

## **R (on the application of X) v Chief Constable of West Midlands Police [2004] EWCA Civ 1068**

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[Fiona Barton](#) - 30 July 2004

**CA (Civ Div) (Lord Woolf LCJ, Mummery LJ, Laws LJ) 30/7/2004**

### **The Facts:**

The appellant chief constable (C) appealed against an order that his decision to provide information in an Enhanced Criminal Record Certificate to the respondent's (X) potential employer, relating to an allegation that did not result in a criminal conviction, could not stand. The certificate was requested by X's potential employers, a social work agency, and was issued pursuant to the Police Act 1997 s.115. X was a social worker with no previous criminal convictions. The position applied for involved caring for persons under 18 years of age. The information disclosed related to allegations of indecent exposure and a threat to rape for which a prosecution did not proceed due to a failed identification of X by the complainant. C's decision to disclose the information was based on the head of the Central Information Unit's (S) assessment of X's crime file in relation to the incident, in particular X's police interview. S gave a full explanation for her decision to disclose the information based on a balancing exercise of competing factors. X argued that C's disclosure was unlawful under the European Convention on Human Rights 1950 Art.8 and procedurally unfair. The judge found in X's favour and quashed C's decision. The judge held that C's duty to act fairly included an obligation to permit X to make representations in relation to the proposed disclosure.

### **Held:**

C was under a duty to provide the information referred to in s.115(7) of the Act subject to the requirement that the information might be relevant and ought to be included in the certificate. That was a matter of opinion for C. The judge had taken a more favourable view of X's police interview. At the interview, X had not categorically denied that he was the person involved as emphatically as could have been expected. Further S had taken obvious care to prepare the matter for C to decide the question of disclosure. The instant case was very different from the case relied on by the judge of Chief Constable of the North Wales Police *ex p AB & anr* (1998) 3 WLR 57, in which disclosure had not been made under a statutory framework, and the judge had misinterpreted the judgment in that case. In the instant case there was no presumption against disclosure, the position was more in favour of disclosure as C was under a duty to disclose if the information might be relevant unless there was a good reason for not making a disclosure. That was the policy of the legislation in order to protect children and vulnerable adults. It imposed too heavy an obligation on C to require him to give an opportunity to a person to make representations to him prior to performing his statutory duty of making disclosure. X had had ample opportunity to set out his account during his police interview. He was further able to explain his position to his potential employers or to correct the certificate under s.117 of the Act. Whilst recognising how damaging the disclosure could be to X, because of the public interest in the information being made available to a prospective employer, C was entitled to be of the opinion that the information might be relevant so that it had to be disclosed. The making available of that information in accordance with the law could not be contrary to Art.8(2) of the Convention. There could be no valid criticism of C.

### **Counsel:**

Fiona Barton, instructed by the Force Solicitor, for the Chief Constable