PREFACE

In the two and a half years since publication of the second edition of this work, there have been 300-odd Information Tribunal decisions. From these there have also been a small number of appeals to the Courts. These are, of course, important. However, it is fair to say that it is through the Tribunal's decisions that most of the important principles are being worked out. This is not surprising. The sheer quantity of appeals to the Tribunal provides a wealth of material from which to fashion principles. Moreover, as a merit-review body hearing of the evidence, often from all three parties (applicant, public authority and Information Commissioner), as well as seeing the information in dispute, it has unique insight into the practical consequences of the competing interpretations. Once again, I have striven to incorporate into this edition as much of the jurisprudence of the Tribunal as practicable.

Notwithstanding the increased wealth of domestic authority, I have retained the comparative jurisprudence. It continues to provide a useful normative yardstick, illustrating how other democratic countries with similar legal traditions have addressed the problems to which such legislation inevitably gives rise.

I noted in the Preface to the Second Edition that it was not to be expected that New Year's Day 2005 would be marked by precipitate culture change within government departments or elsewhere. The abortive attempt to amend the Freedom of Information Act so as to exempt everything held by or coming from the Houses of Parliament — the Bill for which was passed by the House of Commons with a comfortable majority — evidences that.[1] The instinctive urge of public authorities to keep private their information gravitates against the concepts that animate the Freedom of Information Act 2000. This cannot realistically be expected to alter. Rather, re-reading the justifications put forward for the Amendment Bill provides a reminder of the ever-present need to examine rigorously claims for exemption, particularly those resulting in weakened public accountability.

The most significant procedural change since the last edition has been the creation of a comprehensive administrative tribunal system in the United Kingdom: the First-tier Tribunal and the Upper Tribunal. In terms of administrative law, their creation — underscored by the stature of their members — stands to be the most important administrative law development in a lifetime. Time will tell whether the opportunity it presents for a general right of independent, merit-review of administrative decisions relating to an individual will be realised. However, so far as appeals against information rights decisions are concerned, that day arrived with the Freedom of Information Act 2000 itself. The effect of the tribunal reform has been to abolish the Information Tribunal, with its jurisdiction being moved into the First-tier and Upper Tribunals. This bifurcation has provided the means to divide the groundbreaking appeals from the more mundane ones. And it enables the judiciary to decide legal principles having heard the evidence and seen the documents.

Once again, I extend my gratitude to the contributors. There have been changes here, with a number of former authors having taken on writing projects of their own. I have not

[1] See further §1—036.

sought to distract them. They have allowed me to bring fresh eyes to existing text.

I thank my father for his very considerable assistance in preparing this edition. His support in my faltering moments have seen it through to completion.

And finally, I am indebted to Richard Hart for having taken over this publication. He has improved the quality of production whilst bringing the work within reach of a wider audience. In so doing, he has shown what can be done in legal publishing.

For all the remaining shortcomings in this edition, I take full responsibility.

As far as practicable, I have attempted to state the law in light of the material available to me at 1 May 2010.

Philip Coppel QC
5 Gray's Inn Square
London
WC1R 5AH

15 June 2010

PREFACE TO THE FIRST EDITION

The enactment of the Freedom of Information Act 2000 represents the most significant step in the development within the United Kingdom of the right of an individual to elicit information from a public authority. Over the 40 preceding years, a patchwork of legislation had provided the individual with limited rights of access to information held by public authorities. Invariably, these rights were confined in scope by reference to the subject matter of the information, to the identity of the public authority holding the information, to the identity of the person seeking the information, or to any combination of these. While Freedom of Information Act 2000 largely dispenses with these limitations, the patchwork of earlier legislation remains in place. To the extent that a right of access to particular information can be grounded in the earlier legislation, the regime operates to require that that right be used over the right that might otherwise exist under the Freedom of Information Act 2000. Both for the individual seeking to secure information from a public authority and for the public authority responding to a request for information, what is of paramount concern is whether there is a right of access to that information: it is not merely whether there is a right of access to that information under the Freedom of Information Act 2000. This work has therefore sought to treat comprehensively rights of access to information held by public authorities, whatever the source of that right. These have been compendiously termed "information rights". It is, in any event, a term that I consider better describes the reality, with its sharply competing considerations, than does "freedom of information".

The work is a practitioner's text. By this I do not just mean legal practitioners, but all those whose occupation involves seeking or handling requests for official information. Its purpose is not evangelical: that is a purpose that is well served by the material already on offer.

The Freedom of Information Act 2000 is at once both complex and subtle. It is to be hoped that this work will assist in resolving its complexities and in revealing its subtleties. The complexities, which may seem needless at times, are in no small part due to its respect for the earlier evolution of information rights. It is only by simultaneously considering these other information rights that its complexities can begin to be unpicked.

Both during its passage through Parliament and afterwards, considerable criticism was levelled at the range of exemptions provided by the Freedom of Information Act 2000. It is enough for present purposes to make the following observation. It is true that the Act has been cast widely, with an extensive range of public authorities being netted; but it is also true that the mesh of that net is wide in parts. And yet, this is to miss the central feature of the Freedom of Information Act 2000: the role of the public interest and of the Information Commissioner. Together, these result in the ultimate "strength" of the Act lying in the hands of the latter through his conceptualisation of the former.

Inevitably, there has within this work been a certain amount of speculation as to the meaning and operation of the provisions of the Freedom of Information Act 2000. I have sought to found that speculation upon a consideration of cognate branches of the law and by reference to the jurisprudence of comparative jurisdictions. The Freedom of Information Act 2000 will, of course, have to be interpreted according to its own terms and having regard to the circumstances and standards of this jurisdiction. However, in asking and answering the right

questions on issues involving complex and sensitive concepts, it is illuminating to consider how other democratic jurisdictions enjoying similar legal traditions have addressed these issues. That a comparable jurisdiction has had to wrestle with these issues is comforting; that that jurisdiction has worked out solutions consistent with its constitutional standards is both invaluable and instructive. Given that freely available databases on the Internet enable sedentary access to most of the comparative authorities cited in this work, it would be wilful to ignore this seam of jurisprudence.

In writing this book, I must first extend my gratitude to the contributors. Having been persuaded or cajoled by me into joining an enterprise that I promised would not materially interfere with their practices, I provided each with piles of material and lists of authorities that I feel reasonably confident none expected. The work has been much enhanced by their expertise and their contributions. For any remaining shortcomings in the book, I take full responsibility.

I am grateful to Mr Justice Richards for making the time to read the proofs and to write his generous Foreword. Finally, I thank my father for his unstinting support for me in this project.

I have attempted to state the law in light of the material available to me at January 1, 2004. It is intended to keep the book updated by the issue of cumulative supplements as appropriate. Comments on the work, critical or otherwise, are generally welcomed.

Philip Coppel
4–5 Gray's Inn Square
London
WC1R 5AH

1 January 2004

CONTENTS

Materials

Tribunal Rules, Orders and Practice Notes

Statutory Codes of Practice

European Union Directives and Regulations