



Case Reference: EA/2024/0021V
Neutral Citation Number: [2024] UKFTT 980 (GRC)

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

Decision given on: 31 October 2024

Before

**JUDGE A. MARKS CBE
MEMBER S. COSGRAVE
MEMBER P. TAYLOR**

Between

DAVID WALFORD

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN**

Respondents

Representation:

For the Appellant: the Appellant represented himself

For the First Respondent: neither appeared nor was represented

For the Second Respondent: Jack Holborn, Counsel

Decision: The appeal is **dismissed**.

REASONS

Introduction

1. This appeal concerns a request to the Parliamentary and Health Service Ombudsman ('PHSO') made by the appellant ('Mr Walford') under the Data Protection Act 2018 ('DPA') to which PHSO initially responded in accordance with DPA but following an internal review, responded under the Freedom of Information Act 2000 ('FOIA').

Background

2. In 2018, while working as a volunteer at Milton Keynes University Hospital, Mr Walford received a parking penalty notice from the hospital's car-parking contractors. Having become concerned about the contractors' dishonest behaviour during the parking appeals process (for example altering copy documents), in 2019 Mr Walford brought civil proceedings against the contractors in the county court.
3. The court found that the contractors had deliberately submitted misleading and inaccurate documentation, the penalty notice had been imposed incorrectly, and awarded Mr Walford damages and costs. However, the hospital (hereafter referred to as the Trust) refused to uphold his complaint against the contractors.
4. Having exhausted the Trust's complaints procedure, Mr Walford contacted the PHSO in 2019.
5. A final reconsideration by PHSO in 2023 stated that:
 - (a) the Trust is responsible for its contractors.
 - (b) Mr Walford's concerns about the Trust's failure to investigate complaints about their car-parking contractors over many years would require examination of the Trust's specific contract with the contractors to determine the extent of the Trust's responsibility to oversee what the contractors did at the time.
 - (c) Under the Health Service Commissioners Act 1993 (the 1993 Act), PHSO cannot look at contractual matters and could therefore look no further into the matter.
 - (d) PHSO's primary role is to consider and give its views on complaints from individuals.
 - (e) PHSO's work on wider issues, and multiple complaints as part of a systemic investigation, would need a significant number of individual complaints about the same issue – and those were not present in this case.

Request for information, internal review and response

6. On 4 August 2023, Mr Walford emailed PHSO. For the purposes of this appeal, the

relevant part of the email reads as follows:

Please could you disclose copies of all legal advice and discussions received or generated by the PHSO in respect of the Health Service Commissioners Act 1993 in relation to this case...

...in order that I can address in detail the legal advice which [the PHSO caseworker] has received...I am deeply concerned that this could be the second occasion on which incorrect legal advice has misled a Caseworker.

I look forward to receiving this information as soon as possible, or should it be strictly necessary to consider this a subject access request, within one month.

7. On 29 August 2023, PHSO responded, stating that it had handled the request as a subject access request. It said that the information was not being disclosed due to legal professional privilege ('LPP') by virtue of Schedule 2, paragraph 19(b) of DPA.
8. The same day, Mr Walford requested an internal review of PHSO's decision, stating that under Schedule 2 DPA and section 42 FOIA, LPP does not apply where the public interest in disclosing the information outweighs the public interest in maintaining the exemption.
9. On 22 September 2023, PHSO informed Mr Walford that its internal review upheld its original decision to process the request under DPA but also confirmed that the information would be exempt as LPP under section 42 FOIA.
10. On 4 October 2023, Mr Walford complained to the Commissioner about PHSO's handling of his request.
11. By email dated 21 December 2023, PHSO informed the Commissioner that 'our refusal [to disclose information] under FOIA we believe to be correct because the information is the personal data of the applicant and therefore exempt under section 40(1) FOIA...'

The Decision Notice

12. On 21 December 2023, the Commissioner issued his Decision Notice which in summary concluded that:
 - (a) the exemption in section 40(1) FOIA (personal data) was engaged; and
 - (b) because that exemption is absolute under section 2(2) FOIA, no public interest test applied.
13. The Commissioner also observed that 'when a requester is requesting their own personal data, the request should always be handled as a subject access request'. Even if the requester presses to have the matter considered under FOIA, the Commissioner opined that the information will always be exempt under section 40(1) FOIA so no other exemption needs to be considered.

14. The Commissioner concluded that PHSO was not obliged to disclose the requested information.

Appeal to the Tribunal

15. On 14 January 2024, Mr Walford sent a Notice of Appeal to the Tribunal challenging the Commissioner's decision notice.

16. The basis of the appeal was that:

- (a) PHSO's conclusion suggests its legal advice was to the effect that under the 1993 Act, any case involving a private contractor working for the NHS is outside its remit. If so, it would be perverse not to apply this novel legal discovery to other similar complaints which PHSO may receive in future.
- (b) For LPP to apply, the legal professional must be registered with an appropriate institute yet here demonstrably incorrect legal advice has been given.
- (c) Also for LPP to apply, the communications must be made for the sole or dominant purpose of obtaining legal advice. ICO failed to investigate the reasonable possibility that PHSO's primary intention was to seek another pretext for rejecting his complaint.
- (d) Finally, for LPP to apply, the client requesting the advice must have express or implicit authorisation to seek and obtain it. PHSO's complaint handling process only permits the caseworker to consider this matter during step one, but it was raised in this case during stage three, long after such issues should have been considered.

17. In summary, Mr Walford argued that:

- (a) The legal advice which has been withheld does not attract LPP.
- (b) Even if it does attract LPP, the legal advice is incorrect and should therefore be disclosed.
- (c) There is a significant public interest in the withheld information.
- (d) If the withheld information constitutes his own personal data, he has the right for that data to be corrected.
- (e) Part of his request relates to 'discussions' within PHSO about his case. He considers this includes processes by which such legal advice is obtained. The Commissioner's decision notice failed to address the non-disclosure of this material which he does not consider would qualify as legally privileged.

Commissioner's response to the appeal

18. The Commissioner's response to the appeal dated 12 February 2024 in summary stated that:

- (a) Having carefully reviewed the withheld information, the Commissioner was now also satisfied that it was confidential communication between client and lawyer for the dominant purpose of seeking and giving of legal advice and therefore fell within the definition of LPP under s. 42 FOIA.
- (b) Not all the withheld information comprised Mr Walford's personal data so to that extent the decision notice was incorrect and should also have cited s. 42 FOIA.
- (c) Mr Walford's rights under DPA do not fall within the Tribunal's jurisdiction in relation to this appeal against the Commissioner's decision notice served under s.50 FOIA.
- (d) None of the matters put forward by Mr Walford are sufficient to outweigh the compelling inbuilt public interest in maintaining LPP in relation to the legal advice on which PHSO now also relies.
- (e) Having viewed the withheld information, none of the issues raised would add weight to the public interest in accountability, transparency and furthering public debate which Mr Walford claims have been lacking on PHSO's part.

PHSO's response to the appeal

19. PHSO's response to the appeal dated 17 June 2024 in summary stated that:

- (a) The legal advice was drafted by qualified lawyers (internally and externally) for the purpose of advising the PHSO as to its legal powers. It was therefore plainly for the dominant purpose of legal advice.
- (b) While it is accepted that, in the context of FOIA, LPP **could** be overcome in a specific case, the bar is extremely high.
- (c) This is not an example of 'the rarest case' where LPP should be waived in favour of public disclosure because the advice concerns one individual complaint as to PHSO's processes.
- (d) Even if, as Mr Walford says, PHSO received erroneous advice:
 - i. Mr Walford's particular complaint – about the wrongful issuing of a car parking penalty in a hospital car park – has been resolved.

- ii. The underlying complaint to PHSO involves low level alleged mal-administration of parking enforcement.
- iii. Mr Walford had access to, and pursued, an alternative remedy (at the county court, where he received damages and costs) against the car park operators whom he accused of dishonesty.
- iv. There is no basis for any allegation of bad faith against PHSO.
- v. Mr Walford's specific case has no bearing on cases more widely.
- vi. If PHSO was pursuing some general unlawful policy, Mr Walford could have brought judicial review proceedings (though PHSO's position is that such a claim would be hopeless).

Mr Walford's responses to the ICO and PHSO responses and his summary of issues

- 20. The panel had read, and took account of, Mr Walford's 55-paragraph response (with 17 attached documents) dated 25 February 2024 to the ICO and PHSO responses to his appeal.
- 21. Likewise the panel had read and considered Mr Walford's response (comprising 45 paragraphs and 16 attached documents) to PHSO's Counsel's written submissions in June 2024.
- 22. The panel also took note of Mr Walford's one page summary of issues dated 28 June 2024 prepared for the purposes of the hearing.

The Law

Section 1(1) FOIA: general right of access to information held by public authorities

Any person making a request 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 this is the case, to have that information communicated to him...

Section 2 FOIA: Effect of the exemptions in Part II

...

(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a)...

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(3) For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

...

(f) section 40(1)...

Section 40 FOIA: Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) ...

Section 42 FOIA: Legal professional privilege

(1) Information in respect of which a claim to legal professional privilege...could be maintained in legal proceedings is exempt information.

(2) ...

The role of the Tribunal

23. The powers of the Tribunal in determining appeals against the Commissioner's decision notices are governed by section 58 FOIA. This requires the Tribunal to consider whether the decision notice is in accordance with the law or, to the extent the decision involved an exercise of discretion by the Commissioner, whether he ought to have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Evidence

24. Before the hearing, the parties had submitted written evidence. This comprised an Open Bundle of 395 pages (including an Index). The panel also had access to a Closed Bundle to which were added further papers at the start of the hearing. Together the Closed Bundle comprised the legal advice PHSO had received in September 2021 ('the 2021 advice'); and further advice received by PHSO during April – August 2023 ('the 2023 advice'); and associated emails.

Submissions

25. Mr Walford made oral submissions at the hearing of his appeal via HMCTS's Cloud Video Platform.

26. The Commissioner did not attend nor was he represented.

27. PHSO was represented by Counsel who also made oral submissions at the hearing.

Mr Walford's oral submissions

28. At the hearing, Mr Walford made the following additional points:

- (a) PHSO's legal advice appears to be that NHS Trusts have no accountability for their contractors.
- (b) It would be possible for PHSO to waive legal privilege and disclose voluntarily the legal advice it has received: PHSO has not responded to Mr Walford's request to do so.
- (c) Mr Walford does not agree with the Commissioner's decision notice but it explains the legal position in detail.
- (d) PHSO, on the other hand, has not explained its legal position: the legal advice it first obtained (the 2021 advice) was incorrect – so how does PHSO ensure its legal advice is correct?
- (e) As the 2021 advice was incorrect, Mr Walford is interested only in disclosure of the 2023 advice.
- (f) PHSO has not engaged with the facts of the case yet the county court judgment which Mr Walford obtained against the car parking contractors showed they were dishonest: the NHS Trust should do something about this.
- (g) PHSO missed the point when saying that Mr Walford had received a remedy from the county court. Many other people have been defrauded by the parking contractors and neither PHSO nor the Trust nor DVLA have held them to account.
- (h) There appears to be a systemic issue with NHS Trust contractors which neither the NHS Trust nor PHSO has engaged with.
- (i) Mr Walford does not accept that all the withheld information is 'personal data': indeed the Commissioner seems to have conceded this by relying now also on section 42 FOIA (legal professional privilege).
- (j) Mr Walford believes that the legal advice PHSO obtained must be applicable to anyone who parks at the hospital as he did. That advice is therefore of public interest because it could be used in other cases apart from his.
- (k) Contrary to PHSO's submissions, on its facts this is an 'exceptional case' which justifies disclosure of the legal advice. There is legal authority to this effect in *Cabinet Office v. the Commissioner and Gavin Aitchison (GIA 4281/2012)*.
- (l) The PHSO's handling of his complaint was on a false premise because PHSO did not think the parking contractors were dishonest (which the county court found they clearly were) nor that the NHS Trust was responsible for its contractors.

- (m) There is maladministration of the NHS as a whole if NHS Trusts are able to appoint rogue contractors and do not even monitor such contractors' actions.
- (n) PHSO has said that it cannot look at contractual matters and therefore cannot investigate.
- (o) While accepting that judicial review against PHSO is a theoretical route, in practice it is not a realistic option to risk the costs of such proceedings over – at its most basic level – a £70 parking penalty.

PHSO's oral submissions

29. At the hearing, Counsel for PHSO made the following additional points:

- (a) PHSO's submissions had previously focussed on the 2021 advice but PHSO had since provided to the Tribunal (on a confidential 'closed' basis) the 2023 advice. The same exemptions (s.40(1) and s.42) were relied on for withholding this information.
- (b) PHSO's position is that the withheld information either comprises personal data which is absolutely exempt from disclosure under s. 40(1) FOIA, or as legal professionally privileged information is exempt under s.42 FOIA, where the overwhelming public interest favours maintaining the exemption.
- (c) In his oral submissions, Mr Walford effectively conceded that the Commissioner had not made any error of law in the decision notice: at least, he had not identified any such errors. There is therefore no basis on which to run the appeal.
- (d) While Mr Walford apparently disputes PHSO's 'narrative', he has not identified specific factual errors. In any event, in order to make a decision on this appeal, the Tribunal does not need to engage in factual detail going back several years – merely the broad background.
- (e) In response to Mr Walford's specific points:
 - i. It is accepted that NHS Trusts **do** have accountability for the private contractors they engage – and also hold those contractors to account – but those issues do not fall within the statutory remit of PHSO for investigation.
 - ii. If Mr Walford believes that PHSO took the wrong approach to dealing with his complaint, the alternative remedy is to seek judicial review.
 - iii. There is no obligation on PHSO voluntarily to disclose legal advice it had received.

- iv. All the withheld material is either correspondence/instructions from PHSO caseworkers to qualified lawyers seeking legal advice, or correspondence/advice from such lawyers in response.
- v. This case is nowhere near the 'exceptional category' where disclosure of LPP would be justified.
- vi. There are good public policy reasons for protecting clients' ability to obtain legal advice on a confidential basis, which explains why it is difficult to identify any cases where disclosure of information covered by LPP has been ordered.
- vii. An alternative remedy for maladministration of a car parking complaint at an NHS hospital was available to Mr Walford through the county court and was pursued by him against the car-parking contractors, resulting in an order for damages and costs in his favour.
- viii. While Mr Walford may have a point about the way in which NHS Trusts deal with contractors, the legal advice sought and obtained has no bearing on that issue.
- ix. The *Gavin Aitchison* case is not authority for overriding LPP by ordering disclosure of legal advice.

Discussion

Possible unfairness of information being withheld from Mr Walford

- 30. The panel first considered the possible unfairness of the proceedings caused by the withholding of certain information from Mr Walford.
- 31. Mr Walford had not been provided with the information he had requested. The Tribunal permitted the information to be withheld from both Mr Walford and the public pursuant to GRC Rule 14.
- 32. For the purposes of the hearing, the panel was provided with a Closed Bundle containing the withheld information.
- 33. The panel took account of the Tribunal's Practice Note on Closed Material. This explains that, where disclosure of the disputed information would defeat the object of the exercise, the law permits the Tribunal to deviate from the normal rule about all material seen by the Tribunal being available to all parties. However, such deviation is permissible only so far as is necessary to ensure that the purpose of the proceedings is not defeated.
- 34. The panel accepts that there was inevitably **some** prejudice in material being withheld from a party requesting it, but considered that this prejudice was mitigated by:

- (a) the Tribunal's expertise, and exercise of an investigatory rather than adversarial function;
- (b) the Commissioner being an independent, expert regulator who does not take sides. On the contrary, the Commissioner's role is to point out the strengths and weaknesses of both parties' cases in assessing the correct application of the law and regulations;
- (c) informing parties excluded from 'closed' information as much as possible with maximum possible candour in the written reasoned decision; and
- (d) in this case, the panel provides a brief 'gist' of the withheld information namely that both the 2021 advice and the 2023 advice comprise legal advice to PHSO's caseworkers' questions about the extent of PHSO's jurisdiction in dealing with Mr Walford's complaints.

35. Having considered all these matters and having carefully read the withheld information, the panel was satisfied that withholding the requested information was and remained necessary to ensure the purpose of the proceedings was not defeated. Moreover, the prejudice to Mr Walford's position – mitigated as described above – was justified in the interests of justice overall.

The facts

36. The panel went on to consider the relevant facts of this case. Based on all the evidence the panel had seen and heard, the panel made the following findings of fact on the balance of probabilities:
- (a) Apart from the information request in dispute, Mr Walford has been provided with some information by the NHS Trust such as the number of car-parking complaints received and a copy of its contract with the car-parking contractors.
 - (b) PHSO took legal advice before issuing its responses to Mr Walford's complaints in September 2021 (case ref.C-2030042) and August 2023 (case ref. C-2063221).
 - (c) The 2023 advice was not provided to the Tribunal until the panel requested it on the morning of the appeal hearing. The panel therefore surmised that the Commissioner's decision notice was based on the 2021 advice (and associated emails) alone.
 - (d) To the extent there had been any 'discussions' within the scope of Mr Walford's requests, these were included in the Closed Bundle provided to the Tribunal.

The Tribunal's task in this case

37. An appellant's motive in requesting information from a public authority is not relevant to the Tribunal's decision. But in this case, the panel wishes to record its view that Mr Walford's information request, and this appeal, is motivated by genuine concern for the public interest rather than his personal or private interests. In particular, the panel notes Mr Walford's belief not only that many other car-park users wrongly received

(but did not necessarily challenge) penalty charges from the Trust's contractors but also that the Trust's appointment processes and performance-monitoring of those (and possibly other) contractors are seriously inadequate.

38. As the Commissioner issued a decision notice under FOIA, this Tribunal's remit is limited by statute to consideration of that decision notice. This is clearly somewhat removed from Mr Walford's principal concerns, and over those we have no jurisdiction.
39. The Tribunal's sole task is to establish whether the Commissioner's decision notice was wrong – either because the Commissioner made an error of law, or because he ought to have exercised his discretion differently when balancing the public interest.
40. Taking these issues in reverse order, the decision notice did not mention any balancing of the public interest because the only exemption which the Commissioner considered engaged was s.40(1) FOIA (personal data), an absolute exemption which did not involve any balancing of the public interest.
41. Consequently, the only question for the panel is whether the Commissioner made any error of law in his decision notice.

Was there an error of law in the Commissioner's Decision Notice?

42. Having made the findings of fact set out in paragraph 36 above, the first issue for the panel was whether the exemption in s.40(1) (personal information) is indeed engaged as the Commissioner found in his decision notice.

Does the exemption in s.40(1) (Personal information) apply in this case?

43. Personal data of which the applicant is the data subject is absolutely exempt from disclosure under FOIA due to s.40(1) FOIA.
44. According to section 3(2) DPA, personal data is “any information relating to an identified or identifiable living individual” which is about them, linked to them, is used to inform decisions affecting them or has them as its main focus.
45. Having carefully considered both the 2021 advice and the 2023 advice, the panel is satisfied that both contain personal data. Our reasoning is:

The 2021 advice

- (a) PHSO's decision under case reference C-2030042 stated it could not consider Mr Walford's complaint any further given that the county court had by then awarded Mr Walford damages and costs against the contractors.
- (b) The 2021 advice which preceded that decision mentioned Mr Walford by name in the great majority of its paragraphs. Most of the remaining few paragraphs set out the relevant provisions of the statutory framework. In any event, the

panel understands that Mr Walford no longer seeks the 2021 advice: he considers it to be incorrect because PHSO subsequently reconsidered his complaint.

The 2023 advice

- (c) PHSO sought further legal advice under its case reference C-2063221 when reconsidering its earlier decisions in view of Mr Walford's responses.
- (d) Having received the 2023 advice, PHSO wrote to Mr Walford on 3 August 2023 accepting that both the Trust and its contractors fell within its remit and that the Trust was responsible for its contractors.
- (e) PHSO's letter went on to set out Mr Walford's other concerns – that the Trust had covered up information about the number of complaints it had received about its car-parking contractors; that the Trust was dishonest in the information it had provided about how it had dealt with those contractors; and that the contractors themselves had been found dishonest by the county court.
- (f) To investigate these matters, PHSO said that the contract between the Trust and its contractors would have to be examined. This would be necessary to establish the extent of the Trust's responsibility in overseeing what the contractors did during the time complained about. However, the 1993 Act explicitly excludes contractual matters from PHSO's remit, and therefore PHSO would be unable to pursue Mr Walford's complaint further.
- (g) The panel considers that the main focus of PHSO's letter (and the legal advice which preceded it) is Mr Walford's specific complaints and thus the information requested is largely personal data.

46. The panel is therefore satisfied that the decision notice was not wrong in law in citing the absolute exemption in s.40(1) when concluding that PHSO was not required to disclose the withheld information.

47. However, in the light of the Commissioner's concession that s.42 (legal professional privilege) also applies, and in view of additional closed material (the 2023 advice) provided on the morning of the hearing, the panel went on to consider whether the exemption in s.42 is also engaged.

Does the exemption in s.42 (legal professional privilege) apply in this case?

48. The panel agrees with the Commissioner's submission that, in this case, to the extent the withheld information is not personal data it is covered by LPP. That is because the information comprises confidential communications between a client and professional legal advisor acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.

49. Having seen for itself the withheld information, the panel does not accept Mr Walford's arguments that the legal advisors were not qualified; that the advice was not made for the dominant purpose of obtaining legal advice; that the advice was that the contractors did not fall within PHSO's remit; and that the Trust was not responsible for its contractors. The latter two points were expressly addressed in PHSO's letter to Mr Walford of 3 August 2023 which stated '...the Trust, as an organisation, are within our remit to investigate and so are any contractors it uses or has used...' and 'we agree with you that the Trust is responsible for its contractors.'
50. The panel is satisfied not only that the legal advice requested falls within the scope of LPP covered by s.42 FOIA but also that its disclosure would breach the fundamental principle of LPP not merely in this particular case but with implications going far beyond it.
51. Having found s. 42 FOIA engaged in this case, the panel went on to consider the competing public interests in disclosing the information and maintaining the exemption.

Balancing the public interest

52. The panel considers that relevant public interest factors are in summary:

In favour of disclosure:

- (a) Openness, transparency and accountability around public decision-making.
- (b) Enabling the public better to understand decisions PHSO took in relation to the complaints brought by Mr Walford.
- (c) Enhancing public understanding of the extent, and limitations, of PHSO's statutory remit.

In favour of maintaining the exemption:

- (d) LPP is a long-standing and fundamental principle of justice. LPP safeguards the right of clients to obtain legal advice in confidence so they can take informed decisions on their legal rights.
 - (e) At least equally strong countervailing considerations are required to override the inherent public interest in clients being able to consult with their lawyers without fear of intrusion.
 - (f) Strong countervailing factors include, for example, involvement of a substantial amount of public money or a decision affecting a substantial number of people, or evidence of misrepresentation, unlawful activity or significant lack of appropriate transparency.
53. In weighing these competing public interests, the panel acknowledges evidence of misrepresentation and unlawful activity on the part of the car-parking contractors; the

likely number of people affected; and an apparent lack of transparency on the part of the Trust (though the panel was not provided with evidence of the Trust's handling of Mr Walford's complaints). However, none of these factors has any bearing on PHSO and its good faith or transparency – and it is PHSO rather than any other public body which is the relevant organisation in this appeal.

54. We also took account of the parties' arguments, the timing of the request and the nature of the withheld information. Further, we had the benefit of hearing oral submissions from Mr Walford and by Counsel on behalf of PHSO.
55. We do not accept Mr Walford's submission that the *Gavin Aitchison* case is an example of an 'exceptional case' where LPP is outweighed by a very strong public interest in disclosure. Though LPP is mentioned in that judgment, by contrast with this case that case was about disclosure of historical Cabinet papers and the exemptions in s.35 FOIA (Formulation of government policy). It therefore has no bearing on the facts or law in this case.
56. We particularly bear in mind Mr Walford's wider concerns about contractors for NHS Trusts being inadequately scrutinised before appointment, and insufficiently monitored thereafter.
57. Having carefully considered the legal advice sought to be disclosed, we do not consider that its disclosure would shed any light on Mr Walford's outstanding concerns, nor are there any other strong countervailing factors of the kind referred to in para. 52(f) above. We note that Mr Walford accepts that disclosure of the withheld legal advice would be 'merely one more step' towards his stated objectives of holding the Trust to account and obtaining restitution for other car-park users. Having seen the advice in question, the panel does not consider that its disclosure would further Mr Walford's objectives.
58. In summary, Mr Walford has not satisfied us that the very strong public interest in protecting the established convention of LPP and therefore in favour of withholding the information is outweighed by the public interest in disclosure.

Conclusions

59. For the above reasons, we conclude that:
 - (a) The Commissioner made no error of law in concluding that the withheld information contains personal data which is absolutely exempt from disclosure under s.40(1) FOIA.
 - (b) The Commissioner was correct to concede during these proceedings that, to the extent that the withheld information does not comprise personal data, the qualified exemption in s.42 FOIA is engaged. Having carried out the public interest balancing exercise for ourselves, we are satisfied that the public interest

in disclosure does not outweigh the substantial public interest in maintaining the exemption and thereby protecting legal professional privilege.

- (c) Overall, therefore, while the decision notice was wrong in law in failing to consider s.42 FOIA or apply the public interest test thereto, in practice the outcome would be no different since the requested information was withheld.

60. This appeal is dismissed.

Signed:

Date: 22 October 2024



Alexandra Marks CBE
(sitting as a First-tier Tribunal Judge)

Promulgated:

Date: 31 October 2024