



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

Case No. EA/2015/0172

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50579330
Dated: 23 July 2015**

Appellant: ALAN MESSMER
Respondent: INFORMATION COMMISSIONER
On the papers: FOX COURT, LONDON
Date: 13 JANUARY 2016
Date of decision: 13 FEBRUARY 2016

Before

ROBIN CALLENDER SMITH
Judge

and

ROSALIND TATAM and NIGEL WATSON
Tribunal Members

Written Submissions:

For the Appellant: Mr A Messmer.

For the Respondent: Ms H Wrighton, Solicitor for the Information Commissioner.

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter:

Freedom of Information Act 2000

Absolute exemptions

- Personal data s.40

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 23 July 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Alan Messmer (the Appellant) wanted Kent Police to provide him with six original receipts and some relevant photocopies.
2. On 7 January 2015 he asked Kent Police for the “six original official police receipts and six photocopies relevant to them” giving the relevant Kent Police reference number.
3. He added that he wished Kent Police to explain how it was possible to have those six receipts when he (the Appellant) had other police evidence that “not only contradicts what Kent Police have stated [but] proves that it is not possible for Kent Police to have such evidence in the first place. That is unless it was forged by corrupt police officers....”.
4. He continued:

Can you confirm why it is that everyone from Kent Police are refusing to show these very important receipts....in view of the very serious relevance of the six receipts, we are now forced to make an official

request under the Freedom of Information Act requesting to see this very important evidence that will finally one way or another prove or disprove [his complaint].

5. On 20 January 2015 Kent Police responded relying on section 40 (5) (a) FOIA, the exemption that permits neither confirmation nor denial (NCND) in respect to holding the information requested.
6. There was an internal review by the Police which confirmed its initial conclusions on 29 January 2015.
7. The Appellant complained to the Information Commissioner on 3 February 2015.
8. He explained to the Information Commissioner that the requested information would help him in a long-standing attempt to expose what he believed were corrupt practices by some officers within that police force.
9. The Information Commissioner upheld the NCND refusal by the police in respect of the provisions of section 40 (5) FOIA and the fact that the information was also exempt information on the basis that the requested information, if held, would be the personal data of the Appellant.

The appeal to the Tribunal

10. The Appellant wrote a three-page letter of appeal with attachments – submitting a total of 21 pages in support of his appeal – and provided additional written and printed information giving the background to his campaign.
11. In summary he believed that “corrupt high-ranking police officers” should not be able to “misuse and abuse” the Freedom of Information Act to cover up evidence of corruption in respect of this information request.

Conclusion and remedy

12. Paragraph 6 of the Information Commissioner's response to the Appeal sets out more detail of what apparently concerns the Appellant in relation to these receipts.
13. Essentially his allegation is that the receipts were forged or changed, and that an attempt had been made to bribe him whilst he was acting as a "whistle blower".
14. When the requested information is part of the personal data relating to the individual who requested it, that information is automatically excluded from disclosure under FOIA.
15. It is the Appellant's personal data because it relates to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller.
16. In those circumstances, under section 40 (5) (a) Kent Police is not required to confirm whether or not it holds the personal data of the Appellant. This is on the basis that the information amounts to the personal data of the requestor.
17. If the Appellant had signed receipts then those receipts – or any photocopies of them – would clearly constitute his own personal data because they relate to his professional or personal life and the record relates to something about the Appellant.
18. The way in which the Appellant can seek access to his own personal data is by making a subject access request under the provisions of the Data Protection Act 1998.

19. He appears to have done so in this case but, as noted in the Information Commissioner's final submissions dated 3 September 2015, the extent to which the police have or have not complied with their obligations under the Data Protection Act 1998 is not a matter which can be the subject of this appeal.

20. For all these reasons the Appellant's appeal cannot succeed and is dismissed.

21. Our decision is unanimous.

22. There is no order as to costs.

Robin Callender Smith

Judge

14 February 2016