisions

The UK Information Commissioner (ICO) has the power to make legally binding orders requiring public authorities, including government departments, to disclose official information for which a request has been refused. But there is a free right of appeal against any such appeal to an independent Information Tribunal. The Tribunal can consider the case afresh, reviewing issues of fact as well as law.

From the Information Tribunal there is a right of appeal on a point of law to the High Court and on through the appellate court route, ultimately to the House of Lords.

As the use of FOI rights and parallel rights to environmental information (in line with the Aarhus Convention and European Directive EC/2003/04) gathers momentum in the UK, the casework decisions are coming under increasing judicial scrutiny. This can extend beyond a review of the decision itself to an examination of further evidence not considered by the ICO and an assessment of the adequacy of the ICO's investigation of a complaint. The public authority too can come under close scrutiny, not just for the way it handled the original request for information but to the nature of the information it holds, how it is held and what steps it took to assist the requester even if it did not hold the information actually requested.

In this session Graham Smith will explain the legal framework for appeals against the Information Commissioner's formal decisions and give an account of emerging practice in the Information Tribunal and the Higher Courts. He will be supported by Mark Thorogood, a solicitor at the ICO who has dealt with many of the appeal cases already decided.