



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FS50867605**

**Appeal Reference: EA/2020/0181**

**Considered on the papers**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**SUZANNE COSGRAVE & JOHN RANDALL**

**Between**

**CENTRE FOR CRIMINAL APPEALS**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

Cases  
Hazell v Hammersmith and Fulham LBC [1991] 1 All ER 545 (House of Lords),

**DECISION**

The appeal is dismissed.

**REASONS**

1. The Appellant is a law firm/charity representing individuals who claim to be the victims of a miscarriage of justice. The Criminal Cases Review Commission (CCRC) is the public body responsible for independently investigating alleged miscarriages of justice. On 26 March 2019 an officer of the Appellant made an information request under FOIA to CCRC seeking:-

1. The CCRC's list of "criticised experts", which I believe was previously kept in the Case Guidance Note on Expert Evidence, but which may now be on the CCRC's SharePoint intranet.
  2. Any equivalent lists held by the CCRC regarding criticised law enforcement personnel or units, criticised lawyers (including solicitors and barristers, defence and prosecution) and criticised judges;
  3. The CCRC's internal guidance on obtaining material from the Forensic Archive (I understand that the CCRC previously had a Case Guidance Note on this, but again it may now be on the CCRC's SharePoint intranet.)
  4. The CCRC's internal guidance on informants/Covert Human Intelligence Sources/informant-related material (again, the CCRC seems to previously have had a Casework Guidance Note on informant-related material);
  5. The CCRC's internal guidance on intercepted communications (which, again, the CCRC seems to have at one point had a Casework Guidance Note on).
2. CCRC provided information in response to requests 3-5 (with minimal redactions identifying applicants to CCRC) and refused to provide information in response to 1-2 relying on s40(2) FOIA (personal data). It upheld that position on internal review setting out in detail its reasoning:-

*The review is in relation to the decision not to disclose the internal list of criticised experts. This list is compiled to assist case-working staff to keep track of experts who may currently be under investigation, or have been discredited or criticised in some way that may impact upon a case under review. It is a working list subject to constant change and contains details and opinions that directly constitute personal data, and therefore requires consideration under section of (2) and (3) of the Freedom of Information Act (FoIA).*

*It is noted that the requester acts in the capacity of a legal representative assisting those who believe that they have been wrongfully convicted. However, the information requested is not in relation to any specific investigation or proceedings, nor is it necessary for providing legal advice to any existing client. The criterion that allows disclosure under the exemption of the Data Protection Act 2018 is therefore not met in this instance and does not allow for blanket disclosure. Being in a position to potentially provide legal assistance does not automatically allow unrestricted access to this information. It is the CCRC's view that it cannot be argued that there is a valid legitimate interest in the absence of a case that requires the specific disclosure of an identified individual's personal data. To provide the data in the circumstances requested would be in breach of principles 2 and 3 of the Act, purpose limitation (only for specific and predefined purpose) and data minimisation (the maximum amount of data essential for defined purpose). Any information provided but also risk quickly becoming obsolete and unreliable unless constantly updated. It could not, therefore, be used by you for the purpose that you describe as this would also breach principle 4: Accuracy*

3. The Appellant complained to the Information Commissioner (IC) who investigated. The CCRC in its submissions to the Commissioner suggested

that the Appellant (if it chose) was able to produce a list of this type itself since much of it was gathered from public sources. In her decision notice she identified three provisions upon which CCRC could rely to withhold the information:-

- section 40 FOIA. She concluded that the information in question was clearly the personal data of those named in the database. Moreover, it was often highly sensitive data, and was in some cases criminal offence data. There was no legal basis for disclosing either type of data under Articles 6 and 10 GDPR, respectively (DN, §§10-60);
  - section 44 FOIA. Section 23 Criminal Appeal Act 1995 (CAA) prevented the disclosure of the data in question, since none of the exceptions in section 24 applied (DN, §§61-68);
  - section 14 FOIA. The CCRC had real concerns about the volume of information sought and the difficulties that it would have in isolating potentially exempt information from the rest of the material, since the two were intertwined. The time taken to review and isolate disclosable data would be such that the request would impose a grossly oppressive burden on the CCRC (DN, §§79-83).
4. The Appellant challenged the use of all these provisions. With respect to section 44 it argued that the CCRC was not acting in the exercise of its functions when it drew up the list of criticised or discredited individuals:-

*43. The Appellant does not accept that the requested information – that is, the list of criticised experts and the equivalent lists for criticised law enforcement personnel and units, lawyers and judges – can be accurately described as having been obtained by the CCRC in the exercise of any of its statutory functions. Instead, the information is more accurately characterised as information created by the CCRC to assist with the exercise of its statutory functions of reviewing and referring cases. This is not the same as it having been obtained in the actual exercise of its functions.*

5. It also argued that an exception to the prohibition on disclosure was provided by s24(1)(a) of the CAA.

### Consideration

6. FOIA while providing a general right of access to information held by public bodies also exempts much information from that right. Including where there is a statutory prohibition on disclosure:-

44 Prohibitions on disclosure.

- (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
  - (a) is prohibited by or under any enactment,
  - (b) is incompatible with any retained EU obligation, or
  - (c) would constitute or be punishable as a contempt of court.

7. CAA makes detailed provisions on the communication of information by CCRC under the heading **Disclosure of Information**. These are (so far as is relevant):-

**“23 Offence of disclosure.**

(1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 24.

...

**24 Exceptions from obligations of non-disclosure.**

(1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 23 by this section if the information is disclosed, or is authorised to be disclosed –

- (a) for the purposes of any criminal, disciplinary or civil proceedings,
- (b) in order to assist in dealing with an application made to the Secretary of State or the Department of Justice in Northern Ireland for compensation for a miscarriage of justice,
- (c) by a person who is a member or an employee of the Commission either to another person who is a member or an employee of the Commission or to an investigating officer,
- (d) by an investigating officer to a member or an employee of the Commission,
- (e) in any statement or report required by this Act,
- (f) in or in connection with the exercise of any function under this Act, or
- (g) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.

(2) The disclosure of information is also excepted from section 23 by this section if the information is disclosed by an employee of the Commission, or an investigating officer, who is authorised to disclose the information by a member of the Commission.

(3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 23 by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of –

- (a) the investigation of an offence, or
- (b) deciding whether to prosecute a person for an offence, unless the disclosure is or would be prevented by an obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) arising otherwise than under that section.

(4) Where the disclosure of information is excepted from section 23 by subsection (1) or (2), the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) arising otherwise than under that section.

(5) The power to make an order under subsection (1)(g) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

....”

8. The prohibition in s23 is broadly drafted prohibiting disclosure of “*any information obtained by the Commission in the exercise of any of their functions*” S24 provides exhaustive lists of circumstances in which disclosure is possible:-

- s24(1) provides a list of seven circumstances in which information may be disclosed, These are highly specific and include two explicit exemptions from the duty not to disclose to enable the staff and members of the Commission to discuss cases.
- s24(2) allows members of the Commission to authorise disclosure, and
- s24(3) allows disclosure for the purposes of investigating and prosecuting offences

9. The functions of CCRC are set out in the CAA to enable it to consider and refer cases to the Court of Appeal and at s21 a general power is given to the CCRC:-

**21 Other powers.**

*Sections 17 to 20 are without prejudice to the taking by the Commission of any steps which they consider appropriate for assisting them in the exercise of any of their functions including, in particular –*

*(a) undertaking, or arranging for others to undertake, inquiries, and*

*(b) obtaining, or arranging for others to obtain, statements, opinions and reports.*

10. It is clear that in gathering this information they were taking necessary steps preparatory to carrying out inquiries and obtaining reports relevant to such potential inquiries. The Appellant argues that the information was not obtained in the exercise of their functions, but rather was gathered to assist in the exercise of those functions and should therefore fall out with the s23 (and consequently the s44 FOIA) prohibition.

11. The Information Commissioner relied on the decision in *Hazell*, which concerned the interpretation of s111 of the Local Government Act 1972:-

*111 Subsidiary powers of local authorities.*

*(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any*

*property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.*

12. The Information Commissioner argued that in *Hazell* a function was anything that a local authority had power to do and the term function should be understood as broadly in the context of the CCRC, under section 23 CAA, the compiling of the lists was intimately connected with its core function of screening cases for potential grounds for appeal.
13. The CAA sets out various specific powers of the CCRC to do its work in sections 17-22 under the heading “supplementary powers”. These include the power to obtain documents (s17-18), and the work of investigating officers (s19-20). These specialist powers are necessary for this public body as are the more general powers in s21. The tribunal is satisfied that all these powers are integral to its work, they are functions of the CCRC. S24 CAA provides an exhaustive code of the circumstances in which it is lawful for the CAA to disclose information. Disclosure of the information within the lists is therefore prohibited by s23.
14. The Appellant’s argument on section 24(1)(a) lacks substance. The CCRC would not be disclosing the data for the purposes of legal proceedings but in response to a request under FOIA. CCRC does not have an obligation under FOIA to disclose this information. It has decided not to do so.
15. Since the statutory prohibition applies, there was no need to consider the application of s40 and s14.
16. The Information Commissioner’s decision is correct in law and the appeal fails.

Signed Hughes

Judge of the First-tier Tribunal

Date: 2 June 2021

Promulgated: 4 June 2021