



Neutral Citation number: [2023] UKFTT 950 (GRC)

Case Number: TC*****
Case Reference: EA/2023/0402

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

Heard by: determination on the papers

**Heard on: 3 November 2023
Decision given on: 09 November 2023**

Before

TRIBUNAL JUDGE ALEKSANDER

Between

S HUSSAIN

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

Decision: The appeal is struck out

REASONS

1. On 4 May 2023, Mr Hussain wrote to the City of Bradford Metropolitan District Council (“Bradford Council”) requesting the following information:

I would like the name, registration number and date of employment or date of last employment of all qualified registered social workers which are working in Adult social services at Bradford Council, including if they are full-time, part-time, permanent, contract or agency workers covering the period from 2010 onwards. My enquiries should exclude any social workers working in

other files such as children's services. I would like the response to my enquiries to be in an easily readable spreadsheet dataset format such as Excel.

2. Bradford Council responded on 12 May 2023 stating that the requested information was being withheld under s40 Freedom of Information Act 2000 ("FOIA"). That decision was upheld following an internal review.

3. On 16 June 2023, Mr Hussain contacted the Information Commissioner to complain about the way in which his request for information had been handled by Bradford Council.

4. The Information Commissioner decided that the requested data constitutes personal data, which is defined in s3(2) Data Protection Act 2018 ("DPA") as information relating to an identified or identifiable living individual. The names and other details requested about Bradford Council's social workers are clearly information which identifies living individuals, and so is personal data.

5. As the Information Commissioner stated in his decision notice, the mere fact that the requested information constitutes personal data does not of itself exempt the information from disclosure. The exemption relied upon by Bradford Council in this case is in s40(2) FOIA. This provides that information is exempt from disclosure if it is the personal data of an individual other than the requester, and where one of the conditions set out in that section is met.

6. The relevant section in this case is s(3A)(a), which exempts disclosure which would contravene any of the principles relating to the processing of personal data as set out in Article 5 of the UK General Data Protection Regulations ("GDPR"). The principle considered relevant by the Information Commissioner in this case was principle (a) set out in Article 5(1)(a) GDPR which states:

Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject

7. The processing in the case of an FOIA request is the disclosure to the requester. Therefore, personal data can only be disclosed to the requester if the disclosure would be lawful, fair, and transparent.

8. Whether disclosure is "lawful" has to be considered under Article 6(1)(f) GDPR which states:

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, in particular where the data subject is a child.

9. This can be broken down into the following three-part test:

- (1) Whether a legitimate interest is being pursued in the request for information;
- (2) Whether disclosure of the information is necessary to meet the legitimate interest; and
- (3) Whether the protection of personal data in the interests and fundamental rights and freedoms of the data subject should be overridden.

10. The Information Commissioner noted that although Mr Hussain was provided with an opportunity to express his legitimate interest, he did not do so. Nonetheless, the Information Commissioner decided that there is a legitimate interest in knowing whether Bradford Council employs an adequate number of social workers and whether those that it does employ have the necessary qualifications.

11. The Information Commissioner decided that it was not necessary to disclose such detailed information about each individual social worker in order to allow the public to decide whether it is deploying its budget effectively. Such information can be provided in aggregated form in such a way as not to identify individuals. Any concerns about a particular individual social worker can be raised with Bradford Council or with the social worker's professional body, which is a less intrusive means of holding an individual social worker to account. It is possible to check their professional status by searching the professional register.

12. The Information Commissioner decided that Bradford Council were correct to withhold the information requested pursuant to s40(2) FOIA.

13. Mr Hussain now appeals against that decision on two grounds. First, that the Information Commissioner was incorrect to classify the names of public servants as personal data, and secondly that the information requested had been put into the public domain by a different organisation.

14. The Information Commissioner applies to strike out Mr Hussain's appeal on the basis that it has no reasonable prospects of success.

15. I agree with the Information Commissioner that it is self-evident that the information requested is personal data, as it includes the names of identifiable living individuals.

16. Although it is not a ground of appeal, for completeness I note that I agree with the Information Commissioner that the disclosure of personal data relating to named individual social workers is not necessary to allow the public to decide whether Bradford Council is deploying its budget efficiently. I also agree that concerns about a particular social worker can be addressed by less intrusive means than by the provision of the information requested.

17. As regards the second ground of appeal (that the information is already in the public domain), Mr Hussain has not provided details supporting this ground. If it is a reference to the public register to which the Information Commissioner referred in his Decision Notice, the search function is not comparable to the provision of the requested information. To search the register, the searcher needs to know the name or registration number of the social worker. I agree with the Information Commissioner that the register does enable an individual social worker (whose name is already known) to be held to account, and find that this satisfies any legitimate interest in holding an individual social worker to account by less intrusive means.

18. Mr Hussain submits that his appeal should not be struck-out. He challenges the Information Commissioner's use of the phrase "no reasonable prospects of success" as cryptic, and puts him to proof.

19. Mr Hussain states that his legal basis is that failure to disclose the requested information is a violation of his human rights as defined under Article 10 of the European Convention on Human Rights, as incorporated into English law by the Human Rights Act 1998, and referred me to the decision of the European Court of Human Rights in *Magyar Helsinki Bizottság v. Hungary* [2016] ECHR 975. He submits that the matter needs to be judicially deliberated upon.

20. The Information Commissioner referred me to *Moss v Information Commissioner and the Cabinet Office* [2020] UKUT 242 AAC, where the Upper Tribunal dismissed the argument that Article 10 was a relevant consideration when dealing with requests under FOIA.

21. As the Upper Tribunal stated in *Moss*:

the decision in *Magyar* holds that Article 10 of the European Convention on Human Rights ("ECHR"), which provides that "Everyone has a right to freedom of expression", can also in certain circumstances provide a right of access to information.

22. The Upper Tribunal’s decision in *Moss* is long and detailed, as it was in essence a test case about the reach of *Magyar* in UK domestic law. I do not propose to go through that decision in any detail here. Suffice it to say that

(a) as a decision of the Upper Tribunal, it is binding upon the First-tier Tribunal, and

(b) it holds that (i) domestic court authority provides that the expanded reach of *Magyar* does not apply in the UK, and (ii) even if *Magyar* did apply in domestic UK law, it does not provide a result more beneficial than otherwise is available under FOIA.

I therefore find that *Magyar* does not assist Mr Hussain in his appeal.

23. As regards the use by the Information Commissioner of the phrase “no reasonable prospects of success”, this is merely a quotation from the Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, which govern proceedings before this Chamber. Rule 8(3)(c) provides that the Tribunal may strike-out proceedings if it considers that there is no reasonable prospect of the appellants’ case succeeding.

24. I agree with the Information Commissioner in his response, and find that he was correct to determine that the requested information is exempt from disclosure for the reasons he gave. As Mr Hussain has not advanced any argument of substance which challenges the Information Commissioner’s decision, I find that Mr Hussain’s appeal has no reasonable prospects of success, and should be struck-out.

25. Mr Hussain submits that the appeal should be decided at a hearing and not on the papers. However, as I have found that it has no reasonable prospects of success and should be struck out, a hearing will not be necessary.

26. I strike-out Mr Hussain’s appeal.

NICHOLAS ALEKSANDER
TRIBUNAL JUDGE
Promulgated on: 09 November 2023