



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice: FS50890862**

Appeal Reference: EA/2020/0217V

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

STEPHEN SHAW & DAVE SIVERS

Between

PETER THIRLWALL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation

Appellant: in person

Respondent: did not appear

DECISION

1. Mr Thirlwall was concerned for some time at what he claimed was the failure of UKIP members of Rotherham MBC to properly discharge their responsibility to complete the register of interests. After the formation of the Brexit Party and the migration of some councillors to the new party he noted that they had not amended their registrations to disclose their new party affiliations. On Friday 30 August he put down a question to be asked on the subject at the Council meeting on the following Wednesday. He was told, the day before the meeting, that they had changed their registration details. On 7 September he wrote to the Council and asked for:-

"All letters, emails, memos, notes of telephone conversations and any other communications etc, in the last three months, associated with councillor's Register of Interests, between The Council and Elected Members, registered as either members of UKIP or the Brexit Party."

2. The Council replied on 3 October confirming that it held information within the scope of the request but refusing to supply it to Mr Thirlwall relying on the exemption within s40 of FOIA refused to supply the information it held on the basis that it was the personal data of the members concerned and that under Article 5 of the General Data Protection Regulation provided that:-

"1 Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');"

3. The refusal notice confirmed that there had been a meeting between the Monitoring Officer, the Chair of the Standards Committee and some members of the Brexit group of councillors in July and that *"All Brexit members registers of interest have been reviewed by the members and updated if necessary"*.
4. Responding to this Mr Thirlwall in seeking an internal review argued that if the information was not adequate and relevant it should be deleted and argued that it was in the public interest to disclose the information stating that it was not the individuals he wished to scrutinise but the process as a last resort, he would accept information that has been ammonised or with certain redactions.
5. The Council in upholding its decision emphasised that councillors sought the advice of the Monitoring Officer on such issues and it was the reasonable expectation of councillors that such advice would not be disclosed. The Council stated that even if the information was anonymised *"it is likely that the relevant members could still be identified"*. Mr Thirlwall complained to the Information Commissioner.
6. In her decision notice the Commissioner confirmed that the information was personal data and reviewed the basis upon which such data could be released; exploring whether Article 6(1)(f) provided a route:-

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data..."

7. She formulated the test for disclosure as being required to meet a legitimate interest, that it was necessary to meet that interest and whether the interest was sufficient to outweigh the rights of the data subjects. She considered the interest and the role of the Council register in meeting that interest (dn 41-48).

In the light of these considerations she concluded that there was no evidence that the individuals had acted improperly or that the register was not accurate accordingly the public register was sufficient to meet the legitimate interest and Mr Thirlwall's desire to scrutinise could be met by inspecting the register and challenging any entry about which he had concerns. She therefore concluded there was no necessity for disclosure and the council had properly applied the law.

8. In appealing against that decision he explained that he was concerned whether the Register had been altered and whether the councillors had made the changes within the statutory time limit. He believed that the number of emails sent by councillors would indicate whether the process had been properly followed. He claimed that an officer had lied to him about the registrations. He was critical of the Commissioner's investigation.
9. The Commissioner resisted the appeal relying on the analysis in the decision notice. The information was the personal data of the councillors. In considering Mr Thirlwall's interest she argued:-

Now the Appellant's legitimate interest has been identified, it is prudent to consider whether disclosure of the withheld information is necessary to meet the legitimate interest in question. In the Commissioner's view disclosure of the emails would not meet the Appellant's legitimate interest in either seeking whether the correct processes were followed or whether the Councillors altered their interest in the statutory time period. This is because the Appellant is focused on the number of emails. the number of emails does not necessarily have to equate to the number of Councillors. Some Councillors may have emailed 4 times, or sent a group email, and so the numbers nor the withheld information would meet the legitimate interest the Appellant is seeking. In other words, disclosure of the emails nor the number of emails would not meet the legitimate interest the Appellant is seeking.

10. In his oral argument Mr Thirlwall criticised the conduct of one of the councillors and set out the background for his concerns (summarised in paragraph 1 above). He sought to establish that there had been irregularities, suggesting that since the individual councillor was responsible for his or her own entry each one would have to authorise the change individually and that one of the councillors "bragged that he could not open a computer". He stated that the Brexit councillors had recently changed the name of their group to Rotherham Democrats and that he had complained to the Standards Committee but "all they've done is say fill it in".

Consideration

11. It was accepted by Mr Thirlwall that the information was the personal data of the individual councillors. Mr Thirlwall had a legitimate interest; he wished to see whether the correct processes for alteration of the Register of Interests had been followed, including that the councillors altered their interests within the

statutory time period. Although he has subsequently sought to negotiate around the request, the request as made was for all communications about the Register of Interests from a group of Councillors over a period of time. While there may be a legitimate interest in knowing the specific information which Mr Thirlwall has sought, the Register of interests of councillors is a public document which is part of the assurance process underpinning the governance of a Council. The public availability of the Register is one of the guarantees of the probity and regularity of the Council's decisions. It contains personal information about councillors which they are required to put into the public domain. However the communications with the Council around such personal information are protected by GDPR, Councillors have no reason to think that such emails, letters or conversations would be disclosed, to disclose them would not meet the requirement of transparency towards the data subjects. To the (very) limited extent that there is a legitimate interest beyond the information contained in the public record it is far outweighed by the interests of the data subjects. The disclosure which Mr Thirlwall subsequently sought would not even meet his legitimate interest since, as the Commissioner observed, there could have been a combination of different circumstances which would have given rise to different numbers of communications, the number of communications (providing it was more than 0) would not answer Mr Thirlwall's concern.

12. The tribunal is satisfied that the Information Commissioner's decision is correct and the appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal
Date: 18 December 2020