



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2012/0084

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50414026
Dated: 26 March 2012**

Appellant: ROY HODSDON

Respondent: THE INFORMATION COMMISSIONER

On the papers

Date of decision:

**Before
CHRIS RYAN
(Judge)
and
MALCOLM CLARKE
JEAN NELSON**

Subject matter: Personal data s.40

Cases: *Corporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

Introduction

1. We have decided that information about the professional qualification of an individual fulfilling the role of Legal Adviser to a Magistrates' Court should have been disclosed to the Appellant when requested but that he was not entitled to receive information about other academic qualifications. The Decision Notice giving rise to this appeal was therefore correct on its terms although it caused the disclosure of the professional qualification without expressly addressing the Appellant's right to receive the information.

The Information Request

2. On 12 April 2011 the Appellant wrote to the Scunthorpe Magistrates' Court asking for details of the qualifications of a particular individual (X) who had acted as Legal Adviser at a Magistrates' Court hearing in Lincolnshire in which the Appellant had been involved. We refer to that communication as "the Information Request".
3. After some initial confusion as to whether the Appellant's communication constituted a request for information under section 1 of the Freedom of Information Act 2000 ("FOIA") the North East Regional Office of HM Courts and Tribunal Service (an executive agency of the Ministry of Justice) confirmed that it held the information requested but refused to disclose it on the basis that it constituted the personal data of X. It argued that, as disclosure would be contrary to the Data Protection Act 1998 ("DPA") the information was exempt from disclosure under FOIA section 40(2). That refusal was upheld following an internal review.

The relevant law

4. Section 1 of the Freedom of Information Act 2000 ("FOIA") imposes on the public authorities to which it applies an obligation to disclose requested information unless certain conditions apply or the

information falls within one of a number of exemptions set out in FOIA. The Ministry of Justice is the relevant public authority for the purpose of this Appeal and is included among the public authorities to which FOIA applies.

5. As indicated above the Ministry of Justice relied on the exemption from disclosure provided for under FOIA section 40(2). That subsection provides that information is exempt information if it constitutes personal data of a third party the disclosure of which would contravene any of the data protection principles.
6. Personal data is itself defined in section 1 of the DPA which provides:

“personal data’ means data which relate to a living individual who can be identified-
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”

The Appellant does not challenge the Information Commissioner’s conclusion that the requested information in this case did constitute personal data.

7. The data protection principles are set out in Part 1 of Schedule 1 to the DPA. The only one having application to the facts of this Appeal is the first data protection principle. It reads:

“Personal data shall be processed fairly and lawfully, and in particular shall not be processed unless-
(a) at least one of the conditions in Schedule 2 is met ...”

Schedule 2 then sets out a number of conditions, but only one is relevant to the facts of this case. It is found in paragraph 6(1) and reads:

“The processing 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 to the rights and freedoms or legitimate interests of the data subject.”

The term “processing” has a wide meaning (DPA section 1(1)) and includes disclosure.

8. A broad concept of protecting, from unfair or unjustified disclosure, the individuals whose personal data has been requested is a thread that runs through the data protection principles, including the determination of what is “necessary” for the purpose of identifying a legitimate

interest. In order to qualify as being “necessary” there must be a pressing social need for it - *Corporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).

9. In determining whether or not disclosure of the names would be contrary to the data protection principles we have to consider:
 - i. whether disclosure at the time of the information request would have been necessary for a relevant legitimate purpose; without resulting in
 - ii. an unwarranted interference with the rights and freedoms or legitimate interests of X.

And if we are satisfied on those points we have also to consider:

- iii. whether disclosure would have been unfair or unlawful for any other reason.
10. In respect to the issue of fair and lawful processing under (iii) above we have to bear in mind guidance provided in paragraph 1(1) of Part II of Schedule 1 to the DPA, which provides:

“In determining for the purposes of the [first data protection principle] whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.”

The Information Commissioner’s Investigation and Decision Notice

11. On 25 August 2011 the Appellant complained to the Information Commissioner about the refusal of the Information Request. The Information Commissioner investigated the complaint and obtained written confirmation from the Ministry of Justice that it had spoken to the Legal Team Manager at Scunthorpe Magistrates’ Court and obtained confirmation that X was a solicitor. He also obtained information about X’s other qualifications.
12. On 26 March 2012, at the conclusion of his investigation, the Information Commissioner issued a Decision Notice, in which he concluded that the requested information fell within the definition of “personal information” for the purposes of the DPA and that its disclosure would have contravened the Data Protection Principles set out in Schedule 1 to the DPA. In reaching that conclusion he balanced the reasonable expectations of X, as to the maintenance of privacy, against the legitimate public interest in disclosure. He took into account the fact that the information related to the individual’s professional life as a solicitor but drew attention to the fact that the public function undertaken by X differed from that of someone holding elected public office or other public office which involved a greater degree of public accountability. The Information Commissioner also

acknowledged that, as the Appellant had submitted to him, the FOIA leans towards openness and transparency and there was a legitimate public interest in information about an individual employed in any role by a public authority, as disclosure promotes transparency and accountability for court decisions and actions. However, he concluded that as X, although a solicitor, was not part of the Senior Civil Service, her role within the legal system was not senior enough to warrant a strong public interest in the information being made available in the public domain to have justified disclosure.

The Appeal to this Tribunal

13. The Appellant appealed to this Tribunal on 12 April 2012. He indicated in his Notice of Appeal that he wished the matter to be determined without a hearing and the Information Commissioner agreed. We consider that a paper determination was appropriate, given the nature of the case. Accordingly directions were given for the preparation of an agreed bundle and for the exchange of written submissions and we made our decision on the basis of those materials.
14. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.

The parties' submissions

15. The Appellant drew attention in his Grounds for Appeal to the fact that throughout the Decision Notice the Information Commissioner had referred to X as a solicitor. He said that this was the very information that he had been seeking and criticised the Information Commissioner for having interpreted the Information Request as seeking information about academic qualifications. We can understand why the Information Commissioner assumed that the request was for other information about Xs qualifications as there was clearly a degree of ambiguity about the request. This confusion would probably have been avoided had the MOJ, in responding to the request, confirmed that X is a solicitor.
16. The Appellant wished to pursue his appeal, notwithstanding that he now had the information that he said he was seeking and urged us to recognise that the Decision Notice as it stands had caused him injustice and was contrary to the rules of natural justice. We take those quite general submissions as an invitation to us to apply the tests

set out in paragraph 9 above and to conclude that both the professional and academic qualifications should have been disclosed.

17. Information about X's academic qualifications was made available to us under terms of confidentiality as its inclusion in the open bundle would have had the effect of pre-judging our decision. The Information Commissioner argued that it was personal information and that it would be unfair, and therefore contrary to the Data Protection Principles for it to be disclosed.

Our conclusions

18. In view of the functions performed by Legal Advisers in a Magistrate's Court, and the impact they are capable of having on those appearing before the court, we believe that there is a strong public interest in knowing that anyone fulfilling the role has the qualification of barrister or solicitor. That is to say the qualification that the Ministry of Justice holds out Legal Advisers as possessing. We believe that, were that information not to be a matter of public record, there would be strong public interest in its disclosure and that this would outweigh the individual's right to privacy.
19. It follows that, were the position of Legal Adviser to be held by a person having any other qualification, there would be an equally strong public interest in that qualification also being publicly known. And that would apply whether the qualification was a non-legal one or a legal one that was less than full qualification as a barrister or solicitor. Examples of the latter would include a law degree, Chartered Institute of Legal Executives qualification, or completion of a Legal Practice Course or Bar Professional Training Course. But if the Legal Adviser holds the professional qualification of barrister or solicitor then the public interest in information about any other qualification, whether legal or non-legal, academic or professional, is greatly reduced. Disclosure, in those circumstances would constitute an unwarranted interference with the individual's rights and freedoms.
20. We have set out our conclusions in respect of various qualifications, in the context of different possible scenarios, because of the confusion that appears to have arisen between professional and academic qualifications and whether the Information Request covered them both, or was intended to do so. Given the disclosure to the Information Commissioner that X was a solicitor, the impact of those conclusions is that the Ministry of Justice was justified in withholding information about any other qualification. However it was not entitled to withhold information about X's qualification as a solicitor. It refused to disclose that information throughout the correspondence it had with the Appellant. It was only disclosed during the course of the Information Commissioner's investigation, with the result that it then found its way into the public domain via the Decision Notice.

21. Although, therefore, we agree only in part with the conclusion reached in the Decision Notice, it is not necessary for us to direct that any steps be taken because the Appellant now has information which we say should have been disclosed.

Signed by
Judge Ryan
11th October 2012



RULING on an APPLICATION for PERMISSION to APPEAL

By

Roy Dennis Hodsdon

In the Matter of EA/2012/0084

1. The Appellant seeks leave to Appeal to the Upper Tribunal (Administrative Appeals Chamber) from the decision dated 11 October 2012 to dismiss his appeal from a Decision Notice issued by the Information Commissioner
2. The right to appeal arises out of section 11 of the Tribunals, Courts and Enforcement Act 2007 (“TCEA 2007”). That section provides that any party to a decision of a First Tier Tribunal has a right of appeal to the Upper Tribunal on any point of law but that the right may only be exercised with permission. Under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (“the Rules”) permission to appeal must be sought from the relevant First-tier Tribunal.
3. The application for permission to appeal in this case satisfied the formal requirements set out in rule 42 of the Rules in respect of both its contents and the time limit for its submission.
4. Rule 43(1) requires the Tribunal, on receiving an application for permission to appeal that satisfies those requirements, to consider first whether to review the decision in accordance with Rule 44. That rule provides, in relevant part, as follows:

*“(1) The Tribunal may only undertake a review of a decision –
(a) pursuant to rule 43(1)...; and
(b) if it is satisfied that there was an error of law in the
decision”*

5. I am satisfied that there was no error of law in the Decision. In reaching that conclusion I have satisfied myself that:
- (a) the Tribunal's reasons for reaching its conclusion were adequately and intelligibly recorded in the Decision.
 - (b) there was no dispute between the parties as to the law which the Tribunal was required to apply, namely FOIA section 40;
 - (c) the Tribunal interpreted that section correctly, taking account of the submissions it had received from the parties;
 - (d) the facts relevant to the case were apparent from the materials presented to the Tribunal such that there was no error of law in reaching a conclusion that was not supported by evidence;
 - (e) the Tribunal's application of the evidence to the law was rational and its conclusion was justifiable;
 - (f) the Appellant's reliance on the concept of legitimate expectations in his reasons for applying for permission is misguided, (being based, not on a promise from an official, but on government as a whole, in the form of a specific statute) and his other reasons are unsustainable; and
 - (g) the procedures adopted by the Tribunal gave the parties adequate opportunity to present their evidence and arguments.
6. In light of my conclusion that there was no error of law I decline to review the Decision. I am also satisfied that the Appellant does not have any other ground for appealing under section 11. Accordingly, pursuant to rule 43(2), I also refuse his application for leave to appeal.

7. Under Rule 23(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008, as amended, the Appellant has one month from the date of this Ruling is sent to lodge an application for permission to appeal directly with the Upper Tribunal.

Judge Ryan
16 November 2012