



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

**EA/2011/0088 & 0089**

**A  
ON APPEAL FROM  
The Information Commissioner's Decision  
No FS50320645 & FS50320656, both dated 16 March 2011**

**Appellant: Efifiom Edem**

**Respondent: Information Commissioner**

**Date and place of hearing: 3 October 2011 at Field House &  
11 October 2011 by telephone**

**Date of decision: 31 October 2011**

**Before**

**Anisa Dhanji  
Judge**

**and**

**John Randall and Dr Malcolm Clarke  
Panel Members**

**Representation:**

For the Appellant: in person  
For the Information Commissioner: Mr E Capewell, Counsel

**Subject matter**

FOIA section 1(1)(b) – whether the public authority has communicated the requested information.

**DECISION**

The Tribunal allows the appeal in part and substitutes the following Decision Notice in place of the Commissioner's Decision Notice dated 16 March 2011.

**SUBSTITUTED DECISION NOTICE**

**Date:** 31 October 2011

**Public Authority:** Information Commissioner

**Name of Complainant:** Efifiom Edem

**The Substituted Decision:**

For the reasons set out in our determination, we find that in respect of the Request 2 dated 4 February 2010 and Requests 2 and 3 dated 30 March 2010, the Commissioner failed to provide the information requested within 20 working days and was in breach of section 10(1) of FOIA.

**Action Required**

The information requested has now been provided and no action is therefore required.

**Signed**

**Anisa Dhanji  
Judge**

**Dated: 31 October 2011**

### REASONS FOR DECISION

#### Background

1. This is an appeal by Mr. Efifiom Edem (the “Appellant”), against two Decision Notices issued by the Information Commissioner (the “Commissioner”), on 1 March 2011.
2. The appeal arises from various requests for information made by the Appellant to the Commissioner in his capacity as a public authority. The requests for information arise from the appellant’s concerns about how his personal data was dealt with by his former employer, Egg plc and related companies. They also relate, in part, to various subject access requests made by the Appellant to the Commissioner under the Data Protection Act 1998, about information held about him by those companies, and to complaints by the Appellant as to how those requests were handled by the Commissioner.

#### The Request for Information

3. The requests for information which are the subject of this appeal were made by the Appellant on 4 February 2010, and 30 March 2010, respectively.
4. On 4 February 2010, the Appellant requested the following information:
  - “1. Is Egg plc now Egg Banking plc or Prudential Five Limited in the ICO’s *“Data Protection Public Register”*.”
  2. What was the ICO registration date, number and address for Egg plc when RFA0036053 was assigned to Victoria Swift, assessed by her and reviewed by Helen Lappin.
  3. Why and/or how did Egg plc process my “staff records” (RFA0036053 and IRQ0268656) without being registered in the ICO’s *“Data Protection Public Register”*.”
  4. Why and/or how are my “staff records” now being processed by Egg Banking plc (RFA0217964, RFA0256257 and IRQ0262753).”
5. On 30 March 2010, the Appellant made the following further request for information:

“In order to have a complete picture vis-à-vis my information request, I hereby ask the ICO to forward me the registration date and address for the following during the period 16<sup>th</sup> July 1998 (DPA 1998 date) thru [sic] the date at the head of this letter:

  1. Prudential Banking plc (all ICO registration numbers).

2. Egg Banking plc (all number excl. Z8105548 and Z1935304).
3. Egg plc (all numbers including Z5218466).
4. Prudential Five plc (all numbers).
5. Prudential Five Limited (all numbers including Z1443320)."
6. The Appellant was not satisfied with the Commissioner's responses to his requests and requested an internal review. Not being satisfied with the response received following the internal review, he complained to the Commissioner under Section 50 of the Freedom of Information Act 2000 ("FOIA").

### **The Complaint to the Commissioner**

7. The Commissioner investigated the complaint and issued two Decision Notices, both dated 1 March 2011. The first Decision Notice ("DN1") dealt with the information requested on 4 February 2010. The second Decision Notice ("DN2") dealt with the information requested on 30 March 2010.
8. In DN1, the Commissioner found that requests (1) and (2) had been properly dealt with. The Commissioner had complied with sections 1(a) and (b) in providing the requested information, and had complied with section 10(1) in providing the information within 20 working days. In relation to requests (3) and (4), the Commissioner found that it had failed to inform the Appellant that no recorded information was held, and therefore had breached section (1)(a). The Commissioner had also failed to provide a response to the Appellant within 20 working days and therefore had also breached section 10(1) of FOIA. Since no information was held, the Commissioner did not require any steps to be taken in respect of these breaches.
9. In DN2, in respect of the information requested on 30 March 2010, the Commissioner found that it had complied with section (1)(a) and (b) of FOIA. The information held had been provided.

### **The Appeal to the Tribunal**

10. By two Notices of Appeal dated 31 March 2011, the Appellant appealed to the Tribunal against the Decision Notices. The two appeals were consolidated because the parties in both appeals were the same and because of the overlap in the factual context of each.
11. It seemed to the Tribunal from an early review of the papers that these appeals arose more from a misunderstanding between the parties and miscommunication between them, rather than because of any material difference in principle or interpretation of their respective rights and responsibilities under FOIA. The Tribunal encouraged the parties to resolve the issues between themselves in order to avoid the unnecessary expenditure of public funds and allowed them time to do so. Regrettably, the parties were

neither able to resolve the issues between themselves, nor even to narrow the issues.

12. At the Appellant's request, the Tribunal held an oral hearing. In advance of the hearing, the parties lodged an agreed bundle of documents. They were unable to reach agreement on the inclusion of certain documents which the Appellant wished to include. Directions were made permitting the Appellant to lodge those documents by way of a separate bundle. Both parties lodged skeleton arguments, and in addition, the Appellant lodged a reply skeleton argument and at the hearing he lodged a "statement of facts". Both sides also lodged authorities. In the case of the Commissioner, these comprised decisions of the Employment Appeals Tribunal ("EAT") with remarks about the Appellant's conduct in certain cases before the EAT. In the Appellant's case, this comprised case law, which the Tribunal has found to be of no particular relevance to the issues in this appeal.
13. The hearing was listed for 3 October 2011. There were no witnesses on either side and the hearing proceeded on the basis of submissions only. During the course of those submissions, however, Mr Capewell made certain statements in response to the panel's question which were more in the way of evidence than submissions. Although they were on matters that were largely of background relevance, we considered that the responses should properly come from witnesses. The hearing was adjourned, part heard, to be reconvened by telephone for the Tribunal to hear brief evidence from Traci Shirley, an employee of the Commissioner who is knowledgeable about the register of data controllers, and Martyn Jones, a caseworker and advice officer employed by the Commissioner who had dealt with the appellant's complaint that Egg Banking Plc had obtained and processed his employment records unlawfully. Witness statements were lodged from both witnesses and both were cross-examined by the Appellant, and the Tribunal also asked a few questions. Where relevant, we will refer to the witness evidence, below, together with our findings.
14. Both parties lodged further submissions before the reconvened hearing, which have been considered. At the end of the reconvened hearing the parties were informed that no further evidence or submissions would be accepted. If either felt that an important point had been missed out that would lead to unfairness, they were to apply for leave before making any further submissions and would need explain why leave should be granted. In the event, the Appellant lodged further submissions the following day without leave being granted. The Tribunal has considered those submissions although it did not invite a response from the Commissioner because the Appellant's submissions have added nothing of substance to the issues in this appeal.
15. Various other issues arose in connection with the reconvened hearing. They are not dealt with here because they, too, have had no bearing on the outcome of this appeal. The Tribunal is satisfied that both parties and the appellant in particular, have had a full and fair opportunity to put their cases forward. We note that although the Appellant has been unrepresented, he is

very familiar with legal proceedings as evidenced both by the cases he has had before the EAT, as well as other pending cases before this Tribunal.

16. For the avoidance of doubt we would say that we have considered all documents that have been submitted even if not specifically referred to in this determination.

### **The Tribunal's Jurisdiction**

17. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other Notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
18. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, as in this case, the Tribunal will often receive evidence that was not before the Commissioner.
19. The Appellant's grounds of appeal raise certain matters which are outside the Tribunal's jurisdiction. The Tribunal can only consider matters relating to the Appellant's right of access to information held by the Commissioner. Accordingly, the grounds of appeal and submissions have been read as being confined to such matters.

### **The Legislative Framework**

20. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
21. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA, or if certain other provisions apply. In the present case, the Council relies on section 14. This does not provide an exemption as such. Rather, it simply renders inapplicable the general right of access to information contained in section 1(1).

### **Findings**

22. These appeals should never have been brought. We have no doubt that the Commissioner has been willing to provide the Appellant with all such information as it holds coming within the scope of his requests. To the extent he did not do so, we find that it has been because of a degree of human error on the Commissioner's part. Errors in the information provided should have been corrected sooner but were not. These matters could and should have been easily resolved had a sensible discussion taken place between the parties. Unfortunately, the Appellant has been determined to interpret any

failing on the Commissioner's part, however unintended, as an attempt either deliberately to withhold or even to fabricate information, rather than accepting human error as being the most likely cause. Indeed the Appellant has gone so far as to allege that the Commissioner had committed an offence under Section 77 of FOIA (offence of altering records with the intent to prevent disclosure). It is an assertion that is entirely without foundation. There is neither evidence nor motive to support it.

23. Equally, some (although a lesser portion) of the blame for these unnecessary appeals rests with the Commissioner. We accept that the way in which the Appellant tends to communicate (as reflected both in his communications with the Commissioner and with the Tribunal), often makes it extremely difficult to follow what he is saying. Relevant and irrelevant points are given equal emphasis, there is a surfeit of cross-references (mostly unnecessary), and there is a tendency also to follow one document with another setting out clarifications or amendments followed by yet another in the same vein, with new issues or requests being made in different iterations of previous communications, such that it becomes a painstaking task to unlock what the Appellant is actually saying or to follow one issue through to any reasonable conclusion. Nevertheless, we consider that the Commissioner could and should have put greater effort into doing so.
24. To what extent the way in which the Commissioner dealt with the Appellant was influenced by the fact that he acted both as a public authority with a duty to provide information requested under FOIA, and as Information Commissioner with a statutory function under section 50 of FOIA, is not clear. We are told by Mr Capewell that these roles frequently overlap. He was not aware of any particular policy for how the Commissioner ensures it retains sufficient separation of these two functions to maintain the objectivity needed when it is carrying out its role under section 50 of FOIA. We make no recommendations in this regard, save to suggest that there may be cases when it would be prudent for the Commissioner to involve an independent third party (for instance a firm of solicitors), in the investigations.
25. We turn now to address the specific requests in issue. We will deal with them in relation to each Decision Notice in turn, and by reference to the number corresponding with the Appellant's requests.

## DN1

### Request 1

26. The Appellant asked whether Egg Plc. is now Egg Banking Plc. or Prudential Five Limited in the ICO's "Data Protection Public Register".
27. The Commissioner replied on 22 February 2010. He explained that he was unable to confirm if Egg Plc. was now Egg Banking Plc. or Prudential Five Limited as he would not hold that information. However, he stated that both Egg Banking Plc. and Prudential Five Limited were registered on the data protection register. He gave the registration number and the expiry date of the registration, in each case.

28. The Appellant says that the Commissioner's response is incorrect and that he did in fact hold information as to whether Egg Plc. was now Egg Banking Plc. or Prudential Five Limited. As evidence of this, he refers to two letters written by Martyn Jones from the Commissioner's office. The letters are dated 4 November 2009 and 1 February 2010, respectively. The first letter states, *inter alia*, that "I note that you were an employee of Egg Plc. who is now Egg Banking Plc.". The second letter states, *inter alia*, that "I can confirm that Egg Plc., Prudential Limited and Egg Banking Plc. are the same company." The Appellant says that from these letters, it is clear that Commissioner did hold information as to the relationship between these companies.
29. The evidence before us indicates that the letters from Martyn Jones were written to the Appellant in the context of one or more complaints made by him in relation to his subject access requests, pre-dating the information requests in issue in this appeal. More importantly, we note that the Appellant's request was specifically in relation to the information on the "Data Protection Public Register". He was not asking for whether the Commissioner held the information more generally.
30. When this point was made at the hearing, the Appellant wanted to know what comprises the Data Protection Public Register. Is it simply that part of the register available to the public, or if not, how far does it extend? He pointed out that some of the extracts from the register provided by the Commissioner showed the company number, but he said that this was not accessible when a member of the public conducts an on-line search. This, to him, is evidence that there are hidden fields or links between the information publicly available and other information that the Commissioner holds, and he says that this other information is also part of the Public Register.
31. This may be an appropriate point to summarise what the Data Protection Public Register is, both in terms of what the Data Protection Act 1998 ("DPA") says about the register and in terms of the evidence that has been put forward from the Commissioner about what it contains and how it is maintained. What follows is a summary to the extent directly relevant to Request 1. We have set out in Appendix A, a fuller explanation provided by the Commissioner in its submissions dated 6 October 2011.
32. There appears to be no term in the DPA corresponding to the term "Data Protection Public Register" as used by the Appellant. What the DPA requires, under section 19, is that the Commissioner must maintain a register of notifications made to it by UK data controllers. Under section 19(2), each entry in the register must consist of the "registrable particulars" and such other information as the Commissioner may be authorised or required by notification regulations to include in the register. The Data Protection (Notifications and Notification Fees) Regulations 2000, provides, in regulation 11, certain matters in addition to those mentioned in section 19(2) of the DPA, which the Commissioner may include in a register entry.
33. Notification by data controllers is made by way of a form produced by the Commissioner. This is partly pre-populated by the Commissioner based on the type of body or organisation the data controller is. The form requests



certain information that is not required to be included in the register. For example, it asks for contact details of the data controller, and the company number (if the data controller is a corporate entity).

34. This register is made available to the public through the Commissioner's website. The public can also contact the Commissioner to ask if a particular data controller is registered under the DPA, and a full copy of the public register is also available, upon request, on a DVD.
35. The public register only contains current information. It does not contain expired entries. However, the Commissioner maintains his own data base (Ms Shirley referred to this as the "internal notification system") which retains historical versions of the register entries and the additional information which the Commissioner requests, but which does not form part of the registrable particulars or which are not otherwise required for the public register. There is no statutory requirement to maintain this data base. It is separate from the public register and is not accessible to the public, although if a request is received for historic information, it will be obtained from this data base. This is why, when seeking historical information about what was registered, the Appellant made requests for information to the Commissioner rather than searching for the information himself.
36. As regards change of company names, Ms Shirley's evidence is that the Commissioner does not record, on the public register, nor is he required to record, information as to name changes of data controllers. If ABC Limited is registered as the data controller and changes its name to XYZ Limited, it may notify the Commissioner of the change of name, or it may simply submit a fresh notification in the name of XYZ Limited after its current entry expires. Even if the Commissioner is notified of the change of name, the evidence which we have heard from Ms Shirley and which we have no reason to doubt, is that there would be no cross-reference to the previous register entry for ABC Limited. In effect, therefore, the register does not track the changes in company names.
37. It is not within our jurisdiction to query or comment on whether this is an appropriate way in which the register should be maintained. The only question we are called to adjudicate upon is whether, when the Commissioner informed the Appellant that it did not hold the information he was seeking as part of the public register, this answer was in compliance with his duty under section 1(1)(b) of FOIA. We are satisfied that it was. Although the Appellant's request was about the information held on the public register, we are equally satisfied that the Commissioner did not hold the information on the internal notification system and would have provided it if it were held.
38. In addition, we are satisfied that whatever information was set out in Martyn Jones' letters to the Appellant dated 4 November 2009 and 1 February 2010 was based on information outside the scope of the register, and it fell, therefore, outside the scope of the Appellant's request. Mr Jones' evidence. was dealing with a DPA question or complaint about the processing of Mr.Edem's personal data, not an FOIA request involving information recorded on the public register.

39. However, for completeness, we requested the Commissioner to obtain evidence from Mr Jones as to the basis on which he had stated, in his letters dated 4 November 2009 and 1 February 2010, respectively that Egg Plc. was now Egg Banking Plc, and that Egg Plc., Prudential Limited and Egg Banking Plc. were the same company.”
40. Mr Jones has said and we accept, that while he cannot recall precisely how he came to include those statements, he was, in the case of the first letter, relying essentially on information that that the Appellant had himself provided to Mr Jones about the relationship between the companies and that he used that information to explain the DPA implications to the Appellant. In the case of the second letter, he remembers checking with the Companies House register which showed that one of Prudential Five Limited’s previous names was Egg Plc. He also remembers checking various websites including the companies’ own websites to establish the link between the three companies in question.
41. In short, in relation to Request (1), we dismiss the Appellant’s appeal.

#### Request 2

42. The Appellant asked for “the ICO registration date, number and address for Egg Plc. when RFA0036053 was assigned to Victoria Swift, assessed by her and reviewed by Helen Lappin”. It is common ground between the parties that RFA0036053 refers to a previous complaint made by the Appellant to the Commissioner in respect of a data subject request, and further that Victoria Swift and Helen Lappin are or were employees of the Commissioner and were involved in dealing with those requests. It is also common ground that the dates of the events referred to in the Appellant’s request were 20 August 2004 and 22 February 2005, respectively. In effect, therefore, the Appellant was asking for information in relation to Egg Plc.’s entry on the register between the period 20 August 2004 and 22 February 2005.
43. In response to the request, the Commissioner informed the Appellant by way of its letter of 22 February 2010, that it held a registration for Egg Plc. on 20 August 2004 and 22 February 2005. The registration number was Z5218466. The register entry was not amended between those two dates, and the address shown on the registration was Riverside Road, Pride Park, Derby. The expiry date was 28 May 2005.
44. The Appellant takes issue with this response because he says that in other communication, the Commissioner has provided him with information which indicates that the address of Egg Plc. on the register in that period could not have been the address set out in the Commissioner’s response. He refers us to the Commissioner’s letter dated 13 April 2010 (at pages 109 and 109A of the agreed bundle) which was written in response to the Appellant’s request for information dated 30 March 2010. He says that the information provided in that letter contradicts what the Commissioner had stated in its letter of 22 February 2010.

45. The Commissioner's letter of 13 April 2010 states that Egg Plc's address was amended on 13 February 2007. Its previous address was 1 Waterhouse Square, 142 Holborn Bars, London. He encloses a copy of the register entry. That register entry gives a registration date of 29 May 2001 and an expiry date of 28 May 2008. It names the data controller as Egg Plc. and gives its address as City Group Centre, Canada Square, London E14 5LB.
46. The Appellant says that the letter of 13 April 2010, taken together with the register entry, indicates that from the period 29 May 2001 up to 13 February 2007, Egg Plc.'s address was at 1 Waterhouse Square. After 13 February 2007, its address was in Canada Square. The Appellant says that this is at odds with the Commissioner's statement in his letter dated 22 February 2010 that between 6 May 2004 and 3 May 2005, Egg Plc.'s address was in Riverside Road, Derby.
47. The Appellant also refers us to the Commissioner's letter dated 18 October 2010, following the Commissioner's internal review of his response to the Appellant's request of 30 March 2010. In that letter, the Commissioner maintains that the information he had provided in his letter dated 30 April 2010 was correct in that Egg Plc.'s address had been amended on 13 February 2007 and had previously been the address at Waterhouse Square. In the same letter, in an attempt to clarify matters, the Commissioner went on to provide further information. He stated that Egg Plc.'s address from 26 July 2001 to 13 February 2007 was the address at Waterhouse Square. From 13 February 2007 to 25 February 2008, its address was Riverside Road, Derby. From 25 February 2008 to the date of the letter, its address was in Canada Square. In short, Egg Plc.'s address from 6 May 2004 to 3 May 2005 was not Riverside Road in Derby as had been stated by the Commissioner in his letter of 22 February 2010, but was the address at Waterhouse Square.
48. In her witness statement Ms Shirley confirms that the information provided in the Commissioner's letter of 18 October 2010 about Egg Plc.'s address is correct except that the address changed to Canada Square on 25 January 2008 and not 25 February 2008.
49. We find, on the basis of the foregoing, that the Commissioner provided incorrect information about Egg Plc.'s address in its letter dated 22 February 2010. By not providing the correct information within the 20 working days, we find that the Commissioner was in breach of section 10(1) of FOIA. However, we are satisfied that he has now provided the correct information and therefore, we require no action to be taken in respect of this breach.
50. We would also say, for the avoidance of doubt, that we attribute the Commissioner's breach to human error. Clearly, the error should have been picked up at the review stage and it should not have been the case that corrections were still being made as late as the hearing. However, there is no evidence to indicate that the Commissioner has deliberately withheld this information or been obstructive.
51. The Appellant says he does not accept that Egg plc has ever been registered. This would mean that the Commissioner has fabricated all the information he

has provided about Egg Plc's registration, and that he has also fabricated the register entry at page 111 of the agreed bundle. There is nothing on the evidence before us to support such a finding.

### Requests 3 and 4

52. For convenience, we will deal with Requests (3) and (4) together. In request (3), the Appellant asked why and/or how did Egg Plc. process his "staff records" (RFA0036053) and (IRQ0268656) without being registered in the ICO's "Data Protection Public Register". In Request (4) he asked why and/or how were his "staff records" now being processed by Egg Plc. (RFA0217964, RFA0256257 and IRQ0262753). As with Request 2, the reference numbers in requests 3 and 4 are references to the Appellant's previous subject access requests and/or complaints relating to those requests.
53. In his response dated 22 February 2010, the Commissioner stated that while Requests (1) and (2) were for recorded information, Requests (3) and (4) asked questions relating to the handling of his previous data protection complaints and had been passed to the relevant case officer for response. They were not requests for recorded information. Later it became apparent that they did not in fact relate to his previous data protection complaints and the Appellant was asked to submit a fresh complaint. For reasons that are not clear to us, the Commissioner found, in DN1, that Requests (3) and (4) should have been treated as requests for recorded information. He went on to state that as the questions asked for an explanation of the behaviour of the companies concerned and did not relate to recorded information, the Commissioner should have informed the Appellant that he did not in fact hold any information in relation to Requests (3) and (4). He accepted that the Commissioner had been in breach of section 10(1) of FOIA in not having informed the Appellant of this within 20 working days.
54. What then are the Appellant's grounds of appeal in respect of the Commissioner's findings about Requests (3) and (4)? To understand that, we turn to the Appellant's complaint to the Commissioner under section 50 of FOIA in which he rephrases Requests (1) to (4).

Request (3) is rephrased as follows:

"Please forward me full details of all the entries in the ICO's "Data Protection Public Register" that entitled Egg Plc. to lawfully process my "staff records" (RFA0036053 and IRQ0268656)".

Request (4) is rephrased as follows:

"Please forward me full details of all the entries in the ICO's "Data Protection Public Register" that entitled Egg Banking Plc. to lawfully process my "staff records" (RFA0217964, RFA0256257 and IRQ0262753)".

55. On 8 November 2010, the Commissioner wrote to the Appellant, referring to the rephrased requests, and stating as follows:

“..... please find attached copies of two register entries neither of which now appear on the public register.

1. Z5218466. This is the register entry for Egg Plc which was current and listed on the public register at the time of your request for information to Egg Plc on 26 March 2004. Purpose 1 is listed as staff administration.

2. Z8105548. This register entry for Egg Banking Plc which was current and listed on the public register at the time of your request for information to Egg Banking Plc on 20 August 2008 and 19 December 2008. Purpose 1 is listed as staff administration.”

56. The Appellant says that the dates referred to by the Commissioner in his response as set out above, are incorrect because the date on which Egg Plc. would have started processing his “staff records” would either have been 30 October 2002 when they started to recruit him, or 17 February 2003 when he took up employment with them.
57. We note first that the Appellant’s complaint arises from the Commissioner’s response to his rephrased request. Given how the Appellant had framed his original Requests (3) and (4), we are satisfied that it was correct for the Commissioner to say that he did not hold that information. In as much as the Appellant complains about how the Commissioner dealt with his rephrased Requests 3 and 4, that is outside the scope of DN1 which quite properly dealt with requests (3) and (4) as originally made. The Commissioner has treated the rephrased Requests 3 and 4 as fresh requests and responded to them on 8 November 2010. In our view, the rephrased requests were sufficiently different from the original requests made on 4 February 2010 that it was entirely reasonable for the Commissioner to treat them as fresh requests.
58. Even if we are wrong about this, we consider that the Appellant’s complaint as regards the Commissioner’s response to his rephrased Requests (3) and (4) are unfounded. There is nothing in the rephrased requests to indicate that the Appellant was interested in the entries as at 30 October 2002 and/or 17 February 2003. This was put to the Appellant, at the hearing. He accepted the point, but said that the Commissioner could have sought clarification from him. He also said that in a letter dated 9 November 2010, he explained that he had been employed by Egg Plc. from 17 February 2003 through to 13 December 2004, and that in a further letter, written on the same date, he asked the Commissioner to take into account his various observations. In our view, the Appellant’s expectations were wholly unreasonable and unrealistic. He has written many letters to the Commissioner letters and on the whole, they are extremely difficult to follow. Had he stated, in simple terms, that what he had been looking for was information in relation to date X rather than date Y, that would have made it incumbent on the Commissioner to take proper note of it. Instead, his communications were far from clear and we do not fault the Commissioner if he did not understand that the Appellant was adding yet another layer of clarification to an already rephrased request. To the extent that the Appellant is still interested in the information in relation to specific dates and to the extent he does not yet have the information, he is free, of course, to make a fresh request.

59. On the evidence before us, we uphold the findings in DN1 in respect of Requests (3) and (4) and dismiss the Appellant's appeal.

## DN2

60. We turn now to the request made on 30 March 2010. The Appellant stated at the hearing that of the five requests, only requests 2 and 3 are in issue in this appeal. For convenience we will deal with them together.

## Requests 2 and 3

61. In Request 2, the Appellant asked the Commissioner for the registration date and address for Egg Banking Plc. for the period 16 July 1998 through to the date of his letter (30 March 2010). He specifically excluded two registration numbers, namely Z8105548 and Z1935304.
62. In Request 3, he asked for the registration date and address for Egg Plc. for the same period, excluding registration number Z5218466.
63. The Appellant says that he was initially satisfied with the response he received on 13 April 2010, in respect of these two requests. In that response, the Commissioner stated, as regards Request (2), that there were no other registry entries other than the two numbers which the Appellant had excluded. In respect of Request (3) the Commissioner stated that the address was amended on 13 February 2007 and that the previous address was 1 Waterhouse Square, 142 Holborn Bars, London.
64. The Appellant takes issue with this response for the same reason as in relation to his Request 2 of 4 February 2010. He relies on the same information. The Commissioner's position is likewise the same. He accepts that he had given incorrect information to the Appellant when he responded to the request, but has subsequently provided the Appellant with the correct information.
65. The issue being the same as that referred to above, our finding is likewise the same.

## Other

66. There are two additional points which we wish to make briefly.
67. First, the Appellant appears to be trying to pursue a long standing grievance against his former employers by arguing that they have been in breach of the requirements of the DPA by failing to notify. Whether they have or have not, and whether the Commissioner has or has not acted on any such breach is not a matter for this Tribunal.
68. Second, the Appellant takes issue with the information that is on the Data Protection Public Register. He appears to be saying that the register contains information that the DPA does not require it to contain. What the public register is required to contain and whether the Commissioner is fulfilling his statutory obligation as regards the register, are again matters outside this

Tribunal's jurisdiction. The issue before us in this appeal has simply been whether the information requested by the Appellant from the Commissioner was provided, and our findings are limited to that issue.

**Decision**

69. We allow this appeal to the limited extent set out in the Substituted Decision Notice. Our decision is unanimous.

**Signed**

**Anisa Dhanji  
Judge**

**Dated: 31 October 2011**

*Paragraph 22 has been corrected pursuant to Rule 40 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. Minor typographical and grammatical errors have also been corrected.*

## APPENDIX A - The Data Protection Register

1. The Commissioner is obliged, by virtue of section 19(1) Data Protection Act 1998 (“DPA”) to maintain a register of data controllers who notify him, pursuant to section 18(1) DPA, of their wish to be included in that register. Section 19(1)DPA provides:
    - (1) The Commissioner shall—
      - (a) maintain a register of persons who have given notification under section 18, and
      - (b) make an entry in the register in pursuance of each notification received by him under that section from a person in respect of whom no entry as data controller was for the time being included in the register.
  2. Section 18(1) provides:
    - (1) Any data controller who wishes to be included in the register maintained under section 19 shall give a notification to the Commissioner under this section.
  3. It is notable that although section 18(1) appears to encompass only those who ‘wish’ to be included in the register, the effect of sections 17(1) and 21(1) DPA is to make it a criminal offence for a data controller in most circumstances to process data *without* being included on the register. Inclusion on the register is, in effect, a mandatory requirement for most data controllers.<sup>1</sup>
  4. As to the public availability of the register, section 19(6)-(7) DPA provides:
    - (6) The Commissioner—
      - (a) shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge, and
      - (b) may provide such other facilities for making the information contained in those entries available to the public free of charge as he considers appropriate.
    - (7) The Commissioner shall, on payment of such fee, if any, as may be prescribed by fees regulations, supply any member of the public with a duly certified copy in writing of the particulars contained in any entry made in the register.<sup>2</sup>
  5. The content of the register is specified by sections 18 and 19 DPA and by regulations made under those sections. Sections 18(2) and 19(2) provide:
-



(2) A notification under this section must specify in accordance with notification regulations—

- (a) the registrable particulars, and
- (b) a general description of measures to be taken for the purpose of complying with the seventh data protection principle.

...

(2) Each entry in the register shall consist of—

- (a) the registrable particulars notified under section 18 or, as the case requires, those particulars as amended in pursuance of section 20(4), and
- (b) such other information as the Commissioner may be authorised or required by notification regulations to include in the register.

6. There are two definitions in the above subsections which require further elaboration. The first is ‘registrable particulars’ – those pieces of information which must be included in a notification and thus in the register. These are defined by section 16(1) DPA, which provides, so far as here relevant, as follows:

(1) In this Part “the registrable particulars”, in relation to a data controller, means—

- (a) his name and address,
- (b) if he has nominated a representative for the purposes of this Act, the name and address of the representative,
- (c) a description of the personal data being or to be processed by or on behalf of the data controller and of the category or categories of data subject to which they relate,
- (d) a description of the purpose or purposes for which the data are being or are to be processed,
- (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data,
- (f) the names, or a description of, any countries or territories outside the European Economic Area to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data,
- (ff) where the data controller is a public authority, a statement of that fact

...

7. The second definition is of the ‘notification regulations’. These are the Data Protection (Notification and Notification Fees) Regulations 2000 (SI 2000/188) (“the Regulations”) as amended. Specific provision is made as to the requirements of notification for partnerships (regulation 5) and schools

(regulation 6). Regulation 4(1) provides for a broad degree of discretion in the Commissioner as to the form which the section 19 register will take:

(1) ... the Commissioner shall determine the form in which the registrable particulars (within the meaning of section 16(1) of the Act) and the description mentioned in section 18(2)(b) of the Act are to be specified, including in particular the detail required for the purposes of that description and section 16(1)(c), (d), (e) and (f) of the Act.

8. Regulation 11 of the Regulations also provides:

In addition to the matters mentioned in section 19(2)(a) of the Act [sc. the registrable particulars], the Commissioner may include in a register entry—

- (a) a registration number issued by the Commissioner in respect of that entry;
- (b) the date on which the entry is treated, by virtue of regulation 8 above, as having been included in pursuance of a notification under section 18 of the Act;
- (c) the date on which the entry falls or may fall to be removed by virtue of regulation 14 or 15 below [which provides for transitional provisions in relation to data controllers who notified under the DPA 1984]; and
- (d) information additional to the registrable particulars for the purpose of assisting persons consulting the register to communicate with any data controller to whom the entry relates concerning matters relating to the processing of personal data.

9. As to the provisions in the DPA and the Regulations for modification of an existing entry on the register, section 20 DPA provides so far as relevant:

(1) For the purpose specified in subsection (2), notification regulations shall include provision imposing on every person in respect of whom an entry as a data controller is for the time being included in the register maintained under section 19 a duty to notify to the Commissioner, in such circumstances and at such time or times and in such form as may be prescribed, such matters relating to the registrable particulars and measures taken as mentioned in section 18(2)(b) as may be prescribed.

(2) The purpose referred to in subsection (1) is that of ensuring, so far as practicable, that at any time—

- (a) the entries in the register maintained under section 19 contain current names and addresses and describe the current practice or intentions of the data controller with respect to the processing of personal data, and
- (b) the Commissioner is provided with a general description of measures currently being taken as mentioned in section 18(2)(b).

...

(4) On receiving any notification under notification regulations made by virtue of subsection (1), the Commissioner shall make such amendments of the relevant entry in the register maintained under section 19 as are necessary to take account of the notification.

10. Regulation 12 of the Regulations then provides, as relevant:

(1) Subject to regulation 13 below, every person in respect of whom an entry is for the time being included in the register is under a duty to give the Commissioner a notification specifying any respect in which—

(a) that entry becomes inaccurate or incomplete as a statement of his current registrable particulars, or

(b) the general description of measures notified under section 18(2)(b) of the Act or, as the case may be, that description as amended in pursuance of a notification under this regulation, becomes inaccurate or incomplete,

and setting out the changes which need to be made to that entry or general description in order to make it accurate and complete.

(2) Such a notification must be given as soon as practicable and in any event within a period of 28 days from the date on which the entry or, as the case may be, the general description, becomes inaccurate or incomplete.

11. Provision is also made in the DPA and the Regulations for the payment of a fee by data controllers for inclusion on the register: see sections 18(5), 19(4) and regulations 7, 7A and 14.