



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

Appeal No: EA/2014/0015

BETWEEN

Mr K CHARAN

Appellant

and

INFORMATION COMMISSIONER

Respondent

Before

Brian Kennedy QC

Paul Taylor

Jean Nelson

Representation:

For the Appellant:

K. Charan

For the Respondent:

Robin Hopkins of counsel.

DECISION

The Tribunal refuses the Appeal.

We direct that the requested information should not be disclosed and the Closed Bundle should remain confidential.

Introduction:

[1] The appeal raises a question about the interpretation of personal data within the absolute exemption under Section 40(2) of the Freedom of Information Act 2000 ("FOIA").

[2] The impugned decision under appeal is the Decision Notice ("DN") from the Respondent dated the 10th December 2013: Reference FS 50503387 which sets out clearly the issues engaged, the scope of the case and the detailed analysis and reasons for the Decision reached.

[3] The Background:

On 24 April 2013 the Appellant wrote to the Public Authority, an NHS Trust, requesting information relating to the employment of certain Doctors who worked in the trust, in the following terms:

1. Copies of the following contracts: Associate specialists [6 named individuals]
2. Weekly job plan with number of PA's being paid of the following: Associated Specialists [6 named individuals]
3. Copies of the following contracts [5 named individuals].
4. Transitional financial (anonymised) statements of the following doctors (that is at the time of the change of staff grade to speciality doctor/associate specialists) it can be obtained from pay roll department. [7 named individuals]
5. All (extra) imitative work (Clinic, Endoscopies and Theatres) from 10th November 2011 to 25th April 2013 allocated by the Trust to the following Doctors with date, place and time. All this information is on the computer and can be printed in 5 minutes by waiting list co-ordinators. [11 named individuals].

The reason the trust refused to disclose the above information ("the disputed information") under FOIA is that the disputed information is the personal data of the individuals named in the Appellants request, which in the circumstances would breach the first data protection principle under Schedule 1 of the Data Protection act 1998 ("the DPA")

[4] The Legislative Framework:

The exemption under Section 40 (2) FOIA, relied upon by the Pubic Authority in this case is an absolute exemption. It provides that third party data must not be disclosed if to do so would contravene any of the data protection principles.

[4] The issues:

1. Whether the disputed information is personal data, and

2. Whether disclosure would breach any of the data protection principles.

[5] Personal Data:

The definition of “personal data” is found at section 1(1) of the 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 or any other person in respect of the individual.*

The Tribunal accept the Respondents decision and subsequent submissions before us that the definition of personal data contains both a “relation” condition and an “identification” condition. We further accept in this case the disputed information is obviously about the named individuals, named by the Appellant in his request.

The Appellant has indicated that he will accept the anonymisation of the disputed information. However the Respondent argues that where there is a reasonable likelihood of data subjects being identified from *“prima facie anonymous information, then that information constitutes their personal data”*. The Tribunal accept the rationale in this submission and most particularly so in the facts pertaining to this case. The Respondent argues that the disputed information, even in anonymised form, would be disclosed in response to a particular request framed in a particular way, such that, in this context the data subjects could be identified. In this particular case the context of the specific request (see paragraph [3] above) is, in our view highly likely to lead to the identification of the individuals concerned. Accordingly, in the particular circumstances of the specific form of the request in this case, we accept that the required “reasonable likelihood” threshold has been met and the disputed information in this case is personal data within the meaning of the DPA.

[6] The issue for the Tribunal to decide then is whether disclosure would breach any of the data protection principles.

In the DN the Respondent considered a number of factors in coming to a conclusion that disclosure of the personal data in this case would be unfair and unnecessary in the circumstances of this case. Inter-alia he has considered the Reasonable expectations of the Data Subject, Would disclosure cause damage and distress tot eh data subject, and more generally the legitimate public interest. Accordingly the Respondent argues disclosure of the disputed information would be unfair and condition 6(1) from Schedule 2 DPA would not have been met. In support of his argument the Respondent submitted to this Tribunal the following points:

- (i) The Doctors named in the request were consulted and did not consent to disclosure as it would breach their expectations and intrude upon their privacy. The tribunal acknowledge the import of this factor as set out in the DN.
- (ii) There is no sufficient justification for that intrusion in the circumstances of this case. The Appellants’ arguments for disclosure are private interests rather than public. The Tribunal notes in particular the grounds of appeal drafted by the Appellant as support this contention.
- (iii) To the extent that public interests in transparency apply in this case, there is little by way of evidence to support any “pressing social need” for disclosure of this particular information which is likely to be linked to particular individual Doctors. The Tribunal again accept that in the particular circumstances of this case, the likelihood of the personal data of the individual Doctors being discovered overshadows any general assertion of need for transparency.

- (iv) In summary the Respondent further asserts that even if there is any pressing social need, the information already disclosed in other requests by the Appellant is sufficient to demonstrate adequate transparency as to the Public Authorities compliance with equality and non-discrimination duties. The Tribunal have access to the papers referred to in the open bundle provided for this appeal and accept this submission on the basis of the contents of for example the template contracts and anonymised summaries of initiative work etc.

[7] Conclusions:

The Tribunal refuse the appeal on the grounds that the Appellant has failed to demonstrate that the Respondent was wrong in his DN. For the reasons set out above, the Tribunal find the Respondent was correct in his reasoning in his application of the appropriate exemption under Section 40(2) of FOIA in the circumstances of this case.

Signed:

Brian Kennedy QC

20th June 2014.