



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

Appeal No: EA/2011/0150

BETWEEN:

WILLIAM CARLIN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

DVLA (an executive agency for the Department for Transport)

Second Respondent

RULING ON STRIKING OUT

1. On 27 September 2011 after considering the Grounds of Appeal, the Commissioner's Response, the Decision Notice and other documents submitted by the parties I issued a preliminary ruling that I was minded to strike Mr Carlin's Appeal out in accordance with rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (the 2009 Rules) on the basis that it had no reasonable prospect of succeeding.
2. In accordance with rule 8(4) of the 2009 Rules Mr. Carlin was given until 14th October to submit representations to the Tribunal as to why his appeal should not be struck out.
3. Mr Carlin has now submitted those representations.
4. The background to this matter is that Mr. Carlin seeks disclosure from the DVLA of the date on which a local councilor, Ms. Cameron, passed her driving test. He does so because he believes that Ms. Cameron has claimed for driving expenses in her role as a councilor whilst not being qualified to drive.
5. The reasons for reaching the preliminary decision to strike out are set out in paragraphs 6-9 below:
6. There appears to be a fundamental misunderstanding on Mr Carlin's part as to what constitutes 'personal data'. Mr Carlin is referred to the definition in s.1 of the Data Protection Act which is fully and correctly stated at paragraph 9 of the Commissioner's Response to the appeal. It is simply not possible for the DVLA to disclose the date of Ms Cameron's driving test without it being

personal data. Mr Carlin appears to believe that if the date alone was disclosed absent of any other information that this would not be personal data but this is incorrect.

7. The Commissioner has correctly pointed out that personal data is, effectively, disclosable under the FOIA 2000 providing disclosure is fair and lawful and one of the conditions in Schedule 2 Data Protection Act is met. The only pertinent condition in this case is set out in paragraph 6 of Schedule 2 namely:

The [disclosure] 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 the the rights and freedoms or legitimate interests of the data subject.

8. There is therefore a balancing exercise between the legitimate interests of Mr Carlin and the rights and freedoms or legitimate interests of Ms Cameron.

9. What Mr Carlin has failed to do in this matter is to provide any objective evidence at all that he has a 'legitimate interest' in the sought data. His request appears to be based on unsubstantiated speculation only and that cannot be the basis for a 'legitimate interest'. The paragraph 6 condition is clearly not a licence to go on a 'fishing expedition' for information.

10. Although Mr Carlin has been given ample opportunity to address in particular the point set out at paragraphs 7-9 above he has not done so. He has still not provided any objective evidence at all that he has a 'legitimate interest' in the sought data. He asserts that 2 witnesses have told him that Ms Cameron has engaged in wrongdoing but cannot or will not provide any details. He has provided to the Tribunal complaints he has made to the police and Audit Scotland but the correspondence from these bodies consists of mere acknowledgements and not any sort of objective evidence that there is merit in Mr Carlin's assertions.

11. I consequently conclude that Mr Carlin's appeal should be struck out.

Signed:

Angus Hamilton DJ (MC)

Tribunal Judge

Dated: 1st November 2011