



Neutral citation number: [2024] UKFTT 00833 (GRC)

Case Reference: EA/2023/0467

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights  
IC-243485-F3J3**

**Considered on the papers**

**Heard on: 28 August 2024  
Decision given on: 17 September 2024**

**Before**

**TRIBUNAL JUDGE CHRIS HUGHES  
TRIBUNAL MEMBER NAOMI MATTHEWS  
TRIBUNAL MEMBER JO MURPHY**

**Between**

**THOMAS CARROLL MBE**

Appellant

**and**

**INFORMATION COMMISSIONER**

Respondent(s)

**Decision:** The appeal is Dismissed

## **REASONS**

1. On 10 March 2023 the Appellant made a detailed request of the Home Office concerning the placing of asylum seekers in a hotel in his area. The request was in 8 parts with the 8<sup>th</sup> section of the request further divided into five parts.

The Home Office replied on 5 April with a refusal to provide the requested information:

*For questions 1 - 7, and for question 8 (a - d), we have concluded that the information you are seeking is exempt from disclosure under Section 38(2) of the FOIA. This provides an exemption from the duty to confirm or deny whether information is held if doing so would or would be likely to endanger the physical or mental health or of any individual.*

*Section 38(2) is a qualified exemption and accordingly, arguments for and against disclosure in terms of the public interest test for these exemptions can be found in the Annex A below.*

2. The Appellant was dissatisfied with this response and sought an internal review. The conclusions of the review were sent to him on 11 May and did not change the Home Office position. He complained on 3 July to the Information Commissioner who investigated and published his decision on 16 October.
3. With regard to health and safety the Commissioner set out the relevant provision:

*Section 38(1) of FOIA states:*

*“Information is exempt information if its disclosure under this Act would, or would be likely to –*

- a) endanger the physical or mental health of any individual, or*
- b) endanger the safety of any individual.”*

4. He reviewed a number of previous decisions he had made with respect to similar requests noting the arguments and evidence that the Home Office had put forward:

*In support of its position, the Home Office provided evidence that public speculation about asylum accommodation has led to the targeting of properties by individuals opposed to asylum seekers being housed there. It argued that there is clearly a real, evidenced, risk to the physical and mental health and safety of individuals in these types of accommodation, if their location is publicised.*

*As shown by the wording of the request in this case, the complainant believes that the named hotel is being, or is to be, used to accommodate asylum seekers.*

...

*As the giving of confirmation or denial would effectively reveal whether the hotel specified in the request is being used to house asylum seekers, and in light of the dangers associated with disclosing such information, the Commissioner accepts*

*that the exemption from the duty to confirm or deny provided by section 38(2) of FOIA is engaged.*

5. He concluded that on that basis the Home Office was entitled to rely on s38(2) which provides:

*(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1)*

6. In considering the public interest the Commissioner weighed the impact on local services of housing asylum seekers in an area against the risks to asylum seekers and concluded:

*there is a very clear and significant public interest in avoiding endangerment to the health or safety of any individual. While the Commissioner appreciates the public interest in access to information about the accommodation arrangements for asylum seekers, in his view this is outweighed by the need to protect against unwarranted endangerment to any individual's health and safety.*

7. The final part of the request (8E) read:

*As you are aware there has been much published criticism of the profiteering by individuals and companies in providing PPE during Covid 19.*

*I have read the Companies House details of your contractor Clearsprings Ready Homes Ltd, I have attached a copy of my summary of their turnover/profit after tax/ Employees /Wages & Salaries from 2013 to 2022. Can you confirm if this company has been vetted and if you can explain how & why the Turnover for 2021 was £163,323,359 was [sic] increased to a Turnover for 2022 to £501,822,664 and how & Why the Profit after Tax in 2021 was £4,419,841 and how & why it increased to £28,012,427."*

8. In its 5 April response the Home Office responded

*For question 8(e), I can advise the Home Office does not hold the information on the finances of Clearsprings Ready Homes.*

9. In seeking an internal review the Appellant argued (from his experience as a company director):

*"I am greatly concerned about the increases in turnover and profit (Copy attached) by this company that I assume provides the housing of Asylum Seekers - I would strongly suggest that this needs Urgent investigations by the Home Office".*

10. The internal review did not provide what the Appellant wanted on request 8E

11. The Commissioner was critical of the Home Office failing to properly respond to this part of the request and noted the Home Office response to his questioning:

*"All of our suppliers are vetted at the point of procuring the contracts. Financial standing checks are carried out by our Commercial Financial team with a Financial Standing Schedule implemented into all contracts. Due diligence questions are part of the evaluation and will be tailored to the specific procurement exercise."*

12. In his decision notice the Commissioner, in formulating his conclusions wrote:

*42. The issue for the Commissioner to consider is whether or not the information is held by the Home Office. It is not whether it should be held by the Home Office, or whether it should conduct an investigation about the suitability of a contractor. It is not the Commissioner's role to make a ruling on how a public authority deploys its resources, who it contracts with, or the strength of its reasons for holding some types of information but not others. On this point, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson/ Moj (EA2006/0085)6, that FOIA:*

*"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*

*43. The Home Office has explained to the Commissioner that it does not hold information on the finances of the company. It said: "Clearsprings Ready Homes (CRH) is not part of the Home Office. We cannot comment on why, a supplier has had an increase in turnover/profit. The Home Office is not the only source of income, as CRH have contracts with other bodies. We therefore do not hold this information. There is no business purpose as to why this information should be held by the Home Office, for the reasons explained above. Financial information relating to Clearsprings Ready Homes (CRH) is available in the public domain, e.g. Companies House hold account details relating to CRH."*

*44. The Commissioner considers that this is a cogent explanation for why the Home Office says it does not hold the requested information. He acknowledges that the Home Office might have been provided with certain financial information at the point the company tendered for the contract, but the request asks specifically for an analytical explanation of why there was an increase in its profit and turnover between 2021 and 2022. It would be necessary to hold detailed information about*

*the company's accounts, including all its sources of income, to be able to answer that question (assuming such an analysis was already held in recorded form – FOIA does not require the creation of new information to answer a request).*

13. In his Grounds of Appeal the Appellant stated:

*"I received email from the Information Commissioners Office dated 16.10.2023 Freedom of Information Act 2000 (FOIA) decision notice (copy attached) The only item that I am stating that the Information (decision) does not answer my questions which is contained under Section 1 Information Held item 38 part (e) of request asked to item 44 inclusive and the Commissioners decision item 45 to 47"*

14. He explained that he was appealing because he considered that the Home Office should be held to account for what he saw as the contractor's profiteering which he asserted had been widely discussed in the press and on television. He felt that the government was not taking responsibility and referred to the then Prime Minister's statement that the government would have integrity professionalism and accountability at every level.

15. In resisting the appeal the Information Commissioner noted that the Appellant did not appear to be appealing against the determination with respect to parts 1- 8(d) of the request and was only concerned with 8(e). The Commissioner submitted that the appeal could not succeed as:

*None of the Appellant's submissions in his Notice and Grounds of Appeal seek to explain why the Commissioner was wrong to conclude that the Home Office did not hold the requested information. Instead, the Appellant reiterates his concerns about the profit margins of Clearsprings Ready Homes Ltd and the importance of transparency and accountability. These submissions do not go to the relevant issue as set out in the DN, which is whether the Home Office holds the relevant material on the balance of probabilities.*

16. The Information Commissioner applied to strike out the appeal. In opposing the strike out the Appellant argued:

*I would confirm that my case should not be strike out, I have provided my evidence in my original application and my letter to you dated 6.12.2023 (Copy attached) + I have also attached a copy of my schedule of the Clearsprings Ready Homes Ltd Accounts for 2013 to 2023, which I believe demonstrates profiteering and lack of control from the Home Office as identified by The National Audit Office and the Home Affairs Committee.*

17. In declining to strike out the appeal the Judge directed:

By 5 p.m. on 13 March 2024 or, if later, 21 days after these Case Management Directions are sent to him, Mr Carroll must provide a document, comprising no more than 2 pages, using normal margins and at least 12-point font which states (in bullet point form will suffice):

2.1. What information he says that the Home Office does hold about Clearsprings Ready Homes Limited.

18. The judge explained:

2. The ICO applied for the appeal to be struck out. It seems to me that, whilst Mr Carroll has not addressed the key issue, it is more likely that this is because he has not focussed on the right issue rather than being unable to do so. It is, therefore, only fair that he is given an opportunity to make representations, including at a Hearing, at which he may perhaps be able to properly explain why he says that the Home Office holds some information which that body says it does not.

3. I have limited the appeal to being about whether the Home Office does, or does not, hold information about Clearsprings Ready Homes Limited's financial accounts. The Grounds of Appeal do not challenge the finding that the Home Office was entitled to NCND whether it held other information sought by Mr Carroll. It appears to me to be unfair to allow him to bring that to the table at this late stage.

19. In response to this direction the Appellant filed, on 15 February, his statement of what he considers the Home Office holds. He quoted Government guidance "Assessing and monitoring the economic and financial standing of suppliers" (Updated 18.1.2024) which *"is about understanding the financial capacity of suppliers to perform a contract in order to safeguard the delivery of public service"* and enjoins departments to *"Assess the EFS of bidders during a procurement & Monitor the ongoing EFS of suppliers during the life of a contract"*. He argued that *"the Home Office Should / Must be complying with these"*

20. He also quoted NAO correspondence and Parliamentary Committee criticisms of the tendering process failure to produce competition for the provision of accommodation to asylum seekers. NAO letter December 2023:

*"Our work has however explored the extent to which government departments use competitive processes in procurements. We produced a report on this in July 2023, which concluded that departments are not always following central guidance to achieve the benefits of competition. In this instance, while there was an attempt to generate competition when the contracts were awarded in 2019, as you can see*

*from the 2020 report this was not effective as the Home Office had hoped. Since we reported, there have been several changes to the way that the Home Office procures asylum accommodation, and we expect to provide further transparency on this as part of our forthcoming investigation on asylum accommodation”.*

21. In his conclusion he stated:

*It is clearly apparent that the Home Office have not complied to good Procurement Procedures & Practice. They are not achieving Value for Money. In the letter to me from the National Audit Office dated 13.11.2023 from the Director, Home Office Value for Money, confirmed the full details of the Clearsprings accounts that are published at Companies House covering year ending 31.1.2023 (So the Home Office do have this information).*

22. A consideration of these submissions does not take the Appellant further forward. With respect to the Government guidance on assessing suppliers he concluded “The Home Office **should/must** be complying”. However in his conclusion he stated “it is clearly apparent that the Home Office have not complied with good Procurement Procedure and Practice.” In essence he has asserted that there are rules, but the Home Office has not followed them. He has not described the detail of such rules or whether they would mean that the Home Office held the information he requested. What the Appellant requested in the 8(e) request was, to know whether the company had been vetted (he was told it had been) and **why** the turnover and profit increased so markedly between 2021 and 2022 (he was told that the Home Office did not hold the information). His conclusion to his submissions (set out at 21 above) – “accounts that are published at Companies House covering year ending 31.1.2023 (so the Home Office do have this information)” however that information is the company accounts not the analysis of rising turnover and profits which the Appellant asked for.

23. The Appellant’s submissions/evidence filed in response to the judge’s order add nothing of substance.

24. The role of this tribunal under section 58 of FOIA is:

“(1) If on 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 tribunal has reviewed the findings of fact and the points raised by the Appellant do nothing to suggest that the Information Commissioner erred in finding that the information was not held. There was no exercise of discretion by the Information Commissioner and the Appellant has done nothing to demonstrate that the Information Commissioner made decision which was not in accordance with law.

26. This appeal is entirely without merit and is dismissed.

Signed Hughes

Date: 16 September 2024