



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

Case No. EA/2012/0030

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50372275
Dated: 30 January 2012**

Appellant:

IAN MCFERRAN

Respondent:

THE INFORMATION COMMISSIONER

On the papers

Date of decision:

**Before
CHRIS RYAN
(Judge)
and
ROSALIND TATAM
SUZANNE COSGRAVE**

Subject matter: Personal data s.40

Cases: *Corporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed

REASONS FOR DECISION

The Information Request and Complaint to the Information Commissioner

1. In June 2010 two members of staff from the Housing Services team of the Shropshire County Council (“the Council”) were present at one of the Council’s tenanted properties during a search conducted by the police. Both held relatively junior positions and were not involved in the Council’s decision to respond to a request from the police to have someone in attendance in case assistance was needed in gaining access to the premises.
2. The Appellant has a number of concerns about the way in which the search was conducted and the information provided to the police to justify it. The concerns have a connection with wider allegations that have been the subject of investigation in other parts of the country.
3. In an email dated 22 September 2010 the Appellant lodged a freedom of information request with the Council seeking the names of the two individuals. He subsequently asked, also, for the name of the individual next in the chain of command above those two individuals. The requests were made under section 1 of the Freedom of Information Act 2000 (“FOIA”), which imposes on the public authorities to which it applies an obligation to disclose requested information unless certain conditions apply, or the information falls within one of a number of exemptions set out in FOIA.
4. Initially the Council failed to respond to the request. However, it eventually responded confirming that the two individuals worked within its Housing Services section and that they reported to the Head of Landlord Services. However, the Council refused to disclose any of the names on the ground that the information was exempt information under FOIA section 40(2) (third party personal data). It maintained that stance following an internal review, leading to a complaint by the Appellant to the Information Commissioner. He decided, in a Decision Notice issued on 30 January 2012 that the Council had been entitled to

refuse the request in respect of the first two individuals, but not in respect of the third. He ordered the name to be disclosed.

The Appeal to this Tribunal

5. The Council has not appealed either the decision in respect of the Head of Landlord Services or the Information Commissioner's decision that the Council breached both sections 10 and 17 of the FOIA in the manner in which it handled the information request. However, the Appellant does appeal the decision that the names of the two officers did not have to be disclosed.
6. The Appeal was lodged with the Tribunal on 15 February 2012. In his Notice of Appeal the Appellant opted for a paper determination, as opposed to an oral hearing. The Information Commissioner agreed with that method of determination and we are satisfied that it is appropriate in light of the nature of the appeal. We have therefore reached our decision on the basis of written submissions lodged by the parties and a bundle of agreed documents. We were also provided with a closed bundle which contained an email from the Council to the Information Commissioner, redacted to remove the withheld information and other information about those affected by, or concerned about, the police search. We were satisfied that it was appropriate to deal with the information on a closed basis.

The Relevant Law

7. FOIA section 40(2) provides that information is exempt information if it constitutes personal data of a third party the disclosure of which would contravene any of the data protection principles.
8. Personal data is itself defined in section 1 of the Data Protection Act 1998 ("DPA") which provides:

"personal data' means data which relate to a living individual who can be identified-
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller"

The Appellant does not challenge the Information Commissioner's conclusion that the requested information in this case did constitute the personal data of the two individuals concerned.

9. The data protection principles are set out in Part 1 of Schedule 1 to the DPA. The only one having application to the facts of this Appeal is the first data protection principle. It reads:

*“Personal data shall be processed fairly and lawfully, and in particular shall not be processed unless-
(a) at least one of the conditions in Schedule 2 is met ...”*

Schedule 2 then sets out a number of conditions, but only one is relevant to the facts of this case. It is found in paragraph 6(1) and reads:

“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.”

The term “processing” has a wide meaning (DPA section 1(1)) and includes disclosure.

10. A broad concept of protecting, from unfair or unjustified disclosure, the individuals whose personal data has been requested is a thread that runs through the data protection principles, including the determination of what is “necessary” for the purpose of identifying a legitimate interest. In order to qualify as being “necessary” there must be a pressing social need for it - *Corporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).
11. In determining whether or not disclosure of the names would be contrary to the data protection principles we have to consider:
 - i. whether disclosure at the time of the information request would have been necessary for a relevant legitimate purpose; without resulting in
 - ii. an unwarranted interference with the rights and freedoms or legitimate interests of each of the individuals.

And if we are satisfied on those points we have also to consider whether disclosure would have been unfair or unlawful for any other reason. In this respect we have to bear in mind guidance provided in paragraph 1(1) of Part II of Schedule 1 to the DPA, which provides:

“In determining for the purposes of the [first data protection principle] whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.”

12. As to whether there was a legitimate public interest in disclosing the names the Information Commissioner acknowledged in his Decision Notice that the Appellant had alleged that the entry into the property in question had been illegal and that it was appropriate for him to take

into account any allegations of wrongdoing or criminal behaviour insofar as they related to the principles of promoting transparency and accountability in that context. However, he was not satisfied either that there was cogent evidence to support the allegations or, if there was, that the information sought would have any relevance in either supporting or refuting the allegations. The incident of which the Appellant complained could, the Information Commissioner suggested, have been reported to, and investigated by, the relevant authorities whether or not the names of the two Council officers in attendance were made public.

13. In response to those arguments the Appellant has simply reiterated his concern about the circumstances surrounding the entry into the property concerned and his belief that it is not appropriate for the FOIA to be used to enable the names of the individuals to be withheld. He stressed that he was not necessarily making any complaint against the individuals, as opposed to the Council that employed them, and that disclosure might enable them to explain the role they played and demonstrate that no blame should attach to them. However, we noted that in the Grounds of Appeal he stated explicitly that he thought the Council had an "obligation to provide the details of these officers so that they may be approached."
14. The Appellant's case, although expressed in vigorous terms and repeated several times in his written submission, is not supported by any evidence to support the bald assertion that the entry into the property had been illegal. Although, therefore, there is clearly a legitimate public interest in transparency of activity by public authorities, which impinges on the personal freedom of householders, there is insufficient information provided to add significant weight to the general public interest in transparency in public affairs. The Appellant has not satisfied us, either, that his attempts to have the matter investigated are being thwarted by the absence of the names of the individuals in question. If there is sufficient information about the event to interest those responsible for an investigation the absence of names will not deter them.
15. There must be set in the balance against the very light public interest in disclosure which we have identified, the rights, freedoms and legitimate interests of the individuals whose names are sought. Those rights were identified by the Information Commissioner in his Decision Notice. He was satisfied that, in light of the criticism of, and publication of information about, the police search, the publication of the names requested would lead to a degree of publicity which was likely to cause distress and possible harassment of the two individuals. He considered that, although employees of public authorities should be open to a degree of scrutiny and accountability, the two involved in this case were junior members of staff who had limited public facing roles and were less likely than more senior officers of being responsible for the Council's decision making. He considered that they would each

have had reasonable expectations of their privacy being preserved. He concluded that the disclosure of their names in this case would be unfair and would breach the first data protection principle.

16. The Appellant did not convince us that the Information Commissioner was incorrect in either the factors he took into account or his overall conclusion. We think that the Information Commissioner was therefore right to conclude that the information requested was exempt information under FOIA section 40(2) and that the Council had therefore been entitled to refuse to release it.

17. We have therefore concluded that the appeal should be dismissed.

18. Our decision is unanimous.

Signed on the original

Judge Chris Ryan

6 September 2012