# UK information tribunal recognises WikiLeaks as a ‘media organisation’ (Maurizi v The Information Commissioner and Crown Prosecution Service)

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**Information Law analysis: Estelle Dehon at Cornerstone Barristers advises that the decision in Maurizi v The Information Commissioner is important for those practising in freedom of information, as it clarifies the correct approach where a public authority has a policy of ‘neither confirm nor deny’ in relation to a class of information.**

## Original news

*Maurizi v The Information Commissioner and Crown Prosecution Service* (Appeal No EA/2017/0041)

## What did the First-tier Tribunal decide and why?

The tribunal decided that the public interest in disclosing information held by the Crown Prosecution Service (CPS) concerning WikiLeaks founder Julian Assange’s extradition was outweighed by the need for confidentiality in extradition proceedings. The tribunal acknowledged that there was a strong public interest in disclosure of information which increases public understanding of how extradition proceedings are handled by the CPS, and which reveals the pressures brought to bear on decision-making by the CPS and the use of government resources. But the tribunal held this public interest was outweighed in the circumstances of the case.

The CPS confirmed that it held correspondence with the Swedish Prosecution Authority and released some of that correspondence, but subject to redactions. The appeal sought to have the redactions removed. The tribunal held the redactions were justified under section 30 of the Freedom of Information Act 2000, which concerns information held for the purposes of criminal proceedings that the authority has the power to conduct. It was agreed that extradition proceedings are ‘criminal proceedings’ for this purpose.

The CPS also refused to confirm or deny whether it held any correspondence with the US State Department, the US Department of Justice and the State of Ecuador concerning Julian Assange. The tribunal held that the CPS could not apply a blanket policy of always refusing to confirm or deny whether it holds information concerning extradition requests, but that a generally consistent policy was justified to prevent express or implied tip-offs and that the policy had been correctly applied in the instant case.

The tribunal’s decision is likely to be the subject of an appeal to the Upper Tribunal.

## What does the tribunal decision reveal about the definition of a media organisation?

The tribunal accepted that WikiLeaks is ‘a media organisation which publishes and comments upon censored or restricted official materials involving war, surveillance or corruption, which are leaked to it in a variety of different circumstances’. The tribunal also stated:

‘So far as the evidence before us goes, Mr Assange is the only media publisher and free speech advocate in the Western world who is in a situation that a UN body has characterised as arbitrary detention. It is a matter of public controversy how this situation should be understood. The circumstances of his case arguably raise issues about human rights and press freedom, which are the subject of legitimate public debate. Such debate may even help to resolve them, which would itself be a public benefit.’

The UK does not have a set legal definition of what amounts to a ‘media organisation’. That term is, however, often used in decisions concerning press freedom, such as whether the court will impose an injunction or reporting restrictions, or whether a publication amounts to defamation.

These decisions recognise that media organisations exercise the right to freedom of expression and that this right extends various protections against restricting publication. There are also rules of court which require ‘media organisations’ to be notified in advance of any application to court for an injunction to restrain the publication of information.

## How does the definition of a media organisation differ in the US?

The US also does not have a settled legal definition of ‘media organisation’. A number of statutes which protect journalists from having to testify in court as to the source of published information require those individuals to have a link with a certain type of publication. Some US courts have previously recognised that electronic only publication is sufficient and have interpreted a magazine or a periodical publication to be capable of interpretation to include an internet blog—

see eg *O'Grady v Superior Court* 44 Cal Rptr 3rd 27, 100 (Ct Appellant 2006), a decision of the California Court of Appeal.

The US courts have not yet considered the position of an organisation such as WikiLeaks. The US government does not consider WikiLeaks to be a media organisation and has indicated it does not believe Mr Assange benefits from the protection the US Constitution extends to journalists.

## Will this decision help 'new media' and contributors on social media to potentially push for the same status?

Perhaps. The tribunal accepted the evidence of Stefania Maurizi, an investigative journalist with leading Italian newspaper La Repubblica, about the nature of WikiLeaks' work. The tribunal's description of WikiLeaks as a 'media organisation' was clear and was relevant to its decision-making process, in particular its assessment of the public interest in favour of disclosure of information.

But it must be remembered that the tribunal was not determining the legal status of WikiLeaks, nor was there substantial argument about that status. Furthermore, WikiLeaks' publishing method and format, as well as the editorial aspect of its work (often conducted with traditional news organisations), is very different from wholly social media based commentators.

## What are the implications for practitioners?

The decision is important for those practising in freedom of information, as it clarifies the correct approach where a public authority has a policy of 'neither confirm nor deny' in relation to requests for a particular class of information. The tribunal emphasised that such policies cannot be applied in a blanket fashion. In each case, careful assessment must be made of the various public interest considerations in favour and against maintaining the policy, and decision-makers must be willing to make exceptions to such policies where necessary.

*Estelle regularly advises and appears in matters concerning information law, including freedom of information, data protection and environmental information. She has experience of appearing before the First-Tier Tribunal (Information Rights) and of pursuing and resisting damages claims in the High Court alleging breaches of DPA 1998. Estelle provides training in information law—she jointly ran a workshop for journalists at a national newspaper on the use of the Freedom of Information Act 2000 and the Environmental Information Regulations 1992, SI 1992/3240, in investigative journalism. Estelle represented the appellant, Stefania Maurizi, at the tribunal.*

*Interviewed by Kate Beaumont.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*