



Appeal No. EA/2011/0249

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

Dated: 28 February 2012

BETWEEN:

Appellant: Andrew Bousfield

Respondent: The Information Commissioner

Decision by: **David Marks QC**
(Tribunal Judge)

RULING

On application to strike out the Appellant's grounds of appeal pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (The Tribunal Rules).

DECISION

The Tribunal strikes out the Appellant's appeal against the Information Commissioner's (the Commissioner) Decision Notice, reference FS50380667 dated 17 October 2011

Reasons for Decision

Background

1. The Appellant made a written request dated 5 February 2010 of The Royal Wolverhampton Hospital's NHS Trust (the Trust) asking for information in the following terms, namely:

"Please provide copies of all compromise agreements you have entered into with doctors of any grade. Please also provide a list of exploratory or illustratory(sic) issues covered by the compromise agreements (i.e. the reasons the compromise agreements were entered into)."

2. The Appellant subsequently said that the names and dates of the agreements could be redacted.
3. By letter dated 5 March 2010, the Trust stated that it did hold information which might be relevant and considered that the information in question was exempt by virtue of section 41(1) of the Freedom of Information Act (FOIA). Following upon an internal review, the Trust wrote to the Appellant on 23 March 2010 stating that whilst it did hold records on all compromise agreements, it held no information relevant to the request.
4. After exchanges between the Commissioner and the Appellant, the Commissioner asked from the Trust what the estimate would be of the time it would take for the Trust to locate, retrieve and extract the information in order to determine whether it held the information requested.

5. By letter dated 22 July 2011, the Trust informed the Commissioner that the time estimate would be likely to exceed the appropriate limit as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, sometimes called the Appropriate Limit, thereby entailing the application of section 12 of FOIA.

The Decision Notice

6. The Decision Notice is dated 17 October 2011 and bears the reference set out above. At paragraphs 12 to 26 inclusive of the Decision Notice, the Commissioner explains the exchanges that he had with the Trust. In effect, these exchanges reflected the fact that the Trust had confirmed that neither its Finance nor its HR Departments held any records. The Trust had also explained that data from their computerised HR database had identified a total of 2,721 doctors who had left the Trust during the period 2002 to 2011. It then set out the total number of files that might need to be searched for that period, being approximately 2,416. It also explained that it would be necessary to search the personal files held for each individual to establish whether a compromise agreement was held for that person. It also explained that personal files held for doctors who had left the Trust between 2008 and 2010 were held in manual files. The overall position set out by the Trust was then summarised in the Decision Notice to the effect that the Trust would need to search the said number of files, i.e. 2416 for the period 2002 to 2010 with the volume of documentation held in each manual file varying significantly, being largely influenced by the particular individual's length of service in the Trust. On the basis that it would take an average of 15 minutes to review each manual file, the Trust contended to the Commissioner that it would take 66 hours to search the manual files. On the basis that even if the search took 3 minutes per manual file, the Commissioner had calculated that it would take approximately 13.2 hours to search for files for one year. Additional searches would need to be conducted with regard to pdf files held for members of staff for the years 2002 to 2008.

7. In view of all the material and the evidence summarised and set out in the aforesaid paragraphs within the Decision Notice, the Commissioner concluded that the Trust was correct to refuse the request under section 12.
8. The Commissioner was also satisfied that the Trust was unable to provide advice and assistance to the complainant in accordance with its obligations under section 16 of FOIA.
9. In the circumstances, the Commissioner was satisfied that the Trust had correctly applied section 12.

The Notice of Appeal

10. The Appellant informed the Tribunal by letter dated 25 October 2011 that the grounds of appeal “are substantially the same as those set out in my initial letter of appeal of September 19.”
11. The Commissioner points out in a Response dated 17 November 2011 that the Appellant has appealed against 8 of the Commissioner’s Decision Notices concerning requests for the same information as in this case, but with regard to other NHS Trusts. The exemption relied on by the public authority in 6 out of the 8 requests is section 40 of FOIA. As the Commissioner puts it, the above letter appears to be a generic letter setting out grounds of appeal with respect to all 8 appeals.
12. The said letter contains in the main, background to the requests and the only ground of appeal that the Commissioner has identified from the said letter, and in this respect the Tribunal fully agrees with the Commissioner, appears to relate to reliance by the NHS Trusts in relation to 6 of the other requests upon the exemption under section 40.
13. In the circumstances, the Tribunal respectfully agrees with the Commissioner that the Appellant has failed to set out in any part of the

said letter dated 19 September 2011 any arguments as to why the Commissioner was wrong on the facts of this case with regard to the aforesaid Decision Notice to conclude that the appropriate notice would be exceeded and section 12 of FOIA would apply.

Conclusion

14. For all the above reasons and in the absence of any grounds of appeal relating to the Commissioner's decision that section 12 would apply, the Tribunal is satisfied that there is no reasonable prospect of the Appellant's case succeeding and that the appeal should be struck out pursuant to rule 8(3)(c) of the Tribunal Rules 2009.

DAVID MARKS QC

**Tribunal Judge
Dated: 28 February 2012**