



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2014/0164
Appellant: Daniel Lindsay
Respondent: The Information Commissioner
Judge: NJ Warren
Member: R Tatam
Member: R Creedon
Hearing Date: 22 October 2014
Decision Date: 10 November 2014

DECISION NOTICE

1. Shortly before January 2007 Mr Lindsay's then wife left him. He discovered that there were debts of over £100,000 in his name which he had not incurred. It took him four years of negotiation and litigation but he successfully fought off the claims. He has only recently reached final agreement with the last credit ratings agency to ensure that erroneous comments are removed from their records.
2. Some time in about 2010 a person known to Mr Lindsay made allegations to the police of credit card fraud. She suggested to them that Mr Lindsay, who had sat next to her at a computer in a public library to arrange the dispatch of some goods to India, might have been responsible. On being approached by the police Mr Lindsay consulted solicitors. The solicitors informed the police that the library had CCTV and in consequence Mr Lindsay was not even interviewed.
3. In 2011 at the suggestion of solicitors who had assisted Mr Lindsay in one of his court actions, a journalist from the Liverpool Echo wrote a story about Mr Lindsay's fight to clear his name of debt which he had not incurred. The article

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contained a comment from the solicitor and also one from Merseyside Police whose spokesperson said:-

“Allegations of fraud were reported on March 6 and an investigation into those allegations is now underway”.

4. Mr Lindsay says that after he had met the journalist but before the article appeared he received a phone call from him. The journalist asked whether it was true that Mr Lindsay was a suspect in a different fraud case. Mr Lindsay formed the view that the police must have fed this information to the journalist. It is his view that this is not an isolated example of the police briefing journalists against people; that ordinary members of the public are not safe from this kind of action by the police; and that there should be some way of holding them to account.
5. Mr Lindsay did make a complaint to the police which was not upheld. We have not seen a copy of the determination of his complaint but we deduce that the person who spoke to the journalist denies Mr Lindsay’s allegation.
6. The decision on the complaint was delivered by post to Mr Lindsay’s address while he was away. As a result, he says he did not read it until two days before the expiry of his right of appeal. His agreement with the investigating officer was that all correspondence would be by email so he made another complaint in respect of the investigating officer sending the result of the complaint by post. This investigation accepted that a mistake had been made by the first investigating officer but rejected Mr Lindsay’s allegation that this was a deliberate attempt on the part of the investigating officer to prevent him from having the full 29 days in which to prepare an appeal. This second complaint was determined in July 2013.
7. On 4 November 2013 Mr Lindsay made a request to Merseyside Police under the Freedom of Information Act 2000 (FOIA). He referred to the Liverpool Echo article in 2011 and stated:-

“I am specifically requesting the name, force identification number and rank/title of the person in Merseyside Police responsible for the comment in the article...”

8. Merseyside Police have refused to supply the information. They relied first on grounds which they now accept to be inappropriate. They now rely on Section

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40(2) FOIA which protects personal data from disclosure. Mr Lindsay complained unsuccessfully to the Information Commissioner (ICO) and now appeals to the Tribunal against the ICO decision notice.

9. We have no doubt that the information requested constitutes the personal data of an employee of Merseyside Police.
10. FOIA gives rights to persons who request information from public authorities provided that disclosure of the information does not contravene the Data Protection Act (DPA). Rights under FOIA do not trump rights of privacy under the DPA. See the discussion in South Lanarkshire Council v Scottish Information Commissioner [2013] UKSC 55 at paras 4-8.
11. The question therefore becomes whether disclosure of the data to a member of the public would contravene any of the Data Protection Principles in DPA. The first data protection principle is that personal data should be processed fairly and lawfully and, in particular, must not be processed unless at least one of the conditions in Schedule 2 DPA is met.
12. It seems convenient to us to consider first whether disclosure of the disputed information would be lawful. In practice in this case like most others, this means considering para 6 of Schedule 2 DPA and asking whether the disclosure is

“necessary for the purposes of legitimate interests pursued by the data controller or by the third party... 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.”
13. With that in mind, and so as to consider his interests in the matter, we asked Mr Lindsay why he wanted the information and what he proposed to do with it. He told us that in his view the person quoted in the Liverpool Echo had also revealed to the journalist details of the other allegation. He had been in contact with the Home Affairs Committee of the House of Commons and he felt that if he could supply the name of the employee, the Home Affairs Committee would start an investigation.
14. It is not for us to question in any way the proceedings of the Home Affairs Committee. The material produced to us by Mr Lindsay does show that he has

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been in correspondence with them but there is no request from the committee for him to provide the disputed information. Nor, logically, can we see that public release of the information would make any difference to the committee's powers. Merseyside Police told the ICO that any complaint of misconduct could be investigated without the complainant having to name the officer concerned. Indeed, there has already been just such an investigation in this case.

15. We therefore conclude that there is no legitimate interest permitting the processing, by disclosure, of the personal data involved in this case. We agree with the ICO that to do so would breach the first data protection principle. For these reasons, the appeal must fail.

NJ Warren

Chamber President

Dated 10 November 2014