



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0280

**Decided without an oral hearing
On 1 October 2018
Promulgation Date 15th October 2018**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

MIKE JONES & PIETER DE WAAL

Between

EAST OF ENGLAND AMBULANCE SERVICE NHS TRUST

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

1. The Tribunal allows in part the appeal against the Respondent's decision notice FS50683817.
2. There was media interest in the Appellant East of England NHS Trust's ("the Trust") use of lease cars for its staff. On 30 April 2016 the Daily Mirror online published a story on the subject accompanied by a photograph of what it

claimed was a Trust employee with one of the lease cars, a similar story appeared in the Daily Mail in May 2016, and a further article on the subject was published in January 2017 by the Daily Mirror.

3. On 4 April 2017 Allison Dawson made a detailed request to the Trust seeking information: -

*"1. A list of all the lease cars you have in the Trust, by make and model.
2. The total cost to the Trust for the 2016 - 17 financial year for all lease cars (inc all costs incurred as a total).
3. A list of all the lease cars (make and model) that have had tow bars attached for personal use.
4. A list of all the current Directors lease cars (make and model) - including the vehicle(s) leased to the CEO. For each vehicle please state the percentage personal contribution that is made (if non, please state that).
5. The number of lease cars provided to Directors that are for work use only and the number that are also for personal use.
6. The actual total cost to the Trust for the 2016 - 17 financial year (inc insurance, running costs etc) for all Directors cars (inc CEOs).
7. A list of all the lease cars (make and model) provided to band 8 managers, broken down into the pay level in band 8 (a,b,c,d).
8. Please provide the number of lease cars provided to band 8 managers that are work only use and the number that are also for personal use.
9. The actual total cost to the Trust for the 2016 - 17 financial year (inc insurance, running costs etc) for all band 8 managers lease cars).
10. A list of all the lease cars that have been leased by the Trust over the past 6 months."*

4. The Trust provided an incomplete response relying on various exemptions in FOIA. Ms Dawson was dissatisfied and complained to the Respondent Information Commissioner ("the IC"). Following an investigation, the IC issued a decision notice finding that the exemptions claimed did not apply and directing the Trust to issue fresh responses to all elements of the request.
5. The Trust subsequently submitted an appeal limited to parts 4 and 7 of the request, arguing that the information requested was exempt under s40(2) of FOIA: -

S40(2) Any information to which a request for information relates is also exempt information if –

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is –

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure

of the information to a member of the public otherwise than under this Act would contravene –

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), ...

6. With respect to part 4 of the request the Trust argued that there was no legitimate interest in disclosing to the requester and so to the public at large which Director had chosen to lease a car which exceeded the amount covered by the Trust's Business Travel Policy and so required a personal contribution. If there were any such legitimate interest arising out of the Director's work for the Trust, the information was irrelevant to the public role since it related to the personal financial contribution and so any legitimate interest was very limited.
7. The IC accepted the validity of this argument and invited the Tribunal to substitute the decision notice to the effect that: -

"the Trust is entitled to rely on section 40(2) to refuse to disclose in relation to which vehicle the Director makes a personal contribution in response to part two of the second limb of the fourth request."

8. In arguing that it should not disclose the information sought by part 7 of the request the Trust provided background information. At the time of the request there were 62 band 8 managers (distributed across 4 pay bands 8a-8d) participating in the scheme, approximately 75% of the total eligible. Of those 62 cars in the majority of cases there was only one car of a particular make and model. The Trust submitted that a motivated individual who knew that a specific manager was in, for example, Band 8c and drove a specific model of car would be able to make *"at least an educated guess, and possibly a reasonable deduction, that the particular manager makes use of a lease car by reference to the relatively small cohort of staff at each level and the uniqueness of vehicles included. As set out in the Trust's notice of appeal, the lease car "question" is a febrile issue which has led to individual members of staff being singled out in local and national press"*.
9. The IC resisted the argument that the disclosure would identify individuals because the educated guess could be incorrect and even where a guess based on anonymised data turns out to be correct, this does not mean that a disclosure of personal data has taken place. The IC accepted that the issue was whether an individual could be identified by a combination of the disputed information and other information publicly known or which could be accessed by a motivated individual.

10. A witness statement by Lindsay Stafford-Scott, Director of People at the Trust, set out the arrangements for lease cars in the Trust and, most pertinently, the Trust's experience of disclosing a list of vehicles in response to a request about Lease Car Contracts: - *"can you provide a description for each contract please (number of vehicles, type of vehicles- cars, vans plant), also if this is leased or hired?"*. This had resulted in newspaper coverage including the photograph in the Daily Mirror of a member of staff taking a buggy out of her car (alleged to be leased by the Trust) in a street near her home. Another member of staff had been identified in another article. The Trust considered that providing more specific details of members of staff driving particular cars would make it easier to identify members of staff who had legitimately chosen a particular car to be used as an example in similar press articles in the future to illustrate a story. The Trust had an obligation to protect members of staff from being door-stepped at their homes by photo-journalists or from being named in a selective sensationalist way. The Trust had properly attempted to strike the right balance by publishing general details of cars leased under their arrangements and numbers of managers.

Consideration

11. The first issue for the Tribunal to decide is whether the disclosure of the information, combined with other information available to a motivated individual, would be likely to lead to the identification of an individual manager as possessing a lease car. The answer is clearly yes. The possession of the list of cars by type and knowledge of the individual identities and posts of Trust staff could over a short period of time enable a motivated individual observing the Trust car park to identify particular individuals driving specific relatively unusual cars which were highly likely to be leased. In so doing significant biographical information about those individuals would be disclosed.

12. The second issue is whether such disclosure would be in accordance with the data protection principles. The relevant data protection principle contained in Schedule 1 of the Data Protection Act is: -

*"1. 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..."*

13. The Trust has submitted evidence as to the expectations and views of staff on any such disclosure, strongly indicating that it would not be fair. However, what is absolutely apparent to the Tribunal is that none of the conditions in Schedule 2 are met. The only possibly relevant condition in Schedule 2 is: -

"6. – (1) 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."

14. Considering the data being requested as a whole, the questions of the cost to the Trust and the numbers of vehicles involved are clearly matters of accountability of the Trust as to how it spends its resources. However, information about which cars are chosen within the specific budget allowed for those individuals eligible to join in the scheme adds nothing to that accountability. It is not in any conceivable sense necessary for the legitimate interest of accountability to know that an individual manager in band 8 drives a specific car.
15. The Tribunal therefore finds that the information requested by the second part of part four of the request and by that part of the seventh request which seeks disclosure of lease cars of managers in band 8 broken down by four pay bands is exempt from disclosure under s40(2) and to that extent allows the appeal.

Signed

Judge of the First-tier Tribunal

Date: 13 October 2018