



Neutral citation number: [2024] UKFTT 529 (GRC)

Case Reference: EA/2023/0525

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

**Decided without a hearing**

**Determined, by consent, on written evidence and submissions.  
Considered on the papers on 30 May 2024**

**Decision given on: 21 June 2024**

**Before**

**JUDGE RECORDER CRAGG KC (sitting as judge of the FTT)  
MEMBER ROSALIND TATAM  
MEMBER DR PHEBE MANN**

**Between**

**PETER TILSON**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent(s)

**Decision:** The appeal is Dismissed

**Substituted Decision Notice:** No substituted decision notice.

**REASONS**

MODE OF HEARING AND PRELIMINARY MATTERS

1. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.

2. The Tribunal considered an open bundle of 49 pages.

### BACKGROUND

3. On 25 August 2023 the Appellant requested the name of a Council officer from the Local Government Social Care Ombudsman (LGSCO) who refused to provide the requested information, citing section 40(2) (personal information) of FOIA. The request relates to a complaint that the Appellant made to the LGSCO.

4. The request to the LGSCO was as follows:-

1. Further to my earlier communication can you in accordance with EIR/FOI/GDPR send me a copy of the date stamped report and the communication that accompanied it when sent to the Council by the Inspector.

2. I request a copy of all related correspondence between the Council and the LGO which go to identifying the source of the document.

3. I request copies of the correspondence between the Council and the LGO regarding what was on the portal including the letter to the Inspector referrer (sic) in your officers decision notice.

5. LGSCO responded with the information on 25 August 2023. However, in relation to part 3 of the request, it disclosed information with the name of a Council officer redacted and cited section 40(2) Freedom of Information Act 2000 (FOIA) as justifying the redaction. On 18 September 2022 the Appellant requested an internal review, stating:-

I wish to seek a review of the decision to redact the names of the Council Planning Officers who sent emails to [REDACTED].

These are public servants in front office functions their names should be disclosed. There is no valid justification for such a redaction.

I need to establish that the person communicating with [the LGSCO] was not [NAME REDACTED]. This person is the owner of... the property adjacent to the building work. The builder is a friend of [NAME REDACTED] ...and has been doing work on their house. [NAME REDACTED] would have had to declare an interest in supporting the development and being a client of the builder.

6. Following an internal review LGSCO wrote to the complainant on 25 September 2023. It upheld its previous position, and explained that:-

I note the officer in question is not a planning officer, but the officer who is the link between us and the Council. Their role is to deal with our requests and to pass us information they have received. I cannot see any reason why they would have any involvement in any planning decisions. Bearing in mind their reasonable expectation we would not pass this information on I can see no grounds to release this information to you.

## THE LAW

7. Section 40 (2) FOIA reads as follows:-

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

- (a) it constitutes personal data which does not fall within subsection (1) (personal information of the applicant], and
- (b) the first, second or third condition below is satisfied.

8. Section 3(2) of the DPA 2018 defines personal data as “any information relating to an identified or identifiable living individual”.

9. The relevant condition (as referred to in s40(2) FOIA) in this case is found in s40(3A)(a):

- (3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—
- (a) would contravene any of the data protection principles.

10. Under s40(7) FOIA the relevant data protection principles in this case are to be found in Article 5(1) of the UK GDPR. Materially, Article 5(1)(a) reads:-

Personal data shall be:

- (a) processed lawfully, fairly and in a transparent manner in relation to the data subject (“lawfulness, fairness and transparency”).

11. Further, by Article 6(1) UK GDPR:-

Processing shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

...

- (f) 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...

12. Case-law has established the 'legitimate interest' basis for processing is subject to a three-part test, as applied by the Commissioner in this case. The three-part test is:-

- (a) Legitimate interest test: whether a legitimate interest is being pursued in the request for information;
- (b) Necessity test: whether disclosure of the information is necessary to meet the legitimate interest in question;
- (c) Balancing test: whether the above interests override the fundamental rights and freedoms of the data subject.

13. The processing of personal data will be unlawful (and so a public authority will be entitled to withhold it under FOIA) if any limb of the three-part test is not met.

#### THE DECISION NOTICE

14. The Commissioner's decision notice (IC-260480-N3Z7) was issued on 16 November 2023. Having found that the information sought was personal data (as it constituted a person's name) the Commissioner applied the three-part consideration as set out above, starting with the legitimate interest test:-

22. It's important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).

23. At the time of requesting an internal review, the complainant explained that they want to ascertain the identity of the Council officer who communicated with the LGSCO about their complaint. The complainant is concerned that this Council officer may have been involved in the events that led to their complaint to the LGSCO and therefore it's a conflict of interest for them to be communicating with the LGSCO.

24. With the above in mind, the Commissioner is satisfied that there is a legitimate interest in disclosure of this information.

15. In relation to the necessity test the Commissioner noted that ‘necessary’ means ‘more than desirable but less than indispensable or absolute necessity’ and that whether there is another way to meet the legitimate interest in a way that would interfere less with the privacy of individuals, is also a matter to be considered:-

27. The Commissioner isn’t convinced that disclosure is necessary in this instance to fulfil the legitimate interest of the request. The complainant’s concern is that a conflict of interest has occurred during the handling of their complaint. This could be addressed via the complaints procedure of either the LGSCO or the Council. This would address the complainant’s concerns without disclosure of personal data to the world at large.

28. However, he acknowledges that in order to bring a complaint to the LGSCO, the complainant may have already brought a complaint to the Council. He acknowledges that the requested information hasn’t otherwise been made available to the public.

16. The Commissioner said that for completeness, he would go on to consider the balancing test:-

29. If the data subject wouldn’t reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

30. In performing this balancing test, the Commissioner has considered the following

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

17. The Commissioner explained that:-

31. In the complainant’s view, ‘All such officers will be aware that their names can be disclosed in relation to work activities.’

32. However, the LGSCO confirmed to the complainant, ‘I note the officer in question is not a planning officer, but the officer who is the link between us and the Council. Their role is to deal with our requests and to pass us information they have received. I cannot see any reason why they would have any

involvement in any planning decisions. Bearing in mind their reasonable expectation we would not pass this information on I can see no grounds to release this information to you.’

18. The Commissioner concluded that there was no Article 6 UK GDPR basis for processing and so disclosure would not be lawful:-

33. The Commissioner disagrees with the complainant; just because an individual is employed by the Council this doesn’t mean that there is always a reasonable expectation that their personal data will be disclosed to the world at large.

34. Furthermore, it appears the officer in question is just acting as a conduit between the Council and the LGSCO, for the purposes of addressing this complaint. The Commissioner therefore agrees with the LGSCO that the officer would be unlikely to expect that their personal data would be disclosed to the complainant in these circumstances.

## APPEAL AND RESPONSE

19. The Appellant’s grounds of appeal are dated 12 December 2023 and the following points are made:-

It is necessary for the appellant to know the names of the Council staff involved given the past history of lack of openness and concealment of information as referenced in the complaint process. This is also recognised in the Commissioners two Decision Notices dated 27th July 2022 in cases IC – 120022 – F9M3 and IC – 120030 – C7D7.

In case IC – 120022 – F9M3 the Council said they did not hold the requested information however in response to the intervention of the LGCO they now say they held the information in total contradiction to what they said in the Complaints process and in the apology letter from their Information Governance Officer dated.

This contradiction is currently being investigated by the Commissioner in case IC – 264871 – B2Z5.

The key question when it comes to disclosing names, is what is the harm that will arise from disclosure? There must be a connection between the disclosure and the harm. Even if disclosure may cause distress to a member of staff this doesn’t automatically trump the legitimate interests of the requestor; the public authority must undertake a balancing exercise.

When a public authority carries out this balancing exercise it should take the reasonable expectations of the staff concerned into account. The appellant argues that there would not have been a reasonable expectation that the name alone should not be [sic].

There is no blanket presumption in favour of non disclosure of the names of junior officials, each case must be considered carefully and with regard to the legitimate interests of the requestor.

The appellant submits that no potential harm will arise from the disclosure of the name of the Council officer. There must be a connection between the disclosure and the harm. In this case there is no prospect of harm. The appellant is a retired Solicitor and a former senior employee of the Council.

Even if disclosure may cause distress to a member of staff this does not automatically trump the legitimate interests of the requester.

As regards the reasonable expectations of the Council Officer it should be noted that current Government Policy is to promote greater transparency through the public sector. This has a bearing on what information an employee may reasonably expect to be disclosed.

The information is not already in the public domain nor is it known to the appellant. There is no alternative means of satisfactorily resolving the matter without the disclosure of the names.

The appellant cannot make a decision on the merits potential legal remedies or other action without knowing the identity of the Council Officers.

The history of the Council's previous responses is very troubling with deliberate concealment, delay and lack of openness.

There is a general interest in the public knowing who did what. Even if the employees did nothing of significance, they may be necessary as a witnesses to find out what really happened.

The appellant is seeking to establish that the data subject is neither his neighbour (a senior Planning Officer who has personally engaged the developer for work on her house) or line managed by that Planning Officer.

The appellants complaint to the LGSCO passed their screening process for a full investigation of in all the matters. After speaking to someone at the Council the LGSCO investigator rang the applicant to say that he did not see any merit in investigating any aspect. In this conversation it became apparent that the investigator was in error about which properties were involved, he conceded that he had not read the background papers and misquoted the law. The appellant raised this as a complaint with the Investigators Manager.

The appellant asserts that the balancing exercise supports disclosure with lawful processing being required on the basis of the legitimate interests set out above.

20. The Commissioner responded to the appeal and said:-

The Commissioner explained in his decision that just because an individual is employed by a public authority this doesn't mean that there is always a

reasonable expectation that their personal data will be disclosed to the world at large [DN 33].

He went on that in this case,

“...it appears the officer in question is just acting as a conduit between the Council and the LGSCO, for the purposes of addressing this complaint. The Commissioner therefore agrees with the LGSCO that the officer would be unlikely to expect that their personal data would be disclosed to the complainant in these circumstances.” [DN34]

The Commissioner remains of the view that disclosure is not necessary to meet the legitimate interest in this case as the Appellant is able to raise his concerns regarding potential conflict of interest via the Council's and the LGSCO's complaints procedures. If the Tribunal is of the view that disclosure would be necessary in this case, on balance, weighing all of the relevant factors, the Commissioner submits that section 40(2) FOIA was applied correctly by the LGSCO in this instance.

## DISCUSSION

21. It is worth noting the Commissioner's final conclusion in the case where it is said:-

35. To summarise, the Commissioner isn't convinced that disclosure is necessary to fulfil the legitimate interest being pursued here. However, for completeness he has conducted the balancing test and determined that the rights and freedoms of the data subject outweigh the legitimate interest being pursued.

22. The outstanding information from the original request is the name of the local authority officer who communicated with the LGSCO in correspondence which has been disclosed to the Appellant where that name has been redacted. The reason why the Appellant wanted to know the name was because of a concern that the officer might be a planning officer who had some involvement in the events which led to the Appellant's complaint to the LGSCO. The Appellant has been assured by the LGSCO that that is not the case and that the author is simply 'a link' between the LGSCO and the relevant local authority.



23. In his appeal the Appellant may be said to have broadened his concern to finding out also if the sender of the correspondence is line-managed by the officer he is primarily concerned about.
24. We agree that the information in this case (a person's name) is personal data. Applying the tripartite test for the purposes of deciding whether Article 6(1) (f) UK GDPR is applicable, we need to decide first whether the Appellant has a legitimate interest in seeking the disclosure of the officer's name. The Appellant has expressed concerns in his appeal about previous actions of the local authority and in our view he has a legitimate interest in knowing whether the actions of the local authority are above board and the disclosure of the name may be a way to achieve that end. We note the Appellant's reference to previous decision notices in the grounds of appeal, but we are concerned only with the decision notice subject to the appeal in this case.
25. Although the interest is personal to him, there would be a general interest in knowing who has been involved in local authority decision-making processes.
26. However, applying the test as to whether disclosure is 'necessary' to meet that legitimate interest, we agree with the Commissioner that it is not. Having been informed by the LGSCO that the author of the email is not the officer about whom he is most concerned, the interest that the Appellant has in the sender of the correspondence is whether they are line-managed by that officer. In deciding whether disclosure is necessary the Tribunal must consider other methods by which the legitimate interest could be met. In our view, rather than the disclosure of someone's personal data, the Appellant could simply send a copy of the disclosed email with the redacted name and ask the local authority whether that person is line-managed by the officer he is concerned about. The local authority could answer affirmatively or negatively, and the Appellant would have the information he is seeking. The local authority's complaints procedure would be available if a response was not forthcoming.
27. Having reached that conclusion, the Tribunal is not required to consider the balancing test. The Tribunal notes that the Commissioner did go on to consider the balancing test and concluded that an officer who was simply the communication route between the LGSCO and the local authority would have a strong reasonable expectation that their personal data would not be disclosed to the world at large through a FOIA disclosure,

which would not be outweighed by the Appellant's interest in finding out the name of the person.

28. The Tribunal agrees with this approach even in the case where the Appellant now says he wants to discover whether the person was line-managed by a particular officer. Again, we identify that there are other ways of finding out that information which do not involve the disclosure of personal data.

29. On that basis this appeal is dismissed.

Signed

Date: 20 June 2024

Recorder Cragg KC sitting as a Judge of the FTT.