



Neutral citation number: [2025] UKFTT 00115 (GRC)

Case Reference: FT/EA/2023/0407

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

**Heard by Cloud Video Platform
Heard on: 16 December 2024
Decision given on: 10 February 2025**

Before

**TRIBUNAL JUDGE MORNINGTON
TRIBUNAL JUDGE HUGHES
TRIBUNAL MEMBER PALMER-DUNK**

Between

SAJAD HUSSAIN

Appellant

and

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: in person

For the Respondent: did not appear

Decision: The appeal is Dismissed

REASONS

Background to Appeal

1. This Appeal dated 19 September 2023 and made by Mr Sajad Hussain (the "Appellant") arises following a request for information (the "Request") made by the Appellant to the City of Bradford Metropolitan District Council ("the Council") on 16 June 2023 in the following terms:

"Can you kindly supply me with the latest version the [sic] Telephone Directory for Elected Members include [sic] the date of the latest version"

2. This Council responded on the same date to confirm that s 21 of FOIA applied to this request and the information was readily available online and provided a link to its webpage detailing the contact details for Elected Members.
3. On the same date, the Appellant requested an internal review of the Council's handling of the request on the basis that it was likely misinterpreted by the Council and that what the Appellant sought to obtain was a:

"versioned document containing the names, telephone numbers and email addresses of Council Officers supplied to Elected Members, not a link to your website of Elected Members"

4. The Council responded on 20 June 2023 to confirm that such document was not held by the Council.
5. On 23 June 2023, the Appellant requested a second internal review of the Council's handling of their request on the basis that the Appellant knew such a document existed.
6. On 26 June 2023 the Council responded having undertaken a second internal review to confirm that it did not hold the information.
7. On the same date, the Appellant complained to the Information Commissioner. The IC proceeded to carry out an investigation. During the course of this investigation, the Council confirmed to the IC that they had located the requested document and had disclosed a redacted copy to the Appellant which disclosed information relating to senior staff and general contact information but withheld the names and contact details of officers in

junior roles. The Council confirmed that the redacted information was withheld pursuant to s40(2) of the Freedom of Information Act (FOIA).

Reasons for Commissioner's Decision

8. In a Decision Notice ("DN") dated 19 September 2023, the Information Commissioner ("IC") held that:

"The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to withhold some of the requested information. However, the Commissioner finds that the Council breached section 10 of the FOIA in failing to provide the disclosable information within the statutory timescale. The Commissioner does not require any steps to be taken."

9. In summary, The Commissioner's reasons for the Decision were that the requested information contains personal data which is exempt by virtue of s 40(2) FOIA and that the relevant condition detailed in s40 (3A)(a) is satisfied in that release of the personal data would contravene the Data Protection Principles as set out in Article 5 of the UK General Data Protection Regulations (UK GDPR)

10. The IC determined that the information contained within the telephone directory did contain personal data and that disclosure of the information would contravene the Data Protection Principle contained within Article 5(1)(1) of the UK GDPR, that *"personal data shall be processed lawfully, fairly and in a transparent manner..."*. The IC determined that the processing of the requested information containing personal data would be unlawful in that the disclosure of the withheld information is not necessary to meet the legitimate interests in disclosure.

11. The IC did accept that the Council failed to provide the disclosable information to the Appellant within the statutory time frame provided under s10(1) of FOIA in that the Council located information falling within the scope of the request during the IC investigation.

Appeal and Responses

12. The appeal relates to the application of the Freedom of Information Act 2000.

13. The Appellant originally appealed the Decision Notice on the following grounds:

"I believe the decision by the ICO is a deliberate fraud and deception to whitewash the complaint under some private arrangement between the ICO and the Local Authority. I believe that the Local Authority are privately commissioning out the services of the ICO in order to coverup their failures".

14. In submissions from the Appellant following the IC's response to appeal, the Appellant raised further grounds upon which his appeal was brought. They were:

- a. That the Commissioner and local authority have colluded to cover-up the investigation or whitewash the investigation
- b. That Article 11 of the European Convention on Human Rights provides an avenue to request information over and above that provided by FOIA 2000.
- c. That the exemption under s40(2) FOIA should not apply to a person operating in a professional capacity or as a servant of an authority, in this case, the Council.

15. Grounds (a) and (b) at paragraph 13 of this decision have been previously struck out by the decision of District Judge Moan dated 30 August 2024. Ground (c) is the only ground to be considered by this Tribunal.

16. The remaining issue to be considered by this Tribunal is

- (a) the balancing test under Article 6(f) UK GDPR as to whether the personal data of the local authority employees should be disclosed.

17. The Commissioner's response to the appeal maintains that the Decision Notices are correct and that on the question of whether the withheld information constitutes personal data, s 3(2) of the Data Protection Act 2018 defines personal data as "any information relating to an identified or identifiable living individual" which, the IC says, clearly applies in this case. The OC maintained that in all the circumstances, the IC has correctly applied the s40(2) FOIA exemption to the withheld information.

18. During oral submissions, the Appellant set out the background of his request and the reason he sought the telephone directory from the Council. The Appellant stated that he was seeking out a council official involved in a private

prosecution which had been brought against him. This search brought the Appellant to a telephone directory which was freely available online and caused him to make a request for the latest version. Ultimately, after some back and forth, the Appellant has been provided with the latest version of the telephone directory which has been redacted to remove the names of junior council officials.

19. The Appellant took issue with the fact that the previous version of the directory was available online without redaction, but that the latest version provided to him was redacted. He questioned whether the Council ought to be sanctioned in relation to this by the IC, however, this question falls outside the jurisdiction of this tribunal.
20. The Appellant argued that if a person chooses to work for a public authority, then they accept that their name will be in the public domain. He claimed that it was not fair that he had given up his anonymity by appealing to the Tribunal and that it is important that if a member of the public is unhappy with the service of an individual working within a public authority it should be possible to identify them and their contact details.
21. The Appellant considers that the reason why the Council do not want to release the requested information is to thwart any complaints from the public as, in his view, data protection legislation exists to protect citizens above officers of public authorities. The Appellant does not accept that there is a difference between the data of junior officials and that of senior officials. He claims that there should be no rights in relation to personal data for this working in a public place, dealing with the public and being paid by the public purse.
22. Upon exploration of the Appellant's interests and motives for obtaining the requested information, the Appellant stated that his primary interest is to undermine the criminal conviction secured against him by way of private prosecution by the Council, to garner further information regarding the individual dealing with the private prosecution and to make a complaint against this individual and to expose, what he says, are systematic failures of the Council. The Appellant stated that it was his duty to hold the Council to account and embarrass them if necessary.

Documents

23. The Tribunal was provided with a 302-page bundle and a closed bundle of documents.

Applicable Law

24. The relevant provisions of FOIA are as follows:

1 General right of access to information held by public authorities.

- (1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

40 Personal information.

- (2) Any information to which a request for information relates is also exempt information if -
 - (a) it constitutes personal data which does not fall within subsection (1), and
 - (b) [the first, second or third] condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles,

58 Determination of appeals.

- (1) If on an appeal under section 57 the Tribunal considers—
 - (a) that the notice against which the appeal is brought is not in accordance with the law, or

- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based

25. The relevant provisions of the UK General Data Protection Regulations are:

Article 5 Principles relating to processing of personal data

- 1. Personal data shall be:
 - (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency')

Article 6 Lawfulness of processing

- 1. Processing shall be lawful only if and to the extent that at least one of the following applies:
 - (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Discussion and Conclusions

26. In accordance with section 58 FOIA, the issue for the Tribunal to decide upon is whether the IC's Decision Notice was in accordance with the law and whether the IC was correct in finding that the Council was entitled to rely on section 40(2) FOIA in refusing to reply to the Appellant's request of 16 June 2023.

27. Under section 58(2) FOIA, the Tribunal is able to review any finding of fact upon which the Decision Notice was based, consider all of the evidence before it and reach its own decision.

28. The Tribunal has considered two bundles of documents, the oral submissions of the Appellant and the relevant law and will consider each stage of the appeal below.

Does the exemption under section 40(2) FOIA apply?

29. Under s40(2) FOIA, information is exempt from disclosure if it contains personal data and when one of the conditions listed in s40(3A), (3B) or 40(4A) is satisfied.

Does the withheld information contain personal data?

30. There is no alternative but to answer 'yes' to this question. As set out earlier in this decision, s3(2) DPA 2018 defines personal data as "any information relating to an identified or identifiable living individual". It is unquestionably the case that a person's name is an identifying feature and clearly identifies a person. Email addresses usually contain names of the account holder. Insofar as telephone numbers and job titles are personal data, any information which is linked to a person is also considered to be personal data.

Is one of the conditions listed in s40(3A), (3B) or 40(4A) satisfied?

31. The condition under Section 40(3A)(a) is that the disclosure of the withheld information to a member of the public would contravene any of the data protection principles.

32. The relevant Data Protection Principle in this case can be found in Article 5(1) (a) UK GDPR which provides that personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.

33. Article 6 (1) UK GDPR provides that processing shall only be lawful if one of the conditions listed in the Article applies.

34. Article 6(1)(f) is the condition most applicable in this case and provides that processing of personal data shall only be lawful if the processing is necessary for the purposes of the legitimate interests pursued by the Applicant except where such interests are overridden by the interests or fundamental rights of the data subjects (i.e. The council officials) which require protection of personal data.

35. In *South Lanarkshire Council v Scottish Information Commissioner* [2013] UKSC 55; [2013] 1 WLR 2421 Lady Hale DP observed (at paragraph 18) that the proper interpretation and application of condition 6 required three discrete questions to be answered:

- (a) Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests? (“Legitimate interests test”)
- (b) Is the processing involved necessary for the purposes of those interests? (“Necessity test”)
- (c) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject? (“Balancing test”)

Is the Appellant pursuing a legitimate interest or interests?

36. The Appellant made oral submissions in relation to his interests in the withheld information which are detailed at paragraph 22 of this decision.

37. Beyond the overarching theme of holding the council to account and his primary interest in undermining his criminal conviction, the Appellant had made clear that he wished to complain about a council official involved in the private prosecution against him. The Appellant contended that he needed the telephone directory to make such a complaint. However, the Appellant admitted that he was already aware of the name of the council official in question, and indeed, the previous version of the telephone directory which was freely available online contained the name and contact details of the council official at the heart of the Appellant’s complaint.

38. The tribunal accepts that the Appellant has an interest in the withheld information but that it is a private and very narrow interest. There is very little public interest in a list of names, and the names which may be in the public interest to disclose (the names of senior officials) were provided to the Appellant as part of the unredacted information.

39. The Upper Tribunal’s decision in *Cox v Information Commissioner & Home Office* [2018] UKUT 119 (AAC) is binding upon this Tribunal. In this case, despite the submissions for Mr Cox, which are extremely similar to those of the Appellant, that there was always a legitimate interest in knowing the identity of public officials exercising public power, the Upper Tribunal held that “*A legitimate interest does not appear simply by virtue of the data subject’s employer*” and that “*the ordinary principle that it is senior civil servants who carry the can in terms of responsibility and accountability was a conclusion which the Upper Tribunal was not prepared to disturb*”. Accordingly, it is trite law that there is usually little legitimate interest in personal data of junior council officials.

40. The Tribunal accept that there is a legitimate interest in holding senior public officials to account but that there is no benefit in disclosing a list of names of junior officials of which there may be many hundreds.

Is the processing involved necessary for the purposes of those interests?

41. The Tribunal does not accept that the processing and disclosure of the withheld information is necessary to meet the Appellants private interests.

42. Firstly, by his own admission, the Appellant already holds the information relating to the council official against whom he wishes to complain. He is able to meet his private interest already without the further disclosure of the telephone directory.

43. In so far as his interests to hold the Council to account are concerned, the Appellant has received a redacted version of the telephone directory which includes the names, roles and contact details of senior officials. I.e. "those who carry the can in terms of responsibility and accountability". It is not necessary for the Appellant to hold a fully unredacted version of the telephone directory to meet his interests in those who are accountable.

44. The Tribunal does not consider that the "Necessity test" has been met and accordingly, it is unnecessary to consider the "Balancing test".

45. Having considered all of the circumstances, the Tribunal finds that the Information Commissioner's decision was correct in law and dismisses the appeal.

Signed Judge Mornington

Date: 31 January 2025