



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL**  
**(INFORMATION RIGHTS)**

EA/2015/0044

**B E T W E E N:-**

**JACQUELINE RICHARDS**

**Appellant**

**-and-**

**THE INFORMATION COMMISSIONER**

**Respondent**

---

**Tribunal**

**Brian Kennedy QC  
Roger Creedon  
David Wilkinson**

**Hearing:** On the papers - 1<sup>st</sup> December 2015,

**Location:** Field House, London.

**Decision:** Appeal Refused.

.

**Subject Matter:** Whether or not the information requested is personal data engaging s. 40(1) and (2) of the Freedom of Information Act 2000 ("FOIA") and whether or not disclosure would breach the Data Protection Act 1998 ("the DPA") making it exempt.

**Result:** Appeal Refused.

**Date of Decision:** 31 December 2015

## **Introduction:**

1] This is an appeal against a Decision Notice (“the DN”) issued by the Information Commissioner (“the Commissioner”) dated 11 February 2015, (Reference FS50531172) involving Merthyr Tydfil County Borough Council (“the Council”). The DN related to a request for information made to the Council on 28 January 2014.

## **Background:**

2] The background to the request is that on 28 January 2014, the Appellant made an information request to the Council for; *“I would request all information held on how you formulated these accusations, and how we were not interviewed prior to this libelous information documentation I would be interested in any information held by your organisation regarding my request. I understand that I do not have to specify particular files of documents and that it is the departments responsibility to provide the information I require. I would like to receive the information in photo copy.”* . (See DN Para. 4). Further correspondence followed, as detailed at paragraphs 5 & 6 of the DN.

3] The Appellant contacted the Commissioner to complain about the way her request for information had been handled. The Commissioner considered the request was for the Appellant’s personal data and the Appellant was advised to submit a Subject Access Request (“SAR”) under the DPA. The Appellant made a SAR to the Council and was provided with a copy of the personal data she was entitled to under the DPA. The Commissioner’s case was therefore closed.

4] The Appellant subsequently contacted the Commissioner on 21 October 2014 to request a decision notice that considered the request under the terms of the FOIA. The Commissioner investigated the concern. In his DN the Commissioner found that the Appellant’s personal data is exempt under s .40 (1) of the FOIA and the remaining information caught by the request is the personal data of third parties and was exempt under s.40(2) of the FOIA.

## **The Legal Framework:**

5] Under section 1 of the FOIA, any person is entitled to:

- a) be informed whether the relevant public authority holds the requested information - section 1(1)(a); and
- b) have that information communicated to them - section 1 (1)(b).

6] Section 1(1)(b) provides that a public authority is obliged to communicate the requested information to the individual requester.

7] However, section 1(1)(b) is qualified by section 2(2), which establishes that a public authority is not obliged to provide the requested information where an exemption applies. The relevant exemptions in this case are sections 40(1) and 40(2).

**8]** Section 40(1) of FOIA provides:

*“ .... Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”*

**9]** Thus under section 40(1), if some or all of the requested information can be said to be the personal data of the individual who has requested it; then such information is automatically excluded from disclosure under FOIA.

**10]** However, the individual may be able to access that information by making a subject access request under the DPA. The Appellant made a subject access request.

**11]** Section 40(2) of the Act can be summarised as stating that information is exempt if it is the personal data of an individual other than the Appellant and if the disclosure of that information would breach any of the data protection principles.

### **The Commissioners' analysis:**

**12]** In considering whether section 40(2) is engaged; the Commissioner addressed two sequential issues firstly, could the requested information be said to amount to personal data and if so, would disclosure of personal data breach any of the relevant data protection principles.

**13]** Section 1 (1) of the DPA, which defines personal data as follows:

*“ .... 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 ...”

**14]** Further, certain categories of personal data are given additional protection by the DPA because such information is considered particularly sensitive and private. Sensitive personal data is defined in section 2 of the DPA.

**15]** When deciding whether it would be fair to disclose the requested information, the Commissioner firstly considered whether it would be fair to confirm or deny.

The Commissioner took into account the following factors:

- a) Whether confirmation or denial would be within the data subject reasonable expectations;
- b) What if any, consequences would flow from the and any disclosure is provided to the individual; the act operates on the principle that any response by a public authority is effectively made to the world at large.; and

- c) Whether there are any legitimate public interests in the public authority confirming or denying whether it also requested information,

**16]** The Commissioner's view is that although any request is submitted by an individual requester and any confirmation or denial and any disclosure is provided to that individual; the Act operates on the principle that any response by a public authority is effectively made to the world at large.

**17]** Further, the Commissioner argued that the Act operates on an applicant blind and motive blind basis. It is for these reasons, the Commissioner concludes, that the application of any exemption takes into account the impact, if any, on the world at large rather than on the individual request.

**18]** Pausing here, this Tribunal accepts the Commissioners' understanding, interpretation and approach in his analysis as set out above herein and accept and adopts it for the purposes of, and in so far as it is relevant to, this appeal.

**The Decision Notice:**

**19]** The Commissioner in his DN concluded:

- a) Having considered the information that the council subsequently provided to the Appellant through a SAR under the DPA, the Commissioner was satisfied that that information related specifically to the Appellant. The Commissioner was therefore satisfied that that information constituted the personal data of the Appellant. As such the Commissioner considered that that it was exempt from disclosure under section 40(1) of the FOIA and the Council had been correct to consider its disclosure under the terms of the DPA.
- b) The Commissioner had also been provided with the information that the council had considered fell within the scope of the request but was not the Appellant's personal data. Having reviewed the withheld information, which consisted of care records held by the council's social services office, the Commissioner considered the information expressly related to private individuals, council employees and other third parties. The Commissioner considered that the information was clearly 'personal data'. The Commissioner further concluded that the majority of the withheld information represented the sensitive personal information of individuals.
- c) In deciding whether disclosure would be fair, the Commissioner took into account the reasonable expectations of the individual as to what might happen to the individual's data, the consequences of disclosure and any legitimate interest in disclosure. (see DN/22 – 25)
- d) The Commissioner considered it was clear that the information had been created by the Council as part of its duty to provide social care services and contained a substantial proportion of sensitive personal data. As such, the Commissioner considered that none of the relevant third parties would have had a reasonable expectation that the information would be disclosed into the public domain under the FOIA.

- e) The Commissioner further considered that the release of the withheld personal data would disclose highly detailed and sensitive information about multiple third parties and their involvement in a social services matter. As such the commission considered it reasonable to conclude the disclosure might place these parties at risk of harm.
- f) The Commissioner did not identify any legitimate interests in disclosure. The requested information related specifically to named individuals and any concerns held by the Appellant about the Council's social services office in this matter would need to have been referred to the appropriate authority.

**The Appellant's Grounds of Appeal:**

**20]** The Appellant has raised the following issues :

- (a) Why allegations were made against the appellant and her husband;
- (b) The Appellant is not of the opinion she asked for the personal data of any individuals although she agrees that the information relates to individual;
- (c) The Appellant is of the opinion that unfounded allegations were made against her husband and she disagrees it would be unfair to the third parties to disclose their personal data;
- (d) The Appellant wishes to see the evidence which formed the basis of the allegations and wishes to make it public, she appears to be concerned that the council is covering up gross misconduct by the staff;

**Reasons:**

**21]** The Appellant has failed to persuade this Tribunal that the Commissioner was wrong in his analysis of the Law or that he failed to take into account any relevant matters that he should have considered in his investigation, or that he took into account any matters that he should not have and further the Appellant has failed to persuade us that the Commissioner was wrong in his reasoning or his conclusion in his DN as set out above. We have considered carefully the Commissioners' investigation and reasoning and we accept and adopt his conclusion therein.

**13]** Neither the Commissioner nor this Tribunal can answer the Appellant's queries or concerns. This Tribunal cannot provide either the reasons why allegations may or may not have been made, or the form of relief sought by the Appellant in relation to removal of names in data held by the Council.

**14]** Accordingly, we dismiss the Appeal and uphold the Commissioner's DN.

Brian Kennedy QC  
31 December 2015.