



IN THE FIRST-TIER TRIBUNAL Appeal No: EA/2012/0159
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

BETWEEN:

Appellant: Mr Patrick Murphy

Respondent: The Information Commissioner

Second Respondent: The Compensation Agency

Decision by: Robin Callender Smith
(Tribunal Judge)

Dated: 27 December 2012

RULING

On consideration to strike out the Appellant's grounds of appeal pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (The Tribunal Rules).

DECISION

The Appellant's appeal is struck out under the provisions of rule 8 (3) (c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASON FOR DECISION

Background

1. The background to this matter – and the Information Commissioner's Decision Notice dated 11 July 2012 – relates to a request by the Appellant made to the Compensation Agency.
2. The Appellant wanted information from the Agency about a claim for criminal injury compensation by a named individual.
3. The name of that individual will not be revealed in this ruling.
4. The Appellant's lawyers had written to the Compensation Agency on 9 January 2012 in the following terms:

We act on behalf of [name redacted] in relation to allegations of alleged rape and other assault by [name redacted] arising out of an incident on [date redacted]. Can you please forward to us confirmation of the following:-

1. Details of the Criminal Injury Compensation paid to her pursuant to the allegation made by her (and subsequently the subject of Crown Court criminal proceedings which were withdrawn by the Crown).
 2. Details of all other Criminal Injury payments made to her pursuant to other allegations against unrelated parties.
5. The Compensation Agency responded on 16 January 2012 by refusing to disclose the requested information on the basis that it was personal information covered by section 40 FOIA 2000. It upheld that decision on review and told the Appellant this in writing on 1 March 2012.
 6. In his written submissions received on 12 November 2012 - about why the Appeal should not be struck out - the Appellant does not dispute that the information he is seeking constitutes the personal data of the named individual.
 7. He maintains, however, that "the stigma of criminality" which has attached to him has not "been eroded with the dismissal of criminal proceedings" against him.

8. He maintains that his rights under Article 2 of the European Convention on Human Rights (ECHR) are engaged and have been infringed. The social stigma attached to an accusation is rape “is of the highest order not only for me but for my family”.

The strain of the proceedings has not lessened with the dismissal of criminal proceedings; there is a public assumption of guilt associated with an accusation of rape even where criminal proceedings were dismissed which is compounded by the apparent payment of compensation to [the named person].

9. He believes that there was serious criminality on the part of that named person who had made allegations of rape and sexual assault not only against him but (as he believes) against others “on at least three other occasions”.

10. Because of this he asserts that the details of the compensation paid to his accuser are a matter of public interest. The funding for any such payments comes, ultimately, from the taxpayer. Also

If [the named individual] has falsified allegations of rape on more than one occasion solely on the basis of receiving compensation [then] the public are entitled to this information, especially during a time of large cuts to funds across numerous public bodies and authorities. It is submitted that this public interest outweighs any personal data protection principles afforded to [the named individual].

Conclusion

11. I have set out carefully the background arguments in relation to this matter offered by the Appellant because – in fairness to him and in the interests of justice - the process of striking out any appeal requires careful scrutiny and a full consideration of all the relevant elements.
12. The procedure and test adopted by the Tribunal in such situations is set out in the Tribunal's decision in *Tanner v Information Commissioner EA/2007/0106*.
13. In that appeal, the Tribunal concluded there that the appropriate test was analogous to the test under Part 24 of the Civil Procedure Rules 1998. This makes provision for a claim which has no real prospect of success to be summarily dismissed. Guidance on the meaning of this test was provided in *Swain v Hillman [2001] 1 All ER (CA)* by Lord Woolf MR.

14. He said that the words “no real prospect of succeeding” did not need any amplification as they spoke for themselves. The court must decide whether there is a "realistic", as opposed to "fanciful", prospect of success.

15. I remind myself of the comments made by the Tribunal in *Coggins v Information Commissioner* (EA/2007/0130) where the Appellant was motivated by the desire to uncover potential fraud. The Tribunal found that although what he was doing was for a "serious and proper purpose" in that case

there came a point when the Appellant should have let the matter drop.... there had been three independent enquiries.... in the Tribunal's view [the Appellant] was not justified in the circumstances to persist with his campaign.

16. The Compensation Agency is an Executive Agency within the Department of Justice in Northern Ireland. It administers five statutory compensation schemes for criminal injuries, criminal damage and actions taken under the Justice and Security (Northern Ireland) Act 2007. In its submission of this appeal it states that criminal injury compensation claims make up the bulk of the Agency's business.

Each claim is assessed on its own merits in accordance with the governing legislation and decisions are made on the balance of probabilities. It is not necessary to have a conviction before an award of compensation can be made, although great importance is placed on individuals to inform the police of all the circumstances of their case without delay and to co-operate with the police while they make their investigations.

17. The Agency had used police information and medical reports in its assessment of the named person's claim.

18. From the start, its initial response to the Appellant's request for information was guided by the primary consideration that that individual would have had a reasonable expectation that any assessment of the compensation claim would be used and retained by the Agency solely for that purpose. Disclosure would cause that person undue distress because of the nature of the injury sustained.

19. Both the Agency and the Commissioner took the view – correctly – that the data in question is sensitive personal data. Apart from the personal distress that its release would cause, its release could deter others from making legitimate compensation claims and could undermine public confidence in the work of the Agency.

20. There is the more general point that release of the information to the Appellant would, effectively, be disclosure to the world at large.
21. There was no evidence before the Agency or the Commissioner – or before me in considering whether to strike out this appeal – to support the assertion that the named individual has made false allegations against other people with a view to financial gain.
22. I would have expected cogent evidence in respect of such an assertion to be brought to my attention at this stage by the Appellant, particularly in the face of the process for striking-out his appeal. That has not been the case.
23. The data protection principles are set out in Schedule I of the DPA 1998. The first principle requires that personal data be processed fairly and lawfully. In this case it is clear that that disclosure of the requested information would be “unfair”. It was not in the public domain (because criminal injury compensation claims are treated as private and confidential), there was a reasonable expectation of it being kept private and not disclosed, it is sensitive personal data and its disclosure could have a detrimental effect on the individual in question. It is absolutely exempt under section 40 (2) FOIA by virtue of section 40 (3) (a) (i).
24. There is no condition in Schedule 2 – or particularly Schedule 3 – that could be met in this case.
25. There is no evidence before me that the high threshold required for the Appellant’s Article 2 ECHR rights are engaged or infringed in any way.
26. For all these reasons I am satisfied that there is no realistic prospect of this appeal succeeding in respect of the original request and that the appeal should be struck out.
27. The appeal is struck out on that basis.

[Signed on the original]

Robin Callender Smith
Tribunal Judge

27 December 2012