



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

Appeal No: EA/2016/0048

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50590082
Dated: 17 February 2016**

Appellant: Jeremy Obano

Respondents: The Information Commissioner

Heard at: 10, Alfred Place, London WC1

Date of Hearing: 13 July 2016

Neither party attended

**Before
HH Judge Shanks
and
Anne Chafer and Andrew Whetnall**

Date of decision: 21 July 2016

Date of promulgation: 22 July 2016

Subject matter:

Freedom of Information Act 2000 (FOIA)

Section 32(1) (Court records etc)

Section 40(5) (Personal information)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

1. A hearing was arranged in this case for 10.00 on 13 July 2016 but the Information Commissioner had indicated he would not attend in order to save public money and Mr Obano, the Appellant, emailed the Tribunal at 10.06 on the day saying that he was unable to attend “ ... due to a family matter”. In the absence of any further detail we decided not to adjourn the hearing and proceeded to decide the case on the papers.
2. The appeal concerns a request for information made by Mr Obano to the Ministry of Justice under FOIA on 15 June 2015 by which he sought disclosure of all complaints lodged against a named county court bailiff. The Ministry responded on 23 July 2016 confirming that it held the requested information but refusing to disclose it in reliance on sections 40(2) (personal information) and 32(1) (court records). On an internal review the Ministry revised its position and stated that it should have relied on section 40(5) in order to “neither confirm nor deny” whether it held any information of the description specified in the request; however, it also continued to rely on section 32(1). Mr Obano complained to the Information Commissioner who, in a Decision Notice dated 17 February 2016, upheld the Ministry’s position on section 40(5). Mr Obano appeals against that Decision Notice.
3. Section 40(5) states:
The duty to confirm or deny –
...
(b) does not arise in relation to ... information if ...
(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would

(apart from this Act) contravene any of the data protection principles

...

There can be no doubt that information about whether or not there have been complaints against the bailiff is “personal data” of which he is the “data subject” for the purposes of the Data Protection Act 1998, and Mr Obano’s argument that he already knows the identity of the individual is beside the point. Disclosure of that information would therefore contravene the first data protection principle set out in Schedule 1 to the Act unless it was fair and at least one of the conditions in Schedule 2 was met. The Commissioner approached the case by considering whether disclosure would be fair to the data subject. For reasons given in another appeal we have considered on the same occasion (*Cheetham v Information Commissioner* EA2015/280) we prefer in a case like this to look first to the Schedule 2 conditions which generally focus on the purpose for which disclosure is sought.

4. Mr Obano’s case is that the bailiff has committed an unspecified crime against him which the police are investigating. He says the disclosure of the information he seeks is necessary for obtaining legal advice and establishing and defending his legal rights in that connection. He also says that it would show a judge the character of the bailiff and prove that he was guilty of fraud and misconduct in public office. The only conditions in Schedule 2 which might therefore possibly be relevant are conditions 5(a) (that the disclosure was “necessary ... for the administration of justice”) or 6, which is that the disclosure was “necessary for the purposes of legitimate interests pursued by ...” Mr Obano, unless such disclosure was “... unwarranted in the particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”
5. We cannot see that disclosure of the information is necessary for the administration of justice: if criminal proceedings are to be brought against the bailiff it will be a matter for the police or the CPS to obtain any relevant material and if Mr Obano is to bring civil proceedings his rights to disclosure will be governed by the Civil Procedure Rules. Mr Obano has not expressly

articulated any other legitimate interest for which disclosure of the information might be necessary and we are unable to see that there is any: the mere fact there may have been one or more complaints made against an individual bailiff is in itself of no significance and it is for HMCTS or other relevant authorities (and not Mr Obano or the public at large) to decide what steps to take in response to complaints against a bailiff.

6. We therefore conclude that none of the conditions in Schedule 2 would have been met and that disclosure by the Ministry of whether or not there had been complaints against the bailiff would have contravened the first data protection principle and that the duty to confirm or deny did not therefore arise. Thus for somewhat different reasons we uphold the Commissioner's decision in relation to section 40(5) of FOIA.
7. In the circumstances we do not need to consider section 32 but we would make two observations relevant to the Ministry's reliance on it. First, the section only applies to information in documents placed in the custody of a court "... for the purposes of a particular cause or matter", ie in relation to some actual litigation brought before the court, which we would not generally expect to include complaints made by members of the public against a bailiff. Second, we note that reliance on section 32(1) in this case would inevitably have involved disclosing that there had been one or more complaints against the bailiff which would have undermined reliance on section 40(5); the proper route we think if section 32 was relevant at all would have been to cite section 32(3) which negates the duty to confirm or deny.
8. In any event for the reasons above we unanimously dismiss the appeal.

HH Judge Shanks

21 July 2016