



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2012/0063**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50394530  
Dated: 22 February 2012**

**Appellant:** NICK PERUZZI  
**Respondent:** THE INFORMATION COMMISSIONER  
**2nd Respondent:** THE CABINET OFFICE  
**Heard on the papers:** Field House, London.  
**Date of Hearing:** 18 October 2012

**Before  
Claire Taylor  
Judge  
and  
Paul Taylor and Richard Enderby  
Tribunal Members**

**Date of Decision: 10 December 2012**

**Subject matter:**

Freedom of Information Act 2000 ('FOIA') S.40(2)

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal allows the decision in part and issue a substituted Decision Notice.

**IN THE FIRST-TIER TRIBUNAL** **Appeal No:**  
**EA/2012/006312/0063**  
**GENERAL REGULATORY CHAMBER**  
**(INFORMATION RIGHTS)**

**SUBSTITUTED DECISION NOTICE**

**Dated:** **10 December 2012**

**Public authority:** **THE CABINET OFFICE**

Address of Public authority: 26 Whitehall, London SW1A 2WH

**Name of Complainant:** **NICK PERUZZI**

**The Substituted Decision**

For the reasons set out below, the Cabinet Office is to disclose those parts of the disputed information identified as such in the Closed Appendix to this Decision.

*(The Closed Appendix also identifies parts that should not be disclosed and therefore must not to be disclosed to the Appellant or public.)*

Dated this 10<sup>th</sup> day of December 2012

Claire Taylor  
Tribunal Judge

## **REASONS FOR DECISION**

### **Background**

1. The National School of Government ('NSG') was a government department responsible for training civil servants. It was closed on 31 March 2012, (replaced by Civil Service Learning), and the Cabinet Office became responsible for the Freedom of Information Act 2000 requests it had received ('FOIA').
2. Common Purpose UK ('Common Purpose') is a subsidiary of The Common Purpose Charitable Trust. It describes its charitable object as the advancement of education.

### **The Request for Information**

3. On 25 March 2011, the Appellant requested information from NSG relating to one of its employees (the 'official'). The parts of the request of relevance to this appeal (the 'requested information') are:

*"Would you please provide a copy of original documents detailing all of the arrangements regarding [named individual]'s secondment to Common Purpose.*

1. *A copy of any agreement / contract made between the school and Common Purpose.*
2. *A copy of all letters, emails etc between [named individual] and Common Purpose before secondment started and a copy of all emails, letters between Nat School of Govt and Common Purpose regarding secondment.*
3. *A copy of all internal emails between [named official] and other staff members relating to secondment..."*

4. On 15 April 2011, NSG replied stating that the requested information was withheld because it was 'personal data' exempt from disclosure under s40 FOIA. A template agreement was later provided to illustrate the type of contract agreed between the school and Common Purpose.<sup>1</sup> NSG also disclosed the length of the secondment, and that it had paid the official's salary throughout the period.
5. The Appellant progressed the matter. The Information Commissioner's ('Commissioner') decision notice concluded that disclosure was exempt under s40 FOIA:
  - a. The requested information was the official's **personal data** as it concerned his secondment to another employer, and he would be identified from it.
  - b. He disagreed with NSG's assertion that disclosure would contravene s.10 of Data Protection Act 1998 ('DPA') because it would not be likely to cause distress. This was because it related to him acting in his professional capacity.

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<sup>1</sup> We have not seen a copy of this template.

- c. However, disclosure would not be fair and lawful because the public interest in it did not outweigh the reasonable expectation of the official to privacy.

### **This Appeal**

6. The Appellant appealed to this Tribunal, and the Cabinet Office became the Second Respondent.
7. The Tribunal's remit is governed by s.58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or whether he should have exercised any discretion he had differently. The relevant law for this appeal is set out below. (*See in particular paragraphs 16 to 18*).

### **Grounds**

8. The Appellant's grounds of appeal are summarised as<sup>2</sup>:

S.40(2) FOIA is not engaged because:

#### Disclosure would be fair and lawful:

- a. The official's expectation to privacy is not reasonable because:
  - i. He had publicised information about himself on the internet;
  - ii. His opinion as to disclosure is irrelevant because being a public servant he is accountable to the public, and so is the secondment of a public servant from a public body to a charity.
- b. The Legitimate public interest in the information outweighs the official's interest in privacy:
  - i. The question of public interest in disclosure is irrelevant because requests for information are requester and motive blind.
  - ii. In assessing of the legitimate public interest, the Commissioner's assessment took into account irrelevant factors, namely: a) the amount of money involved; and b) whether or not there was controversy surrounding the secondment.
  - iii. Disclosure of the requested information is necessary to enable the public to assess value for money regarding the secondment.
  - iv. The taxpayer was paying for the secondment and therefore had a right to know who the funds went to, what they were for; and whether or not there was any benefit accrued to the taxpayer as a consequence.

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<sup>2</sup> We have added underlined headings or underlining to the grounds and submissions to set them within the legal context or to ease comprehension.

## **Evidence**

9. The parties submitted witness evidence, submissions and a bundle of documents, including closed paragraphs from the Cabinet Office and the requested information. We have considered all of this, even if not specifically referred to below. We have produced a closed appendix to this decision, which contains some of the contents of the requested information.

## **Appellant's Evidence and Submissions**

10. The Appellant submitted evidence to show that the official had published biographical information on the internet, including a profile on 'LinkedIn'. This included that he was a course director at Common Purpose.
11. He made the following arguments:

### **Credibility**

- a. There was an inconsistency in the Second Respondent's and official's online account of how long he was seconded to Common Purpose. This raised credibility issues as to who was telling the truth.

### **Not Personal Data**

- b. He had not requested information that was 'personal' and cannot be disclosed, because the data subject had already published his details on the internet.
- c. He did not want details about the official's tax, family, health, social events, relationships, beliefs, career, property holdings or personal history. He was seeking all documentation relating to the contractual arrangements.

### **No legitimate expectation to privacy**

- d. The data subject has already published his details on the internet and therefore had demonstrated that he had no objections to disclosure and he had no concerns of harm or distress consequent upon disclosure. There appeared to be some influence, interest or control acting beyond its authority that is behind the relatively late objections of the Cabinet Office.
- e. Any damage or distress caused to the official by disclosure should be discounted. The official must also provide, at the time of the request, the evidence to demonstrate that there would be a high probability of 'damage and distress' should the information be released.

### **Legitimate public interests**

- f. Transparency of public funds and public functions and VFM:

This case related solely to (1) the official's professional activities, (2) the public aspect of a public servant, and (3) activities funded out of the public purse.

Disclosure was mandatory to demonstrate openness, transparency, fair-trading and value for money. The public authority's mere refusal, and moreover its manner, raises alarms.

As elucidated in *Corporate Officer of the House of Commons v ICO and Norman Baker MP (EA/2006/0015 & 0016)*: When officials carry out public functions or public funds are spent, their public actions will be subject to greater scrutiny than for their private lives. This is so even where a few aspects of their private lives are intertwined with their public lives but the vast majority of processing of personal data relates to the official's public life.

He was interested in 'How, who, when, where, financial probity, value to the taxpayer, etc', whose idea it was and who originally arranged it. He anticipated that there must be emails outlining the reasons behind the secondment, who authorised it and why Common Purpose was chosen.

He suggested that there would be no valid reason to withhold such information, which in any case could have been provided with redaction if necessary. He required the original contract, material related to how it was arranged, and communications with Common Purpose.

## **Second Respondent Evidence and Submissions**

12. The Cabinet Office submitted witness testimony from its 'Head of HR Employee Engagement, Policy and Capability'. This included:
  - a. Background: The official was an 'Assistant Programme Director' employed by the NSG. He was seconded to Common Purpose from 17 January to 15 April 2011, working as course director. Common Purpose is a not-for-profit organisation that brings together people from a wide range of backgrounds with the aim of developing them as leaders in society.
  - b. The Secondment: It was not unusual for civil servants, including NSG employees, to be seconded into the private or third sectors for short periods. Secondments assisted the personal and career development of the individuals involved as well as the development of both organisations. There is a range of arrangements for paying staff during secondments. The choice depends on the circumstances, including whether it is part of a larger initiative or a one-off. In this case, NSG paid the salary because the secondment was for a short time and for the official's personal development.
  - c. The 'disputed information' comprises:
    - a) emails between the official, NSG and Common Purpose in relation to his secondment; and
    - b) the signed agreement between the official, NSG and Common Purpose setting out the terms of the secondment.
  - d. Consent: NSG asked the official if he consented to disclosure. He did not because the information was personal to him and its release would, or would be likely to, cause him damage and distress. Having considered this and the information already in the public domain, NSG confirmed the dates of the secondment and that it had received no invoices from Common Purpose since January 2009.

- e. HR related personal data: NSG, like Cabinet Office, regarded correspondence about transfers, secondments, details of training or an individual's contract as confidential. It is an established principle that all such information about a staff member would not be disclosed to anyone without their consent unless for a legitimate purpose to do with the management of their employment contract, secondment or transfer. This principle predates data protection legislation and is essential to maintain trust and confidence between employer and employee.
- f. Legitimate Expectation: Therefore NSG employees would have expected that personnel information would be kept private and not be disclosed. NSG employees had a strong and reasonable expectation that secondment agreements, such as that reached between the NSG, the NSG Employee and Common Purpose would not be disclosed to the public. The contract itself specifies what information it was envisaged might be disclosed, where such disclosure was fair and lawful under the Data Protection Act 1998: his name, the organisation to which he had been seconded, his job title on secondment and the nature of the work he would carry out. It was not envisaged that his particular contractual obligations and entitlements would be disclosed. Moreover, given that a template contract between NSG and Common Purpose has already been disclosed to the Appellant, as set out above, any minimal public interest in understanding the secondment terms will already have been met.
- g. Necessity: The information NSG disclosed to the Appellant was sufficient to meet the public interest in disclosure of the requested information.
- h. Exhibits:
  - a) Cabinet Office's (and NSG's) data protection and data handling policy, including:

“when making or storing records in relation to individuals, staff must ensure that records are securely kept and used only by those who require access for a legitimate purpose.”
  - b) Extracts from Common Purpose website, including:

*“Common Purpose is an independent not-for-profit organisation that runs leadership development courses which mix people from the private, public and not-for-profit sectors...We run courses which give people the skills, connections and inspiration to become better leaders both at work and in society.”*

### **Cabinet Office Submissions**

13. The Cabinet Office made the following arguments in addition to the Commissioner's:

#### Personal Data and Sensitive Personal Data:

- a. The disputed information constituted private personnel or 'HR' information relating to the course of an individual's employment and arrangements to

satisfy his training and development needs. It included sensitive personal data as defined by s2 Data Protection Act 1998 ('DPA').

#### Redactions

- b. Even if the disputed information were supplied in redacted form, the official would readily be associated with it, because his identity and the fact of his secondment were available in the public domain.

#### Fair and Lawful:

##### Not lawful:

- c. Disclosure of the disputed information would not be lawful because (a) the official expressly refused consent to disclosure; (b) no other conditions for disclosure in Schedules 2 (personal data) or 3 DPA (sensitive personal data) were met.

##### Not Fair:

##### Legitimate Expectation of Privacy

- d. Erstwhile NSG employees have a strong and justified expectation that information of this type will not be disclosed to the public.

##### Legitimate Public Interests

- e. Whilst the official's salary was being paid from public funds, "*the line demarcating personal data from information which is deemed to be disclosable in the interests of transparency and public accountability is less clear than would otherwise be the case*". However, there was no marked public interest in disclosure of the disputed information. Any general interest in transparency, disclosure of the disputed information is not necessary to the pursuit of that interest as it has been satisfied by the disclosures already made. Any public interest remaining is strongly outweighed by the likely prejudice to the rights, freedoms and legitimate interests of the official, including his interest in maintaining the privacy of his personnel and HR information – such as information and arrangements in relation to his career development.

### **Commissioners' Submissions**

- 14. The Commissioner made the following arguments:

#### Legitimate expectation to privacy

- a. The requested information had not been posted online. That the official posted some information online did not amount to a broader waiver of the reasonable expectation of privacy for other information.
- b. Since NSG sought consent to disclosure from the official and he refused, he would have a strong and justified expectation that his information would not be disclosed, effectively to the world at large.



- c. Information related to public functions and professional lives is subject to greater scrutiny than for private lives. However, it is reasonable to expect employment or 'personnel' information such as the requested contract and associated correspondence - to remain confidential and private.

Legitimate public interests

- d. The Commissioner recognises a public interest in disclosure to improve public knowledge about why public funds continued to be spent on the salary of the individual throughout the period of secondment. In particular, a public official's services were provided to a non-public sector body and the cost of the secondment was borne by the public purse. However, this public interest was not of significant weight. The sum of money in question is very minor in public spending terms. In the absence of any evidence to the contrary, there was no controversy concerning this particular secondment or public interest attached to the secondment. Instead the public interest was as weighty as any legitimate interest in transparency and accountability where public funds are involved. Further, the disclosure of the template agreement, that the National School of Government had paid the data subject's wages during the period and other details already disclosed in response to the request would have satisfied to some extent this limited public interest.

*Further Submissions*

15. In response to panel questions:

***Q1. It seems there is some public interest in the work of Common Purpose or any connection it has with training Government officials as there have been a few FOIA related cases concerning Common Purpose. (The panel noted that it had replaced a previously constituted panel because members had disclosed having attended a course at Common Purpose some years earlier and wanted to avoid any perception of bias.)***

Appellant:

The Appellant noted that The Sun, Guardian, Independent and The Daily Mail had 'picked up' on a public interest in the activities of Common Purpose.

He referred us to an article by The Guardian's editor which stated:

*"This is what it boils down to. Common Purpose is a leadership development organisation with global reach and, I don't doubt, oozing with good intentions. It gives training and insights to all sorts of people in the public service – from local authorities to the police and BBC executives. It's a non-profit organisation ...but charges serious money, much of which comes from the taxpayer...The way the Mail puts it, this amounts to a "giant octopus" whose tentacles reach into every cranny of establishment life – a leftwing counterpoint to the traditional Tory establishment, the kind of network which saw the Etonian David Cameron put the Etonian Justin Welby into Lambeth Palace as archbishop last week....I must say I knew little or nothing about this and was uneasy about it. But where the Mail's investigator Richard Pendelbury got my attention was over the way Common Purpose responded to inquiries about its operation and specifically to Freedom of Information requests about Whitehall's expenditure (£1m over several years) on its courses. Common Purpose sent a "blacklist" around the system warning public bodies to treat such inquirers as "vexatious", according to the Mail. In doing so they*

*breached Information Commissioner rules on data protection by revealing the private addresses and phone numbers of the individuals concerned ... It was a "genuine mistake", Common Purpose later conceded. I don't know the full facts. The Mail is pretty thorough on jobs like this but makes errors like everyone else. It can also be pretty mendacious towards public figures it doesn't like."*<sup>3</sup>

Cabinet Office:

From responding to a number of FOI requests, there is interest amongst a small section of the public in the work of Common Purpose. However this minority interest in Common Purpose does not amount to a material public interest in the circumstances of the secondment at issue in this case, such that disclosure of this HR information would be lawful. Some individuals, including the Appellant, have expressed concerns in relation to the work of Common Purpose. An example, is an article on the BBC news website from 2009 which was found on the internet. Such general concerns are insufficient to warrant disclosure of personnel information such as that at issue in this case.

The Cabinet Office is not aware of any controversy in relation to the brief secondment of the official in question other than the fact of the Appellant's FOI request. The secondment was arranged in order to further the official's personal development during a period in which there were substantial reorganisations within the NSG and the authority considered it reasonable and appropriate to further its employees' personal development and to assist them to improve their professional skills and experience, in light of the impending restructure and closure of the NSG itself.

- BBC News Channel featured an article 'A Secret Society?' including: *"Its critics say it is a secret networking organisation at the heart of the establishment, with a hidden agenda and influence" on 8 March 2009.*

Commissioner:

The Commissioner acknowledges some level of public interest in, and at times controversy over, Common Purpose and its activities. The Tribunal was provided with some information from the website of Common Purpose setting out information about its history, charter (its vision, aims and ethos), what it does, governance etc. Its purpose is summarised as *"an independent, not-for-profit organisation that runs leadership development courses which mix people from the private, public and not-for-profit sectors"*.

Its courses are run under 'Chatham House rules' such that whilst participants can recite what has been discussed; they are unable to attribute statements or comments to particular individuals. Some view this in itself as suspicious, arguing that this means that Common Purpose works in secrecy. An internet search using the words "common purpose" returns results not only for Common Purpose and its own website but also a small number of results for websites which are critical of the organisation. For example, one website alleges that Common Purpose *"...is an elitest pro-EU political organisation helping to replace democracy in UK, and worldwide, with CP chosen 'elite' leaders. In truth, their hidden networks and political objectives are undermining and destroying our democratic society and are*

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<sup>3</sup><http://www.guardian.co.uk/media/2012/nov/16/daily-mail-dossier?INTCMP=SRCH>

*threatening 'free will' in adults, teenagers and children. Their work is funded by public money and big business, including international banks. It is important for researchers on this site to realise that the majority of Common Purpose 'graduates' are victims, who have little if any understanding of the wider role of Common Purpose within UK society, nor of its connections to higher government and the European Union*<sup>4</sup> This website also maintains a register of Common Purpose 'graduates'.

A number of requests have and continue to be submitted to a range of public authorities requesting information about Common Purpose. A small sample of these were:

- *John Greenwood v IC & Bolton Metropolitan Council, EA/2010/0007, 14.9.10:* The Appellant sought information regarding employees who had attended Common Purposes courses. The Tribunal in that case upheld the application of s40(2) FOIA and commented:

*"44...Mr Greenwood has raised speculations about dishonesty or other impropriety amongst Common Purpose graduates, such as insider dealing or failure to adhere to the civil servants Code of Conduct. It is for the Charities Commission to investigate or undertake regulation of charities and any allegations of improper or inappropriate behaviours on the part of Common Purpose should be directed to the regulator; this Tribunal has no jurisdiction over such matters. Mr Greenwood refers to Common Purpose as a "secret organisation", "imposing secrecy under Chatham House rules". We do not accept his submissions on this; there is no evidence that Common Purpose is a secret organisation in the way Mr Greenwood suggests. In fact, the evidence appears to us to show an organisation very much in the public arena with a strong marketing and publicity presence. There is certainly no evidence that this is an organisation that denies its existence...."*

*This decision notice was set aside further to a ruling by the Upper Tribunal which remitted the matter back to a differently constituted First-tier Tribunal. However, the Appellant subsequently withdrew his appeal.*

- *Martin Brighton v Information Commissioner (EA/2010/0114, 25.11.10)* – The Appellant sought copies of communications between the Cabinet Office and Common Purpose and details of the government's policy towards it. The Appellant also requested information from the Cabinet Office concerning changes to the speech made by the then Prime Minister Gordon Brown in the Commons concerning anti-terrorist measures. The speech, as delivered, differed slightly from the published version by specifically omitting references to certain organisations including Common Purpose. The Tribunal accepted that the requested information was not held. Permission to appeal to the Upper Tribunal was refused.
- *Commissioner's Decision Notice Ref. FS50439809, 14.8.12:* A requester submitted a request to Sheffield Hallam University for various information regarding its connection with Common Purpose, including a list of those in any way associated with Common Purpose as members, supporters, associates, alumni etc.

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<sup>4</sup> <http://cpexposed.com/about-common-purpose>

- *Commissioner's Decision Notice Ref. FS50438587, 14.8.12*, currently under appeal. The same requester as directly above sought copies from Sheffield Hallam University of all invoices and associated communications relating to Common Purpose over a four-year period.
- *Commissioner's Decision Notice Ref. [FS50445085, 1.10.12](#): the* requester sought from Sutton BC: copies of invoices for each attendee of common purpose training, in each case identifying the recipient and council officer, including correspondence with common purpose from initial contact to placement of the contract and evidence of best value being applied, i.e. how the contract(s) went out to tender.

***Q2. A public official's services were provided to a non-public sector body along. The cost of the secondment was borne by the public purse. There appears to be a public interest in knowing what the official was doing and what benefit it gave and to whom.***

Cabinet Office: There is a general public interest in transparency, however:

- (i) nothing in the disputed information would further such a public interest (particularly given the nature and extent of information already disclosed to the Appellant in relation to the secondment); and
- (ii) such public interest is not sufficient to render disclosure of the public official's personal data fair or lawful in this case.

There is a public interest in understanding relationships between Government departments and external organisations and suppliers and that this can extend to relationships between senior officials within each organisation, particularly if there is a question of financial benefit such as substantial gifts or hospitality. However, such public interests do not arise in this case. The information in question relates to a relatively junior official and his personnel arrangements in connection with a straightforward and very short secondment, the pay arrangements for which are already public.

Commissioner: Against the background outlined in the answer to Q1 above, the Tribunal should consider whether it would be fair to the data subject to disclose a copy of the specific contract setting out the terms of the secondment and also associated correspondence making arrangements for the same.

***Q3. How senior was the official?***

Cabinet Office: The official was at level B2 (SEO/HEO) at the time of the request which is two grades below senior civil servant and three grades above the lowest civil service grade.

***Q4. We were told that the cost of secondment was minimal. How much was this?***

Cabinet Office: The cost was the official's continuing salary payments. The total cost would have been no more than £12,000 over the duration of the secondment. This figure was minimal in the context of the overall expenditure within NSG at the time of the secondment.

**Q5. The Appellant raised a concern on credibility given the official was either seconded for 3 months (as stated by NSG), or 4 months (as implied from what the official published online, or 6 months. What is accurate?**

Cabinet Office: The official was seconded for 3 months, from 17 January to 15 April 2011.

## **Our Findings**

### The Law

16. For these purposes, a public authority is exempt from providing information requested under FOIA where it is 'exempt information'.
17. Under s40(2) FOIA, exempt information includes information that is **personal data** where its disclosure to the public would contravene (i) **s10 DPA** or (ii) any of the **data protection principles**.

- a. Personal data:

This is defined in s.1(1) DPA to include data which relates to a living individual who can be identified from it and other data.

The Court of Appeal explained in *Durant v FSA [2004] FSR 28* that if the information has the data subject - in our case the official - as its focus, or main focus then the data 'relates' to him. It elucidated factors such as the information affecting his privacy and be biographical in a significant sense. (See paragraphs 28 and 51 of the *Durant* case.)

- b. s10 DPA: This establishes a right to prevent processing (or disclosure) likely to cause substantial damage or substantial distress.

Our Finding: Whilst the Cabinet Office argued that disclosure would cause damage and distress to the official, they did not show any compelling evidence as to why. The Commissioner had already made clear that he considered their argument lacking prior to this appeal, so we conclude that if they had had such evidence, we would have expected them to provide it. We do not consider 'damage or distress' further in our decision either in relation to s.10 DPA or to the extent it would be relevant to the data protection principles, because as a finding of fact, we do not consider disclosure would cause this.

Data protection principles:

- c. The first data protection principle is claimed to apply here. This requires personal data to be processed (a) fairly and lawfully, and (b) not unless at least one of the conditions in **Schedule 2** DPA is met, or in the case of **sensitive personal data**, at least one of the conditions in **Schedule 3** is also met.
  - a) The only Schedule 2 condition referred to by the parties would allow for fair and lawful processing or disclosure where it is:

'necessary' for the legitimate interests pursued by parties to whom the data are disclosed (ie the Appellant as a member of the public), except where the disclosure is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the official.<sup>5</sup> (See *Para 6, Sch.2 of DPA*.<sup>6</sup>)

'Necessary' for these purposes implies a "pressing social need" rather than something useful or desirable, and that the disclosure envisaged is proportionate to the legitimate aim being pursued.<sup>7</sup> It also implies that the disclosure would in fact further such interests.

b) Sensitive personal data includes data about:

The racial or ethnic origin of the data subject, (b) his political opinions, (c) his religious beliefs or other beliefs of a similar nature, (d) whether he is a member of a trade union, (e) his physical or mental health or condition, (f) his sexual life, (g) the commission or alleged commission by him of any offence, or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings. (See s2 DPA.)

c) No Schedule 3 condition has been argued to have been met in this case in relation to that sensitive personal data, and on the basis of the information before us, none seem to be of relevance in any event.

### The Issues

18. We therefore need to decide:

- a. Is the withheld information sensitive personal data and/or personal data?
- b. Is the information exempt from disclosure?

***Is the information sensitive personal data or personal data?***

19. The Cabinet Office claims some of the requested information to be sensitive personal data. We agree that it is self-evident when reviewing certain sentences that they contain sensitive personal data. (We have identified what is sensitive personal data in a closed appendix to this decision.)

20. As for the remaining data, the Appellant appears to suggest that the information he requested is not personal data either because the official already published certain

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<sup>5</sup> See *Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015; 16 January 2007), para 90: "*Paragraph 6 requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed which in this context are members of the public (section 40(3)(a)); and (ii) prejudice to the rights, freedoms and legitimate interests of data subjects ... However because the processing must be 'necessary' for the legitimate interests of members of the public to apply we find that only where (i) outweighs or is greater than (ii) should the personal data be disclosed.*"

<sup>6</sup> This states: "6(1) *The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.*"

<sup>7</sup> See *Stone v South East Coast Strategic Health Authority* [2006] EWHC 1668 (Admin), at paragraph 60.

details on the internet, or perhaps because any personal information could be redacted.

21. We consider all the requested information to be personal data in its entirety because:
  - a. The official is identifiable from it given that the request included his name, and he is the main focus of the material. The material is of a biographical nature concerning the official's career. The Appellant argued that he did not want data such as that concerning his family or tax affairs. Essentially he seemed to be arguing that he was not asking for particularly 'personal' information. However, we accept that 'HR' or personnel information in this case is personal data.
  - b. Even if certain material were to be redacted, the rest would still be personal data because (1) the official remains the main focus and identifiable because the request itself included the official's name, and (2) unless the redaction rendered the remainder meaningless (with words such as 'and and then' remaining, the publication of this 'HR' type of data would carry an element of invasiveness.

***Is the information exempt from disclosure?***

22. Sensitive personal data: There are no conditions from schedule 3 of the DPA that have been argued to apply to this data or that we regard as could apply. Therefore, we conclude that these sentences are exempt from disclosure.
23. Personal Data: As regards the remaining requested data that is not sensitive personal data, we need to decide whether disclosing it would contravene any data protection principles.
24. (The Appellant asserted that the question of public interest was irrelevant here. He may have been referring to s40 FOIA conferring what is known as an 'absolute exemption'<sup>8</sup> on information falling under s40, such that it does not need to be disclosed regardless of the public interest test set out in s.2(2)(b)<sup>9</sup>. Nevertheless, before we can conclude that personal data is exempt information under s40 FOIA, we need to consider if disclosing it would be fair and lawful and necessary because of any and all legitimate public interests, which outweigh any prejudice to the rights, freedoms and legitimate interests of the official. Therefore there is an element of balancing interests in this exemption.)
25. (i) *Assessing the legitimate interests of those to whom the data would be disclosed, namely the public*:
  - a. Transparency of public funds and public functions: Given that the case concerns activities funded out of the public purse, there is an interest in demonstrating openness and how the public sector functions. This includes knowing who the funds went to; what they were for; what the official was doing whilst on secondment and why; and what benefit it would give and to whom.

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<sup>8</sup> See s.2(2)(a) and s.2(3) FOIA.

<sup>9</sup> The public interest test we refer to here is set out in s.2(2)(b)FOIA and states that the requirement to disclose information does not apply where: '(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'

However, having reviewed the disputed information, only a very limited amount would further this interest.

- b. Understanding: There is a public interest in understanding relationships between Government departments and external organisations and suppliers, and likewise any significant relationships between officials within each organisation, including understanding the point of this secondment and whose responsibility it was. Only a limited amount of the requested information would further this interest.
- c. Accountability: To improve public knowledge about why public funds continued to be spent on the salary of the individual throughout the period of secondment. In particular, a public official's services were provided to a non-public sector body and for no charge because the cost of the secondment was borne by the public purse. The Cabinet Office accepted that since the official's salary was being paid from public funds, "*the line demarcating personal data from information which is deemed to be disclosable in the interests of transparency and public accountability is less clear than would otherwise be the case*". The Appellant's interest in knowing who originally arranged the secondment may also be of interest in terms of transparency and accountability, at least in identifying the role of the person sanctioning the activity, the reasons behind the secondment, who authorised it and why Common Purpose was chosen, all as proper scrutiny of decision-making generally. However, disclosure of the disputed information is not 'necessary' as interpreted in paragraph 17(c)(a) above to pursue this interest further than disclosures already made.
- d. VFM: Assessing value for money regarding the secondment would be a legitimate interest. However, disclosure of the disputed information is not necessary to pursue this interest further than disclosures already made.
- e. Controversy: The respondents have argued that personal 'HR' data should not be disclosed in the absence of controversy surrounding the secondment or strong public interest. The Appellant argued that controversy was an irrelevant factor. We accept that a controversy related to the secondment may in some cases strengthen the weight of public interest in seeing the material, provided that disclosing it is necessary to further the legitimate public interest. (Conversely, the absence of controversy does not necessarily weaken the public interest. The exercise we must undertake is to try to elucidate, refine and pinpoint precisely what is the nature of the interest, assess its' strength and how necessary disclosure is to meet such interest.)
- f. We accept that the public and media have shown some, even 'heated', interest, in the work of Common Purpose and its connection with training Government officials. In short, according to the BBC, critics describe it as "*a secret networking organisation at the heart of the establishment, with a hidden agenda and influence*". We stress that we have no way of knowing whether such interest is wholly unwarranted or misconceived, and have been given no substantive evidence that we would be content to rely upon to accept that it is justified. Additionally, Common Purpose has had no involvement in this appeal. The media focus and earlier requests for information would seem to emphasise the interest in understanding the relationship between the organisation and Government departments. Notwithstanding this, we have been given no specific reasons why the secondment of this particular official was controversial. Although his association does seem to have been relatively



strong, in spending time working for it at public cost as opposed to simply attending a training course.

- g. Cost to public purse: The Commissioner's considers the cost of the secondment minimal in public spending terms, the Appellant considers it an irrelevant factor. (Again, if the cost were significant, this may strengthen the public interest in viewing the material, but its absence does not necessarily weaken the interest.) In this case, we do not consider the amount minimal. This is in the context that we were not given evidence of its benefit to NSG, the Cabinet Office or the wider public sector, as opposed to advancing the official or benefitting Common Purpose. However, the secondment of three months was for a relatively short period. Again, we think this would indicate a clear emphasis on the interest in understanding the relationship between the NSG, Cabinet Office and the organisation.
26. In conclusion, we consider that for the reasons outlined above, where there is a baseline of legitimate interest in transparency and accountability for spending public money, in this case, the interest exceeds it. The respondents argue that previous disclosures meet this interest. We have not seen the template agreement so cannot consider that. NSG did disclose the length of secondment and that it funded the arrangements, which to some extent meets the public interest, but also raises more questions. It does not assist the Appellant's interest in knowing what the official was doing whilst on secondment and why, more information about what benefit it would give and to whom, whether there was VFM, why Common Purpose was chosen, why it was decided to give a non-public sector body such benefits and broader understanding about the relationship between government departments and the private or third sector.
27. *(ii) Assessing the prejudice to the rights, freedoms and legitimate interests of the official:*
- a. The official has a general legitimate right and interest to privacy of his personnel and HR information, including information and arrangements in relation to his career development. That he chose to publish specific career details online does not make the expectation to privacy of other details less reasonable or lessen the obligations on those holding other personal data. It also does not amount to a waiver of his rights to privacy. The Appellant seemed to be arguing that the specific material he requested was not particularly 'personal' as it related to his profession not private life, particularly given he had already published details on the internet. On the facts, we consider the HR information requested, (such as documentation relating to the contractual arrangements), to be personal, albeit not as personal as details about his family life. However, some parts are less personal than others, and the fact that he has published his association with Common Purpose online does indicate that this information can no longer be considered particularly personal or private.
- b. Contrary to the Appellant's assertions, the right to privacy for HR information is not irrelevant for civil servants. The official was not particularly senior. Generally he should legitimately expect that his personal details should be further from public gaze. This has carried substantial weight in considering what should be disclosed.
- c. We accept that the official has not consented to the disclosure merely by publishing some information.

28. (iii) Does the Legitimate public interest in the information outweigh the official's interest in privacy?
- a. Having reviewed the information, we consider disclosure of a small amount (and only a small amount) as identified in the closed appendix would be necessary and proportionate to further the legitimate interests as outlined above, and outweigh the legitimate interests in privacy that the official has.
  - b. We consider these to be exceptional circumstances. This is particularly because the official concerned does not consider his secondment to the charity particularly private because it seems he has publicised his having worked there on the internet, the public authority paid for the secondment to the non-public sector body, and there is public interest in the organisation. The limited disclosure is necessary to the extent that it furthers an understanding of the purpose of the secondment and relationship between the authority and non-public sector body.
29. (iv) Fair and Lawful
- a. Information is exempt under s40(2) FOIA, where its disclosure would not be fair and lawful. The Cabinet Office asserted that it would not be lawful because the official expressly refused consent to disclosure and no other conditions for disclosure in Schedules 2 for personal data or 3 DPA for sensitive personal data were met. We accept the latter in relation to sensitive personal data. The Cabinet Office gave us no argument as to why the official's lack of consent meant disclosure was not lawful. (We also received no evidence from the official that he had in fact refused consent.) We have set out above why for a limited amount of information a Schedule 2 condition is met. As to the disclosure not being 'fair', the Cabinet Office argued that erstwhile NSG employees have a strong and justified expectation that information of this type will not be disclosed to the public. We would think that the expectation would be based on an understanding of what is stated in the DPA. We have explored the issues in relation to this above, when considering the condition set out in paragraph 6 of Schedule 2 of the DPA.

### **Other Matters**

30. During this appeal, the Appellant requested the Tribunal to order that the Cabinet Office disclose the names of all those within the NSG and the Cabinet Office who were associated with Common Purpose, and to provide any and all materials from anyone associated with Common Purpose within NSG and the Cabinet Office who may have advised, directed, or otherwise influenced, their approach to and proceedings of this case. Such an order falls outside the Tribunal powers, the information not being at all relevant to this appeal. The Appellant also complained about the repetitive nature of the appeal process and that the public authority's grounds for refusal caused him alarm and distress. We regret that the Appellant felt this way. However, he had declined to attend a preliminary case management hearing which could have addressed such issues, ensured all parties agreed the timetable that was set, and would have helped him to be aware of what to expect from the process and ensure an understanding of the legal positions of the parties and what powers the Tribunal has and does not have.
31. Our decision is unanimous.

Claire Taylor

Tribunal Judge

Dated: 10 December 2012