Neutral Citation Number:

IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2015/0248**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50634708
Dated: 5 October 2016

Appellant: Marco Renna

Respondent: The Information Commissioner

Heard at: Cheltenham

Date of Hearing: 17 February 2017

Before

Chris Hughes

Judge

and

Michael Hake and **John Randall**

Tribunal Members

Date of Decision: 8 March 2017

Attendances:

For the Appellant: in person

For the Respondent: did not appear

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 5 October 2016 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The appellant in these proceedings claims that the Children and Family Courts Advisory service (CAFCASS) is sexist in its operations in that it favours mothers over fathers in making recommendations about time to be spent by children with each parent. He has sought information from that body to demonstrate his belief. On 4 June 2016 he made his initial request:-

   "…the number of cases in which Cafcass has been involved in the last years (ideally in the last few years but any data will do) and in how many of these cases the Cafcass Officer/Family Court Adviser recommended for the child/children in question to spend more time with their father rather that their mother.

   I also wish to know in how many cases the recommendation was for the child to spend an equal amount of time with their respective parents."

2. CAFCASS replied explaining that the number of cases it received each month in could be found on its website but the details of individual recommendations made in in each case was not extracted from the case files. The time and therefore cost taken to extract that information from the tens of thousands of cases it handled each year would exceed the threshold provided by s12 of the Freedom of Information Act (FOIA) which exempts public bodies from having to comply with requests if the costs of compliance would exceed the specified limit of £450, approximately 18 hours work.

3. The Appellant was dissatisfied and submitted a refined response on 12 June:-
   "1. Starting from 1 January 2005, how many cases have been considered within your stated limit of 450.00/18 hours;

2. In how many cases the Cafcass Family Court Adviser recommended for the child/children in question to (a) spend more time with their father rather than their mother, (b) spend more time with their mother rather than their father, (c) spend an equal amount of time with their respective parents;

3. In how many cases a Shared Residence Order was either considered or already in place, and what was the advice by the Cafcass Family Court Adviser to the Court in relation to the child/children spending time to their respective fathers/mothers as in point 2 above.

4. … clarify how Cafcass compliance to antidiscrimination law, specifically in relation to the sex of the parent and the Cafcass Family Court Advisers recommendations to the court, has so far been monitored."

4. CAFCASS responded re-affirming its position, responded to question 4 by explaining what steps it took to ensure the quality of its work and explaining that it considered the refined request related to the previous request, relying on section 12 with respect to the first three parts of the request and stating that:-

"no specific cases were looked at; this is because the public authority is under no obligation to work up to the appropriate limit if completing a response to a request is likely to exceed the limit."

5. The Appellant was dissatisfied and complained to the Respondent Information Commissioner ("the ICO"). The ICO investigated and in her decision upheld the position of CAFCASS.

6. With respect to the first three parts of the request she accepted the explanations provided by CAFCASS that individual case recommendations are held within each report and not centrally collated. She accepted the estimate that the work in gathering the information would exceed the cost limits. The ICO agreed that CAFCASS was not obliged, under section 12 FOIA, to search for or collate any of the requested information once it had estimated that the cost of complying with parts 1 to 3 of the Request would exceed the appropriate limit. Once section 12 was engaged a public body did not have to take any steps with respect to the information requested.

7. In considering the request for CAFCASS to clarify how it complied with anti-discrimination legislation the ICO noted the detailed explanation given by CAFCASS

of how it set about discharging its responsibilities in this area (decision notice paragraphs 29-44); she noted that CAFCASS had explained that (decision notice 38-40):-

"….it does not discriminate in respect of any personal characteristics of service users, whether parents, relatives or other interested parties.

39. It has explained that in view of the number of such characteristics, and of such other factors as the relationships among the parties and the relationships of the parties with the children, and the children's ages, personalities and stages of development, it is not possible to keep data on case outcomes by reference to any one personal characteristic such as gender.

40. For these reasons, Cafcass has confirmed it therefore does not keep any data by reference to individual characteristics of service users."

8. The ICO, in the light of the explanations concluded on the balance of probabilities that CAFCASS did not hold the gender monitoring information which the Appellant sought.

9. In challenging the decision the Appellant identified an error: the decision notice at paragraph 36 referred to the monitoring of the outcome of court cases, what he was seeking was the recommendations made to the court, not the court's decision. He disputed the reliance on section 12 with respect to parts 1-3 of the request as he felt that the information was "available and easily assembled". He felt that CAFCASS must hold statistical evidence to show compliance with its legal obligations and it was in the public interest to provide such information.

10. In reply the ICO acknowledged the error but stated that it had made no material impact on the decision (referring to other parts of the DN where recommendations were referred to) and confirming that CAFCASS had re-stated the position that the recommendations in all the reports could not be analysed without exceeding the cost limit; this was true with respect to both paper and also electronic versions of reports. She re-affirmed her position that no further information with respect to part 4 was held and the public interest argument was not relevant to the application of s.12.

11. In oral submissions the Appellant discussed the role of CAFCASS and argued that it openly discriminated against fathers and was arrogant towards children. He felt that it was unaccountable. He considered that he should have been given a small sample up

to the costs limit and from that sample it would be possible to see "either they discriminate or they are more or less equal" between mothers and fathers. It was in the public interest to reveal this discrimination. He was convinced that the information was available. He had refused to speak to CAFCASS on the telephone. He felt that information should have been extracted up to the cost limit and that the ICO was sheltering behind regulations. He did not accept the assurances and explanations that CAFCASS had given the ICO about steps it took to ensure the quality of its procedures, the disparity between the number of recommendations in favour of mothers and fathers would demonstrate that CAFCASS had unlawfully discriminated against men.

Consideration

12. The tribunal reminded itself that the question for the tribunal was whether the ICO's decision was correct in law in the light of the surrounding facts. The tribunal noted the error made in the ICO's report and that CAFCASS in its responses to the Appellant and the ICO had been clear that their responses related to recommendations of reports. The error was not of substance.

13. CAFCASS had given the ICO considerable detail about its working practices and in particular the fact that the recommendations in reports were not routinely abstracted from the reports and therefore to identify what the recommendations were would require each individual report (of which there are many thousands each year) to be examined. Section 12(1) FOIA provides that:-

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit"

14. In this case given the scale of its operations it is clear that the original request far exceeded the cost limit. Therefore CAFCASS was under no obligation to start work extracting the information or take any steps with respect to the information request beyond explaining that it was not obliged to comply. The Appellant's suggestion that CAFCASS work up to the limit of 18 hours is ineffective and inappropriate since it required CAFCASS to start work as though it was obliged to provide all the information requested and then stop when some form of taxi-meter reached 18 hours. A proper structured search on that basis is not possible, it would also have required

CAFCASS to re-design and re-formulate the request – it would no longer be the Appellant's request. Given the Appellants approach it was no possible for CAFCASS to do other than confirm on 14 June that the first three parts of the amended request could not be answered under FOIA.

15. With respect to the fourth part of the request, the CAFCASS letter of 14 June provided details of how CAFCASS set about complying with its obligations with quality checking of reports, case audits and feedback. The tribunal was satisfied that CAFCASS had provided the clarification which had been requested.

16. The Appellant has not identified any error of substance and the tribunal is satisfied that the ICO's decision notice is correct in law; accordingly the appeal is dismissed.

17. Our decision is unanimous.

Judge Hughes
[Signed on original]

Date: 8 March 2017