



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF
INFORMATION ACT 2000**

Appeal No. EA/2011/0205

BETWEEN:-

COLIN PARKER

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

RULING

1. Mr Parker was appointed to the Leeds East Research Ethics Committee in December 2004 but in July 2009 he was told that his five year appointment would not be renewed. This was a decision which he regarded as unfair and he complained to the NHS Yorkshire and Humber Strategic Health Authority, the body which had responsibility for establishing, and for approving (but not making) appointments to, the research ethics committee. The health authority held a meeting with Mr Parker on 24 March 2010 and carried out a review of the actions of the research ethics committee, concluding that the committee acted reasonably in not recommending Mr Parker's re-appointment to the committee.
2. On 14 April 2010 Mr Parker requested the following relevant information from the health authority under the Freedom of Information Act 2000:

- (1) ... what action has the [health authority] taken regarding the [National Research Ethics Service] decision not to recommend the continuation of my membership of [the research ethics committee]?
 - (2) ...
 - (3) What documents were used and what was the role played by the [health authority] in collaboration with the [National Research Ethics Service] in this matter to terminate my membership?
 - (4) ...
 - (5) On your current “rotation system for membership [of research ethics committees]” ...
 - (6) ... what information is the [health authority] using to demonstrate that [National Research Ethics Service] acted reasonably in reaching its decision?
3. The health authority responded to the request in letters dated 4 May 2010 and 1 July 2010 which were provided to the Tribunal as part of Mr Parker’s notice of appeal. Mr Parker considered the health authority’s response inadequate and complained to the Information Commissioner. The Commissioner issued a decision notice dated 23 August 2011 in which he found that information coming under requests (1) and (3) comprised Mr Parker’s personal data and was therefore exempt under section 40(1) of the 2000 Act and that, in any event, all information under requests (1), (3), (5) and (6) had been supplied to Mr Parker.
4. Mr Parker has appealed against that decision notice. The Commissioner in his Reply maintains (at paragraph 81) that the appeal has no realistic prospect of success and applies for it to be struck out under rule 8(3)(c) of the Tribunal’s rules of procedure. I held a telephone hearing on 31 October 2011 to consider this application and heard oral submissions from Mr Parker in person, Mr Sowerbutts for the Commissioner and Ms Dally for the health authority.
5. Since on the papers I had difficulty seeing what further information Mr Parker could possibly expect in answer to his requests, I concentrated on this aspect of the decision notice rather than the section 40(1) exemption and I asked Mr Parker to explain and expand on what information it was that he said the health authority held but had not supplied to him. Although he sought to

address my questions courteously and articulately I am afraid he did not persuade me that there was any basis for challenging the health authority's assertion that they had provided all the information they held.

6. When I asked him about the various categories of information he was seeking in his request he returned time after time to the question of the "rotation system for membership of research ethics committees" which the health authority is required (by the Governance Arrangements for NHS Research Ethics Committees) to ensure is in place to allow for continuity, development, maintenance of expertise and input of fresh ideas to a committee. He asserted that there must be further documents in existence in relation to such a system and in particular a "rotation list" of members and said in effect that the failure to supply these indicated that the health authority were not complying with their obligations under the 2000 Act generally. In fact request (5) does not seek any documents as such and it seemed to me that the answers in the letters of 4 May 2010 and 1 July 2010 were a perfectly adequate description of the "system" which the health authority say they had in place (regardless of its merits, which of course are not a matter for this Tribunal). But in any event, given the health authority's denial and explanations given in their letters and orally by Ms Dally, I see no prospect of Mr Parker establishing that there are undisclosed documents relating to the rotation system or, in particular, that there is a "rotation list" when the health authority say quite unequivocally that there is no such list.

7. In all the circumstances, it seems clear to me that Mr Parker has no reasonable prospects of succeeding in showing that there are any documents or information which should have, but have not, been supplied to him. There is therefore no point in his appeal continuing and I therefore strike it out under rule 8(3)(c) of the Tribunal's rules of procedure.

HH Judge Shanks
8 November 2011