



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2016/0104

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS 50612767
Dated: 12 April 2016**

Appellant: ANNA CHRISTIE

First Respondent: INFORMATION COMMISSIONER

Second Respondent: LONDON BOROUGH OF SOUTHWARK

Heard at: FLEETBANK HOUSE, LONDON

Date of hearing: 27 October and 14 December 2016

Date of decision: 19 December 2016

Before

ROBIN CALLENDER SMITH
Judge

and

ALISON LOWTON and STEVE SHAW
Tribunal Members

DECISION

The Tribunal upholds the decision notice dated 12 April 2016 and dismisses the appeal.

REASONS FOR DECISION

Background

1. Mrs Anna Christie (the Appellant) asked for information from the London Borough of Southwark (the Second Respondent) about the final bill for electrical works and the final annual service charges bill for a specific property for the account year ending March 2014.

The request for information

2. On 4 October 2015 she wrote:

I am writing to request a copy the following document under the FOI Act: A copy of the final bill for electrical works for [redacted] for the account year ending March 2014. A copy of the final annual service charges bill [redacted] for the account year ending March 2014.

3. LB Southwark provided her, 5 November 2015, with the final amount charged but withheld the copies of the final bills as they contain the personal data of another individual.
4. It was asked to review its response by the Appellant.
5. On 13 January 2016 it provided its internal review findings. Those were that the final figures provided to the Appellant 5 November 2015 were, in fact, incorrect. It went on to state that the correct information was exempt under section 40 FOIA. It maintained its position that it was correct to withhold the bills under that exemption.
6. The Appellant complained to the Information Commissioner on 18 January 2016.
7. The Information Commissioner was satisfied that the information fell within the definition of personal data set out in the Data Protection Act 1998

because it related to identifiable living individuals. The Information Commissioner decided that the Council was correct to apply section 40 (2) to the request.

8. The Appellant appealed on the basis that she wanted to know how, initially, the Council had provided her with inaccurate figures.
9. She claimed the bill did not apply to anyone else and there were no grounds for it being withheld. She believed she might be owed money if the final account bill showed less than the estimated bill that she had paid.
10. The names of the individuals who had purchased the property after she sold it were known to her and could be redacted.

Conclusion and remedy

11. On the day the appeal was first listed for an oral hearing on 27 October 2016 the Appellant was unable to attend because of ill-health and sent a telephone message to the Tribunal explaining this.
12. The Tribunal was satisfied that it could deal with the appeal justly and fairly – because of the limited nature of the substance of the appeal - in the absence of the Appellant but, in the interests of justice, decided to adjourn its final consideration until it had had a chance to consider the information being withheld by the Council.
13. As a result, the Tribunal adjourned the matter to join the Council as Second Respondent.
14. The Council then provided the withheld information as confidential information solely for the Tribunal's consideration together with brief open submissions available to all parties.

15. It follows, therefore, that the Tribunal has been able to see directly the withheld information and to consider whether the Council and the Information Commissioner had been correct in characterising it as personal data belonging to a living individual.

16. When this procedure is used, the Tribunal adopts the guidance for the approach to be taken by Courts and Tribunals in respect of any closed material procedure. That procedure is set out immediately below.

17. In *Bank Mellat v HMT (no. 1)* [2013] UKSC 38, which was not a case about FOIA, Lord Neuberger said at paragraphs 68-74 that:

i) If closed material is necessary, the parties should try to minimise the extent of any closed hearing.

ii) If there is a closed hearing, the lawyers representing the party relying on the closed material should give the excluded party as much information as possible about the closed documents relied on.

iii) Where open and closed judgments are given, it is highly desirable that in the open judgment the judge/Tribunal (i) identifies every conclusion in the open judgment reached in whole or in part in the light of points made or evidence referred to in the closed judgment and (ii) says that this is what they have done.

iv) A judge/Tribunal who has relied on closed material in a closed judgment should say in the open judgment as much as can properly be said about the closed material relied on. Any party excluded from the closed hearing should know as much as possible about the court's reasoning, and the evidence and the arguments it has received.

18. In *Browning v Information Commissioner and Department for Business, Innovation and Skills* [2013] UKUT 0236 (AAC) the Upper Tribunal issued similar guidance about the use of closed material and hearings in FOIA cases, noting that such practices are likely to be unavoidable in resolving disputes in this context:

i) FOIA appeals are unlike criminal or other civil proceedings. The Tribunal's function is investigative, i.e. it is not concerned with the resolution of an adversarial civil case based on competing interests.

ii) Closed procedures may therefore be necessary, for consideration not only of the disputed material itself, but also of supporting evidence which itself attracts similar sensitivities.

iii) Parliament did not intend disproportionate satellite litigation to arise from the use of closed procedures in FOIA cases.

iv) Tribunals should take into account the Practice Note on Closed Material in Information Rights Cases (issued in May 2012). They should follow it or explain why they have decided not to do so.

v) Throughout the proceedings, the Tribunal must keep under review whether information about closed material should be provided to an excluded party.

19. The closed bundle in this appeal contained the disputed information. It was necessary for the Tribunal to see this and consider the redacted elements of it when set against the Open material before reaching its conclusions.

20. The Tribunal has considered carefully and rigorously the material in the light of the Appellant's points and concerns already expressed in her notice of appeal and other representations and submissions she had made.

21. Consideration of the Closed Material, however, while helpful and informative, has not materially influenced the Tribunal's decision.

22. It has, however, confirmed its view that the section 40 FOIA exemptions relied on by the Commissioner and Southwark Council is clearly engaged on the specific facts of this case.

23. The information sought by the Appellant relates to the final amount payable by the leaseholders of the property in question for the account year ending March 2014.

24. An estimate of the amount due was payable by the Appellant. Once the actual amount is known the subsequent leaseholder might be required to pay an additional amount or might receive a credit.

25. While the identity of the new leaseholders was known to the Appellant, the Tribunal finds that the provision of the information about the actual amount payable would allow the Appellant to calculate the final amount paid by the new leaseholders or the credit they would receive.

26. In either case the amount is personal data of the new leaseholders and properly exempt under section 40 of the Freedom of Information.

27. That information falls within the definition of personal data, as set out in the Data Protection Act 1998, because it is data that “relates to” identifiable living individuals.

28. Disclosing it would breach their privacy and would be unfair within the terms of the Data Protection Act 1998.

29. On that basis, the appeal must fail.

30. Our decision is unanimous.

31. There is no order as to costs.

Robin Callender Smith

Judge

19 December 2016