IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0189

BETWEEN:

STEPHEN AKRILL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

HMCTS (MINISTRY OF JUSTICE)

Second Respondent

Decision on Application to Strike Out
20 September 2011

Introduction

1. On 31 March 2011 the Appellant made a request to the Her Majesty's Courts Service ('HMCS'), an executive agency of the Ministry of Justice, under the Freedom of Information Act 2000 (the "FOIA") for information in the following terms –

> *"Names and contact addresses of persons summoned for jury service at the Queen Elizabeth II Law Courts, Newton Street, Birmingham, West Midlands B4 7NA during the month of July 2009."*

2. HMCS refused to disclose the information on the basis of section 40(2) of FOIA as it was personal data and disclosure would amount to unfair processing in breach of the first data protection principle.

The Legal Framework

3. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

4. The section 1(1)(b) duty of the public authority to provide the information requested will not apply where the information is exempt by virtue of any provision of Part II of FOIA. The exemptions provided for under Part II fall into two classes: absolute exemptions and qualified exemptions. Where the information is subject to a qualified exemption, it will only be exempt from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (section 2(2)(b)). Section 40(2)(a) of FOIA is an absolute exemption. Information that falls within this section is therefore exempt from disclosure regardless of the public interest considerations.

5. The relevant part of section 40(2) of FOIA provides:

> *(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 second condition below is satisfied.*
>
> *(3) The first condition is –*
>
> *(a) In a case where the information falls within any of the 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. There is no dispute that the relevant information in this Appeal is personal data as defined in section 1 of the DPA.

7. The first data protection principle states that personal data shall be processed (which includes disclosure of the information) fairly and lawfully and, in particular, shall not processed unless at least one of the conditions in Schedule 2 of the DPA is also met.

The Information Commissioner's Decision

8. The Appellant appealed to the Information Commissioner (the 'Commissioner') who concluded that the information is exempt from disclosure n the basis of section 40(2) of FOIA. The Commissioner took into account what the reasonable expectations of the jurors would be, what the consequences of disclosure would be and whether there was any compelling public interest in disclosure.

Appeal to the Tribunal

9. The Appellant appeals against the Commissioner's Decision Notice. He submits that the Commissioner's decision that the information requested is exempt from disclosure on the basis of section 40(2) of FOIA is wrong in law and he advances two grounds of appeal:

Ground 1 - that the Commissioner erred in concluding that disclosure would breach the first data protection principle; and

Ground 2 - the test applied by the Commissioner was arbitrary and outwith the statutory test provided by section 2 of Part II of the Data Protection Act 1998 ('DPA').

10. In the Appellant's very brief grounds of appeal he does not advance any argument in support, nor does he identify any particular part or parts of the Commissioner's reasoning he is challenging.

11. The Principal Judge invited the Appellant to set out in more detail why he challenges the Decision Notice; the Appellant replied to the effect that there was nothing further he could add and commenting that the Commissioner did not *"proffer a legal argument to which one can respond"*.

12. The Commissioner, in his Response to the Appellant's Notice of Appeal, has invited the Tribunal to strike out the Appellant's appeal under Rule 8(3)(c) of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the 'Rules') on the basis that that there is no reasonable prospect of success.

13. In particular, the Commissioner submits that he understands the basis for the Appellant's appeal is that the test of "fairness" under the first data protection principle is a statutory test that is solely defined by Part II of Schedule 1 DPA and that the Commissioner should have taken into account only those matters referred to in part II.

14. The Appellant is a litigant in person, not legally qualified or trained, and has put forward what he believes to be relevant grounds of appeal.

15. In relation to Ground 1, it appears to me that although the Appellant has not set out his submissions in detail, he is challenging the findings of the Commissioner in support of the decision to conclude that

(i) Individuals called for jury service would have a reasonable expectation that their names and addresses would not be disclosed on request by third parties;

(ii) Disclosure could lead to jurors receiving unexpected and unwarranted attention from defendants, family members of the accused or others which would be a significant invasion into their private lives;

(iii) Jurors did not volunteer but were summoned; that these factors were not undermined by the fact that names of jurors are read out in open court;

(iv) There was no genuine public interest in the disclosure of the requested information.

16. As this was a decision that involved identifying and considering relevant factors, I am satisfied that the challenge of that decision has a reasonable prospect of success and I am not persuaded that this ground of appeal should be struck out under Rule 8(3)(c).

17. In relation to Ground 2, that the test applied by the Commissioner was arbitrary and outwith the statutory test provided by section 2 of Part II of the Data Protection Act 1998 ('DPA'), the Appellant has provided no basis for this submission and I am unable to infer his arguments.

18. Under Rule 8(4) of the Rules, the Tribunal may not strike out the whole or part of the proceedings under Rule 8(3)(c) without first giving the Appellant an opportunity to make representations in relation to the proposed striking out.

19. The Appellant is therefore directed to provide written representations to the Tribunal and the other parties in relation to the proposed striking out of Ground 2 by 3 October 2011.

20. The other parties shall serve any response to those representations by 17 October 2011.

Annabel Pilling 20 September 2011

Tribunal Judge

IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0189

BETWEEN:

STEPHEN AKRILL

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

And

THE MINISTRY OF JUSTICE

Second Respondent

DECISION ON
APPLICATION TO SET ASIDE DECISION
OR
FOR PERMISSION TO APPEAL
TO THE UPPER TRIBUNAL

26 October 2011

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1. The Appellant has applied for the Tribunal to set aside its decision of 18 October 2011 to strike out his Appeal. Alternatively, he applies for permission to appeal to the Upper Tribunal.

Background

2. On 31 March 2010 the Appellant made a request to the Her Majesty's Courts Service ('HMCS'), an executive agency of the Ministry of Justice, under the Freedom of Information Act 2000 (the "FOIA") for information in the following terms –

> *"Names and contact addresses of persons summoned for jury service at the Queen Elizabeth II Law Courts, Newton Street, Birmingham, West Midlands B4 7NA during the month of July 2009."*

3. HMCS refused to disclose the information on the basis of section 40(2) of FOIA as it was personal data and disclosure would amount to unfair processing in breach of the first data protection principle.

The Legal Framework

4. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

5. The section 1(1)(b) duty of the public authority to provide the information requested will not apply where the information is exempt by virtue of any provision of Part II of FOIA. The exemptions provided for under Part II fall into two classes: absolute exemptions and qualified exemptions. Where the information is subject to a qualified exemption, it will only be exempt from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (section 2(2)(b)). Section 40(2)(a) of FOIA is an absolute exemption. Information that falls within this section is therefore exempt from disclosure regardless of the public interest considerations.

6. The relevant part of section 40(2) of FOIA provides:

> *(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 second condition below is satisfied.*

(3) The first condition is –

(a) In a case where the information falls within any of the 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)…..

7. There is no dispute that the relevant information in this Appeal is personal data as defined in section 1 of the DPA.

8. The first data protection principle states that personal data shall be processed (which includes disclosure of the information) fairly and lawfully and, in particular, shall not processed unless at least one of the conditions in Schedule 2 of the DPA is also met.

The Information Commissioner's Decision

9. The Appellant appealed to the Information Commissioner (the 'Commissioner') who concluded that the information is exempt from disclosure on the basis of section 40(2) of FOIA. The Commissioner took into account what the reasonable expectations of the jurors would be, what the consequences of disclosure would be and whether there was any compelling public interest in disclosure.

Appeal to the Tribunal

10. The Appellant appeals against the Commissioner's Decision Notice:

"The Commissioner's decision that the request is exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 is wrong in law: the first data protection principle relating to fairness is not contravened as alleged.

The fairness test applied by the Commissioner is arbitrary and outwith the statutory test which is provided for by section 2 of Part II (Interpretation of Part I) of the Data Protection Act 1998. None of the Commissioner's remarks take into account the statutory provisions as aforesaid, or are relevant to the Applicant's request for information under Part I of the Freedom of Information Act 2000."

11. In these very brief grounds of appeal the Appellant did not advance any argument in support, nor did he identify any particular part or parts of the Commissioner's reasoning he is challenging.

12. The Principal Judge invited the Appellant to set out in more detail why he challenges the Decision Notice; the Appellant replied to the effect that there was nothing further he could add and commenting that the Commissioner did not *"proffer a legal argument to which one can respond"*.

13. The Commissioner, in his Response to the Appellant's Notice of Appeal, invited the Tribunal to strike out the Appellant's appeal under Rule 8(3)(c) of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the 'Rules') on the basis that that there is no reasonable prospect of success.

14. In particular, the Commissioner submits that he understands the basis for the Appellant's appeal is that the test of "fairness" under the first data protection principle is a statutory test that is solely defined by Part II of Schedule 1 DPA and that the Commissioner should have taken into account only those matters referred to in part II.

15. The Appellant is a litigant in person, not legally qualified or trained, and has put forward what he believes to be relevant grounds of appeal. The Tribunal took a wide approach to the appeal submitted by the Appellant. It appeared that the Appellant was submitting that the

Commissioner's decision that the information requested is exempt from disclosure on the basis of section 40(2) of FOIA is wrong in law and that he advanced two distinct grounds of appeal:

> Ground 1 - that the Commissioner erred in concluding that disclosure would breach the first data protection principle; and
>
> Ground 2 - the test applied by the Commissioner was arbitrary and outwith the statutory test provided by section 2 of Part II of the Data Protection Act 1998 ('DPA').

16. The Appellant disagrees with this assessment and submits that only Ground 2 is his actual ground of appeal. He submits that the Tribunal has invented Ground 1 in order to avoid hearing the actual appeal.

17. In relation to Ground 1, it appeared to the Tribunal that although the Appellant had not set out his submissions in detail, he was challenging the findings of the Commissioner in support of the decision to conclude that disclosure would be unfair and breach the first data protection principle, namely, that

    (i) Individuals called for jury service would have a reasonable expectation that their names and addresses would not be disclosed on request by third parties;

    (ii) Disclosure could lead to jurors receiving unexpected and unwarranted attention from defendants, family members of the accused or others which would be a significant invasion into their private lives;

    (iii) Jurors did not volunteer but were summoned; that these factors were not undermined by the fact that names of jurors are read out in open court;

    (iv) There was no genuine public interest in the disclosure of the requested information.

18. As Ground 1 was a decision that involved identifying and considering relevant factors, the Tribunal concluded that the challenge of that decision has a reasonable prospect of success. Accordingly this ground of appeal was not struck out under Rule 8(3)(c) and the Appeal due to proceed to a hearing on 12 December 2011.

19. In relation to Ground 2, the Appellant had provided no basis for this submission and the Tribunal was unable to infer his arguments. Therefore, the Appellant was given an opportunity to make representations in relation to the proposed striking out under Rule 8(4) of the Rules. He was directed to provide written representations to the Tribunal and the other parties in relation to the proposed striking out of Ground 2 by 3 October 2011. The other parties were directed to serve any response to those representations by 17 October 2011.

20. The Appellant responded by a short letter dated 26 September 2011. He described the documents as "*mendacious*" and accused the Tribunal Judge of "*inventing a second false ground [Ground 1]* …" and "*creating an illusion of a fair adjudication and due process*". He alleged that the Tribunal Judge is motivated to assist an endeavour to "*conceal the Crown Court practice of secret jury trials and prevent its public exposure*." He concluded the letter by indicating that he would take no further part in the Tribunal proceedings "*until such time as the order and ruling are withdrawn and my appeal is truthfully represented.*"

21. Having been directed to provide written representations in relation to the proposed striking out of Ground 2, said by the Appellant to be his only ground of appeal, the Appellant had failed to comply. The Tribunal was not in a position to infer his arguments in relation to this ground of appeal. It was not clear what the Appellant meant by "*secret jury trials*". Taking into account the overriding objective of the Rules, in all the circumstances, the Tribunal was satisfied that there is no reasonable prospect of this part of the appeal succeeding and accordingly this ground of appeal was struck out under Rule 8(3)(c) of the Rules on 18 October 2011.

22. As the Appellant had indicated that he will take no further part in the proceedings until the "*order and ruling*" are withdrawn, it was not clear whether this Appeal was in fact being withdrawn. The "*ruling*" to which the Appellant referred relates to the *refusal* to strike out Ground 1 as identified by the Tribunal and the subsequent directions for the preparation for the hearing.

23. The Appellant was directed to indicate in writing by 4pm on 24 October 2011 whether he was withdrawing this Appeal or whether he wished the appeal to proceed in relation to Ground 1. He was warned that failure to comply with this Direction would result in the Appeal being struck out.

The Application

24. The Appellant applies to the Tribunal to set aside the decision of 18 October 2011 to strike out Ground 2 of his Appeal. He submits that this decision is an error of law and the Tribunal failed to provide reasons upon which it could support such a decision, making the decision manifestly perverse.

25. The Appellant submits that nothing in the Rules or in law permitted the Tribunal on 19 September 2011 to direct him to disclose legal arguments in advance of the Appeal hearing listed for 12 December 2011. The Tribunal is aware that the Appellant is not legally represented in these proceedings and may not have a full understanding of the Rules, the relevant legislation and the practice in the Tribunal. In particular, there is a wide discretion under Rule 5 for the Tribunal to regulate its own procedure and make directions in relation to the conduct of the proceedings.

26. In Directions issued on 19 September 2011 the parties were reminded of the overriding objective of the Rules to deal with cases fairly and justly, as set out in Rule 2(1). Examples of dealing with a case fairly and justly are set out in Rule 2(2); that list is not exhaustive and includes ensuring that, so far as practicable, parties are able to

participate fully, to avoid delay and to deal with cases is ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties. The parties were also reminded of their *obligation* under Rule 2(4) to help the Tribunal to further the overriding objective and to co-operate with the Tribunal. The "ambush" approach to legal arguments suggested by the Appellant has no place in this Tribunal.

27. The Appellant was also referred to Rule 8(4) of the Rules which provides that the Tribunal may not strike out the whole or part of the proceedings under Rule 8(3)(c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out. This opportunity was given and the Appellant's only response was to ask for the decision refusing to strike out what the Tribunal had identified as a reasonable ground of appeal to be withdrawn and boycotting any further involvement.

Decision

28. I do not consider that there was any error in law in the decision of 18 October 2011. The Appellant was directed to provide written representations in relation to the proposed striking out of Ground 2, said by the Appellant to be his only ground of appeal, and he failed to comply. The Tribunal was not in a position to infer his arguments in relation to this ground of appeal. Reasons were given to support the decision. This application is refused.

29. The Appellant seeks, in the alternative, permission to appeal the decision to the Upper Tribunal. Under Rule 43(1) of the Rules, I must first consider, taking into account the overriding objective in Rule 2, whether to review the decision in accordance with Rule 44. There does not appear to me to be any basis upon which to review the decision of 18 October 2011. The Appellant was directed to provide written representations in relation to the proposed striking out of Ground 2, said by the Appellant to be his only ground of appeal, and he

failed to comply. The Tribunal was not in a position to infer his arguments in relation to this ground of appeal. No further submissions have been received. The Appellant appears to be asserting a right not to provide any submissions to the Tribunal or the other parties until the hearing date of 12 December 2011 contrary to the overriding objective, the Rules and the Directions issued.

30. I do not consider that there was any error of law in the decision of 18 October 2011 and the application for permission to appeal is similarly refused

Further conduct of this Appeal

31. By 4pm on 4 November 2011 the Appellant is directed to indicate in writing to this Tribunal whether he has applied, or intends to apply, directly to the Upper Tribunal for permission to appeal. Subject to representations by the parties, it may be that this Appeal will be stayed pending the outcome of any such appeal to the Upper Tribunal. If the Appellant does not seek to apply to the Upper Tribunal, he must indicate in writing to this Tribunal by 4pm on 4 November 2011 whether he wishes this Appeal to proceed in relation to Ground 1. Failure to comply will result in the Appeal being struck out.

Annabel Pilling 27 October 2011
Tribunal Judge

IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0189

BETWEEN:

STEPHEN AKRILL

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

And

THE MINISTRY OF JUSTICE

Second Respondent

STRIKE OUT UNDER RULE 8(3)
The Tribunal Procedure (First-tier) Tribunal
(General Regulatory Chamber) Rules 2009

14 November 2011

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1. On 26 October 2011, I refused an application to set aside the decision of 18 October 2011 to strike out Ground 2 of this Appeal. I also refused an alternative application for permission to appeal to the Upper Tribunal. Full details of this Appeal are set out in that Ruling of 26 October 2011 and are not repeated here.

2. I did not consider that there was any error in law in the decision of 18 October 2011. The Appellant had been directed to provide written representations in relation to the proposed striking out of Ground 2, said by the Appellant to be his only ground of appeal, and he failed to comply. The Tribunal was not in a position to infer his arguments in

relation to this ground of appeal. Reasons were given to support the decision.

3. The Appellant sought, in the alternative, permission to appeal the decision to the Upper Tribunal. Under Rule 43(1) of The Tribunal Procedure (First-tier) Tribunal (General Regulatory Chamber) Rules 2009 (the 'Rules'), I was required to first consider whether to review the decision in accordance with Rule 44, taking into account the overriding objective in Rule 2. For the same reasons, I did not find that there was any basis upon which to review the decision of 18 October 2011. The Appellant had been directed to provide written representations in relation to the proposed striking out of Ground 2, said by the Appellant to be his only ground of appeal, and he failed to comply. The Tribunal was not in a position to infer his arguments in relation to this ground of appeal. No further submissions had been received and the Appellant appeared to be asserting a right not to provide any submissions to the Tribunal or the other parties until the hearing date of 12 December 2011 contrary to the overriding objective, the Rules and the Directions issued. I did not consider that there was any error of law in the decision of 18 October 2011 and the application for permission to appeal was refused.

4. As the Appellant has previously indicated that he does not intend to participate any further unless his application to set aside the decision to strike out Ground 2 is allowed, further directions were issued on 26 October 2011. The Appellant was directed to indicate in writing by 4pm on 4 November 2011 whether he has applied, or intends to apply, directly to the Upper Tribunal for permission to appeal. (Subject to representations by the parties, this Appeal may have been stayed pending the outcome of any such appeal to the Upper Tribunal.) If the Appellant does not seek to apply to the Upper Tribunal, he was directed to indicate in writing to this Tribunal by 4pm on 4 November 2011 whether he wishes this Appeal to proceed in relation to Ground 1.

He was warned that failure to comply would result in the Appeal being struck out.

5. There has been no response from the Appellant.

6. Having regard to the overriding objective to the Rules, to deal with cases fairly and justly, I have taken the following into account:

   (i) the Appellant is a litigant in person and may have misunderstood parts of the Tribunal process. He has, however, been given clear and unambiguous directions on a number of occasions and he has chosen not to comply. He has been warned of the consequence of his failure to comply with these directions.

   (ii) the Tribunal has afforded the Appellant the opportunity to indicate whether he wishes the Appeal to proceed in relation to Ground 1, which the Tribunal has previously ruled has a reasonable prospect of success. He has not chosen to proceed on that basis.

   (iii) there are two Respondents to this Appeal, both using public funds to answer the Appeal brought by the Appellant. To allow the Appeal to continue in light of the disinterest and lack of co-operation from the Appellant would incur further and disproportionate public expense.

   (iv) the nature of the information requested, that is, the names and addresses of jurors summoned for jury service at one Crown Court during one month in 2009. In the absence of any submissions, it is hard to infer that this is important or significant information.

7. As the Appellant has failed to comply with a direction which stated that failure to comply would lead to the striking out of the proceedings and

taking into account the factors listed above, I strike out the while of the proceedings under Rule 8(3)(a) of the Rules.

Annabel Pilling 14 November 2011

Judge