



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2011/0119
Appellant: William Stevenson
Respondent: The Information Commissioner
Second Respondent: NHS North Lancashire
(North Lancashire Teaching Primary Care Trust)
Third Respondent: The Secretary of State for Health
Judge: NJ Warren
Member: J Nelson
Member: P Taylor
Hearing Date: 20 September 2013
Decision Date: 1 October 2013

DECISION NOTICE

1. The Upper Tribunal has remitted this case to the First Tier Tribunal for rehearing.
2. The only information now in dispute are the nine names (not ten as referred to in an earlier case management note) redacted from a letter dated 14 June 2010 sent by the Chief Executive of the University Hospitals of Morecambe Bay NHS Trust to the Chief Executive of the North Lancashire Teaching Primary Care Trust.
3. We have received a numbered list of those names with a job title attached to each. This information has not been disclosed to Mr Stevenson because to do so would defeat the purpose of the proceedings.
4. All parties have consented to us deciding the issue now remaining without a hearing and we are satisfied that we can properly do so.
5. The right to information under the Freedom of Information Act (FOIA) does not trump the rights to privacy which individuals might have with respect to the processing of their personal data. The second respondent submits that the nine names, said to be those of staff who are not in senior management or “public facing” positions should not be disclosed because they are exempt under Section 40(2) FOIA. It is submitted that their disclosure would contravene the first Data

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Protection Principle. It would not be fair and, in terms of condition 6 in schedule 1 part 1 Data Protection Act (DPA), it is not necessary for the purposes of Mr Stevenson's legitimate interest; and it is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the persons named.

6. The Information Commissioner (ICO) did not deal with this issue in his decision notice. He now submits that "in the absence of a proper investigation with the public authority" he is in difficulty in providing a definitive view as to whether disclosure of the names withheld would be fair and in accordance with the first Data Protection Principle. He describes the roles specified for each name as "positions of responsibility" but says he has no reason to doubt that the employees concerned are not in senior and "public facing" positions. He suggests that they would have a reasonable expectation that their names would not be disclosed on the particular facts of this case and agrees with the second respondent that there is little or no legitimate public interest in the disclosure of the names.
7. The appellant wants to know the names. He says he suspects that they are not junior employees at all and he thinks it proper that they should be disclosed.
8. We would make two preliminary observations about the context in which the names occur because it may be taking too narrow a view to focus just on the names. First, the names themselves are of course personal data – but so also may be the statements in a document about a named person. Moreover the content of what is stated about the person in the document is a relevant factor. For example, if a document states that "X quite properly brought this matter to the attention of the Chief Executive" then the data subject is less likely to be worried about the processing than if something more controversial were stated.
9. Second, it may be "necessary" to disclose a name or at least a job title if one is to properly convey legitimately disclosed information. The information that "concerns about the general standards of cleanliness were brought to the attention of X" has a different meaning depending on whether X is a cleaner or the managing director of the company in charge of cleaning.
10. This means that we must look at each of the names separately and in each case consider the context in which they occur.
11. No one, it seems to us, can doubt that Mr Stevenson has a legitimate interest in pursuing information about the management of the University Hospitals of Morecambe Bay NHS Trust. It is unnecessary for us to go into detail about the reasons for concern which he has given.
12. We should say that, in our judgment, the second respondent's case is pitched too high when describing the employees as: -

"They do not have a public or political profile or personal responsibility at a macro level for budgetary, personnel or policy matters; their chief executives are ultimately accountable for their work; and they therefore have a reasonable expectation that their privacy should be respected and their names protected."

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13. Considering each name individually, it is our view that they all have senior positions of responsibility within the trust. We have hesitated over number 8 but have concluded that that person bears what is, in these days, an important public responsibility in any NHS Trust. In each case, we have concluded that the position held is of such responsibility that an expectation of anonymity would be unreasonable. Indeed, in many cases, the names probably appear on photograph displays in hospital wards and on letter heads. No other specific harm has been suggested. In each case we were satisfied that disclosure was necessary for the purposes of Mr Stevenson's legitimate interests concerning the management of the trust. We conclude that disclosure of the names would be fair and lawful.
14. Our decision therefore is to allow the appeal. We require the public authority to disclose the letter dated 14 June 2010 in full within 35 days of the date of this decision.

NJ Warren

Chamber President

Dated 1 October 2013