



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

Case No. EA/2010/0084

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50186242
Dated: 31 March 2010**

Appellant: Clive Colliass

Respondent: Information Commissioner

Determined on the papers on 30 July 2010 at Holborn Bars, London

Before

Robin Callender Smith

Tribunal Judge

and

**Mike Jones
Steve Shaw**

Tribunal Members

For the Appellant: Mr Clive Colliass

For the Respondent: Mr Mark Thorogood, Solicitor for Information Commissioner

Subject matter:

Freedom of Information Act 2000

Section 40

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 31 March 2010 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Clive Colliass ("the Appellant") wrote to Thames Valley Police ("the Public Authority") on 6 October 2007 with a series of five questions.
2. Because of this decision will be a public document, the names and addresses of the individuals referred to in the Appellant's request to the Public Authority are not reproduced here.

The request for information

3. The information requested was:
 - (1) When did [a named police officer]'s deployment Maidenhead Police Station commence and what rank?
 - (2) What is [the named police officer]'s relationship with [a named person 1] of [a specific address]?
 - (3) Kindly state the post [the named person 1] held when employed by TVPC and specify whether he is currently undertaking contracts for services for the TVP.
 - (4) With reference to the alleged false statements made to the TVPC by [the named person 2] then resident at [a specific address], did [named person 2] so act in collusion with [named person 1]?
 - (5) Please confirm that the TVPC is responsible for the placement of a surveillance device positioned adjacent to a pendant/ceiling light bulb/sitting in a bedroom at [the Appellant's address] and specify the function of that device. What other surveillance equipment is planted at [the Appellant's address] and where is it sited?
4. The Public Authority refused to provide this information in a letter dated 30 October 2, 2007. It stated:

"In response to questions 1 to 4 your request for information has now been considered and I am not obliged to supply the information you have

requested. Such information is exempt under section 40 of the Freedom of Information Act 2000. This exemption applies because the right under the Act to request official information held by public authorities does not apply to personal data.

"In accordance with the Act, this letter represents a Refusal Notice for this particular part of your request. Under the Freedom of Information Act 2000, we neither confirm nor deny that the information you requested exists. We are, however, advising you as required by section 17 of the Act that such information, if it were to exist could reasonably be expected to be exempted under the relevant sections of the Act. This action cannot be taken as confirmation or denial but Thames Family Police holds the information you have asked for.

"In response to question 5, no information is held relevant to your request."

5. The Appellant subsequently wrote to the Public Authority on one November 2007 questioning the refusal to provide the information requested. The Public Authority treated that letter as a request for an internal review. 19 February 2008 the Public Authority informed the Appellant of the outcome of its review. It stated that the information requested in question 1 was exempt under section 40 (2) (a) and (b) FOIA; it neither confirmed nor denied that it held any information in relation to questions 2, 3 and 4 under section 40 (5) FOIA and it maintained that it held no information in respect of question 5.
6. The Appellant complained to the Information Commissioner ("IC") on 28 February 2008, challenging the decision to withhold the information requested.

The Information Commissioner's Decision

7. In the course of the IC's investigation the Public Authority disclosed to the Appellant the information held in respect of question 1. It sought to rely on section 40 (5) FOIA in relation to question 5.
8. The IC concentrated solely on questions 2 to 5. He took the view that questions 2 and 3 related to information that – if held – would constitute personal data of third parties.

9. The IC decided that confirming or denying that any information was held in relation to questions 2 and 3 would amount to disclosure of personal data. The IC considered whether confirmation or denial would breach the first data protection principle and concluded it would not be fair to that specific individual for the Public Authority to disclose the information requested because there was no evidence to suggest that he would consent to such a disclosure unless there was legitimate and overriding public interest in so doing. The IC concluded that no such interest existed and that disclosure would breach the first data protection principle.
10. By virtue of section 40 (5) (b) (i) FOIA the Public authority was entitled neither to confirm or deny whether it held the information requested falling within the scope of questions 2 and 3.
11. In relation to questions 4 and 5 the IC concluded that, if held, the information would constitute the personal data of the Appellant. Question 4 related to information concerning false statements allegedly made about the Appellant. Question 5 concerned the alleged surveillance of the Appellant's property by the Public authority. This engaged section 40 (1) FOIA and, by virtue of section 40 (5) (a) the Public Authority were entitled neither to confirm or deny whether it held the information requested falling within the scope of questions 4 and 5.

The appeal to the Tribunal

12. The Appellant appealed to the Tribunal on 3 April 2010 on the basis that the IC's decisions were wrong.
13. By directions issued by the Tribunal dated 6 June 2010 the Appellant was put on notice that the Tribunal's preliminary view was that his appeal had no prospect of success. He was given notice of the consideration being given to strike out the appeal under the provisions of Rule 8 (3) (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.
14. By giving notice to the Appellant under Rule 8 (4), this gave the Appellant the opportunity to make representations in writing in relation to the proposal to strike out the appeal. The Appellant was given until 12 noon on 28 June 2010 to make those representations.
15. In the event he provided a copy of the **Response by the Information Commissioner** dated 20 May 2010 with two short manuscript comments inserted into the margins.

The questions for the Tribunal

16. The Tribunal has to consider whether the Appellant has addressed the substance of the IC's Decision Notice so as to provide reasonable grounds of appeal. If he has failed to do this, then his appeal has no realistic prospect of success.
17. The procedure adopted by the Tribunal in such situations is set out in the Tribunal's decision in *Tanner v Information Commissioner 2007/0106*.
18. The Tribunal concluded there that the appropriate test was analogous to the test under Part 24 of the Civil Procedure Rules 1998. This makes provision for a claim which has no real prospect of success to be summarily dismissed. Guidance on the meaning of this test was provided in **Swain v Hillman [2001] 1 All ER (CA)** by Lord Woolf MR. He said that the words "no real prospect of succeeding" did not need any amplification as they spoke for themselves. The court must decide whether there is a "realistic", as opposed to "fanciful", prospect of success.

Conclusion and remedy

19. The Tribunal is satisfied to the required standard – the balance of probabilities – that the Appellant has failed to identify an appealable issue within the IC's decisions.
20. He has not addressed the IC's findings that the information falling within the scope of questions 2 and 3 would, if held, amount personal data about a third party the disclosure of which would contravene the first data protection principle.
21. He has also failed to address the fact that the information falling within the scope of questions 4 and 5 would, if held amount personal data about the Appellant himself.
22. He has given no reasons why the IC was incorrect in concluding that the Public Authority was not obliged to confirm or deny whether it held the information requested.
23. On this basis the Tribunal strikes out the Appellant's grounds of appeal under rule 8 (3) (c) of the 2009 Rules because there is no reasonable prospect of the Appellant succeeding.
24. Our decision is unanimous.

25. The Tribunal makes no order as to costs in relation to this appeal.

26. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure an appeal against a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to the First –tier Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can be found on the Tribunal’s website at www.informationtribunal.gov.uk.

Robin Callender Smith

Tribunal Judge

23 August 2010