

# High Court rules that discovery documentation requested in “tiger kidnapping” case is not protected by public interest privilege

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## Introduction and background to decision

In its recent decision in *Byrne v Hannon and An Post [2020] IEHC 101*, the High Court rejected arguments by An Post that it should be excused from having to disclose certain documentation, alleged to contain highly sensitive details of An Post’s security procedures and protocols, on grounds of public interest privilege.

Public interest privilege is one of a number of classes of legal privilege which may be relied upon by a party which objects to furnishing documentation to the opposing side in compliance with its discovery obligations. A party claiming public interest privilege must generally identify some form of public interest (e.g., national security) which it believes should relieve it from having to hand over sensitive information to its opponents. In ruling on a claim of public interest privilege, courts must consider the public interest invoked and come to a decision as to whether or not this interest outweighs the entitlement of the opposing party to have access to the requested documentation in order to prove its case at trial.

In the *Byrne* case, the High Court examined the scope of public interest privilege under Irish law, which has traditionally operated in the context of documentation generated by State entities, and considered whether it could also operate to protect the disclosure of documentation by An Post. In the proceedings, the Plaintiff, who was a post office clerk, sued the local postmaster and An Post for personal injuries suffered as a result of an aggravated burglary and “tiger kidnapping” which took place at her home in October 2011.

As part of her claim, the Plaintiff sought discovery of seven categories of documentation from An Post. These included requests for: (i) any Postmaster’s Manuals issued by An Post to postmasters in the preceding 5 years and (ii) any ‘security procedures booklet’ distributed by An Post to local postmasters.

## Public interest claimed by An Post

An Post opposed the request for discovery and argued that the documentation sought was subject to public interest privilege such that it should not be obliged to produce copies of these materials to the Plaintiff. In particular, An Post contended that the documentation in issue contained highly sensitive information detailing the *minutiae* of its security arrangements, the disclosure of which would pose “a real and substantial systemic risk” to the security and safety of post offices, people working in them as well as members of the public. In An Post’s view, the public interest in preserving the security and safety of post offices and the wider public outweighed any entitlement of the Plaintiff to have access to documentation which might advance her case or damage that of An Post.

## Decision on claim of public interest privilege

In its ruling, the High Court observed that the parties were effectively conflating two separate steps in the discovery process: the initial question as to whether the documentation in issue was capable of discovery in the first place (i.e. relevant to the issues in the case) and the subsequent issue as to whether discoverable documentation was protected from production to the requesting party on grounds of privilege. Nonetheless, the Court proceeded to rule on the discoverability and privilege questions at the same time.

In its ruling, the High Court accepted that in principle the documentation sought by the Plaintiff was capable of attracting a claim of public interest privilege. Having done so, the High Court proceeded to weigh the competing interests of the parties in accordance with the principles laid down by the Supreme Court in *Keating v RTE [2013] IESC 22*. In doing so, the Court physically inspected the disputed documentation in order to determine which parties interests should prevail. With respect to the Postmaster’s Manual, the Court concluded that this was relevant to the matters at issue in the case and that its discovery was necessary for the fair disposal of the Plaintiff’s claim. In considering the claim for public interest privilege, the Court noted that while the Postmaster’s Manual was clearly a confidential and sensitive document, it was also satisfied that its disclosure to the Plaintiff did not pose any significant risk to the security and safety of the post office network as claimed by An Post. In forming this view, the Court noted in particular that sections of the manual appeared to be quite old and, in relation to the manual’s security section, appeared to date back to 1992 - almost 20 years prior to the burglary at the

Plaintiff's home.

The Court also considered whether to direct discovery of a manual entitled "Security Procedures Handbook for Retail Sub-Post Offices" which dated from 2006. Having reviewed the handbook, the Court noted that it covered a range of security procedures, including a brief section devoted to "Hostage/ Tiger Kidnap". The Court concluded that this handbook similarly did not contain any information whose disclosure to the Plaintiff was likely to result in a risk to the security of the post office network or the safety of persons working there. In reaching this view, the Court noted that An Post's security procedures in relation to managing tiger kidnappings were substantially overhauled in 2013, such that the information contained in the 2006 handbook was no longer operational. As such, it could not be said that its disclosure to the Plaintiff would result in any live security risk. In addition, the Court also noted the impact which a refusal to direct discovery would have on the Plaintiff's ability to establish her case against An Post at trial. If the Plaintiff was not permitted to have access to the 2006 handbook, it would severely restrict her in establishing what directions or guidelines were given by An Post in relation to security measures generally and with respect to tiger kidnappings in particular.

Recognising that the two documents directed to be disclosed to the Plaintiff did contain confidential information, the High Court requested the Plaintiff and her solicitor to undertake to limit access to the documents to themselves, counsel and any expert instructed in the proceedings. The Court further directed that the documents should not be used for any purpose other than the prosecution of the Plaintiff's claim against the Defendants.

## Comment

This decision is a relatively rare example of a High Court ruling on the issue of public interest privilege. While the decision does not change the applicable legal principles, the case is illustrative of the approach which the courts will take in considering claims of public interest privilege. This involves the careful examination of disputed documentation and the weighing up of the competing interests of both sides in order to determine whether the balance should lie in favour of directing production of those documents or upholding the asserted claim of privilege. In cases where a party is directed to disclose sensitive documentation, the courts are prepared to impose limitations on the use of that documentation in order to protect the interests of the producing party.

## Authors



**Lisa Broderick**

*Dublin*  
+353 (0) 1 231 9683  
[lbroderick@dacbeachcroft.com](mailto:lbroderick@dacbeachcroft.com)



**Rowena McCormack**

*Dublin*  
+353 (0)1 231 9628  
[rmccormack@dacbeachcroft.com](mailto:rmccormack@dacbeachcroft.com)



**Julie-Anne Binchy**

*Dublin*  
+353 (0) 123 19636  
[jabinchy@dacbeachcroft.com](mailto:jabinchy@dacbeachcroft.com)



**Charlotte Burke**

*Dublin*  
+353 (0)1 2319679  
[cburke@dacbeachcroft.com](mailto:cburke@dacbeachcroft.com)



**Simon Halpin**

*Dublin*  
+353 (0) 123 19639  
[shalpin@dacbeachcroft.com](mailto:shalpin@dacbeachcroft.com)



**David Freeman**

*Dublin*  
+353 1588 2558  
[dfreeman@dacbeachcroft.com](mailto:dfreeman@dacbeachcroft.com)