



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2012/0169

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: **FS50435700**

Dated: **2 August 2012**

Appellant: **JOHN GREENWOOD**

First Respondent: **INFORMATION COMMISSIONER**

Second Respondent: **CROWN PROSECUTION SERVICE**

On the papers on: **19 DECEMBER 2012**

Date of decision: **17 JANUARY 2013**

Before

ROBIN CALLENDER SMITH
Judge

and

MICHAEL JONES and NARENDRA MAKANJI
Tribunal Members

Representations:

For the Appellant: in person

For the First Respondent: Adam Sowerbutts, Solicitor for the Information
Commissioner

For the Second Respondent: Charles Banner, Counsel for CPS

Subject matter:

FOIA

Absolute exemptions

- Personal data s.40

Cases:

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 2 August 2012 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant requested copies of all correspondence – including emails – between two named senior Crown Prosecution Service (CPS) officers and the CPS Freedom of Information Unit or any other person relating to his FOIA request dated 17 November 2011 for the work email addresses of those two individuals.

The request for information

2. On 20 December 2011 he wrote:

Please provide copies of all correspondence including Emails between [two named senior CPS officers]'s and the CPS Freedom of Information Units or any other known as relating to the Freedom of Information request that [the Appellant] made on 17 November 2011 for the work Email addresses of [2 named CPS officers].

3. He sent a rider to that request on 22 December 2011 clarifying that he wanted to see

copies of 'all correspondence' including any correspondence regarding this matter even if it was sent using personal Email address's or SMS txt messages Etc.

4. The CPS responded on 20 January 2012 saying that some of the recorded information was held that fell within the scope of the request and copies were provided to the Appellant of the recorded information held but there was redacted information that the CPS said is exempt from disclosure under section 40 (2) FOIA.
5. Following an internal review the CPS wrote to the Appellant on 14 February 2012 indicating that some additional information had come to light in the form of a letter dated 17 November 2011 and an email dated 19 December 2011.
6. Those had not been identified in time for them to be communicated to the Appellant on 20 January 2012 and were disclosed with further redaction in terms of the section 40 (1) FOIA exemption.

The complaint to the Information Commissioner

7. The Appellant, in his complaint to the Information Commissioner (IC) dated 15 February 2012 identified issues about the way request for information had been handled.
8. He took the view that both officers had public-facing roles and acted in their professional capacity when working for the CPS. He noted that the exemption in section 40 (1) FOIA had not been relied on in the initial refusal notice that had appeared following the internal review.
9. The IC found that the information was held by the CPS in reliance of the section 40 (2) comprised:

- the official telephone, facsimile and mobile telephone numbers of one of the CPS officers but not the postal and email addresses;
- the signature of that officer in: and,
- an expression of opinion by a named CPS officer.

10. He concluded that all that information was personal data of the CPS officers and that section 40 (2) was engaged. He then considered whether or not it would be fair to disclose that personal data. He had considered the reasonable expectations of the officers in question. As senior CPS officers they could reasonably expect to be contacted by some members of the public from time to time and they would expect to have at least some of their relevant official contact details made available.

11. In the context of this matter the IC decided that the provision of relevant official postal and official email addresses met those reasonable expectations. Because providing personal data was providing information to the world at large the IC had decided that disclosure of the CPS the senior officers' [direct] telephone, facsimile and mobile phone numbers – which opened up the possibility of those officers being the subject of uncontrollable communication possibly at unwelcome times within or outside the working day – it was not proportionate and not reasonable.

12. They would not reasonably have expected this kind of access and there was no public interest that could be served by disclosing such further information. Communicating it would be unfair processing of that personal data.

13. In respect of the signature of the relevant CPS officer, he could not reasonably have expected that to have been made available to the

world at large and the IC could see no public interest objective that would be served by the widespread communication of that signature. Communication of that information would be unfair.

14. In respect of the opinion expressed by a senior CPS officer the IC concluded this was a personal professional judgement made within the context of the CPS officer's official role. He inferred that the information was likely to have been intended to enable that officer's colleagues to consider their own professional actions.

15. The individual could reasonably have expected that his view – given in the close confines of a closed professional exchange between CPS colleagues – would be treated in confidence. Also, the officer could only reasonably have expected his expression of a professional judgement to be the subject of wider scrutiny in exceptional circumstances which did not obtain in this situation.

16. The IC concluded – having regard to the content of the information and the context in which the opinion was given – that disclosure would be unfair and that the exemption was correctly maintained by the CPS.

The appeal to the Tribunal

17. The Appellant, his notice of appeal, stated that – as a victim of crime – he wished to be able to contact the manager of the complex case work section of the CPS. He had previously been able to speak to two named individuals but wanted to be able to write to one of the at his work email address as a result of what he thought were inconsistencies in correspondence with him and what he had been told on the telephone. Both individuals were senior people with public-facing roles acting in their professional capacity who worked for a public body and with whom he wished – and had a legitimate reason – to be able to communicate.

18. He also felt that – because letters were signed when they were sent through the normal mail system – he should also have disclosed to him the CPS officer's manual signature.

Evidence

19. The Tribunal was able to determine this appeal without reference to the closed and confidential material provided by the CPS in this matter.

20. In fact, the helpful and relevant evidence considered by the Tribunal was the open material relating to the statements of the Appellant, Mr Michael Kennedy CBE, Mr Howard Gough and Mr John Dilworth (all members of the CPS).

21. Mr Kennedy was Chief Operating Officer (COO) CPS and a member of the CPS management board. Among his many roles as CMO he is the Senior Information Risks Owner (SIRO) for the CPS. As such he is responsible for information security and assurance and issues relating to information security.

22. He stated that the Appellant was the victim in a criminal case dealt with by the Bolton, Bury, Wigan and Rochdale Branch of CPS North West. The Appellant had made enquiries with the Divisional Crown Prosecutor there and that individual became the Deputy Head of the North West Complex Casework Unit but continued to deal with the Appellant's enquiries. A specific issue the Appellant raised was subsequently passed to the Head of the North West Complex Casework.

23. The named CPS officer in the appeal is the Head of the North West Area Complex Casework Unit. This is a senior post and therefore the individual would reasonably expect to be contacted by members of the public, particularly those involved in cases in which his unit has dealt. It

was reasonable that some of his contact details should be available to the public. The full office addresses and main telephone numbers for the offices from which that individual worked were both on the CPS website.

Conclusion and remedy

24. The Tribunal is satisfied that senior lawyers of this level would not expect their direct dial telephone numbers, mobile numbers and fax numbers to be disclosed. They could be expected to be contacted by members of the public – and this was clearly possible because the full office addresses and main telephone numbers for these individuals were already available – and it is completely reasonable that they could expect contact with the public to be made via the switchboard or by post to the relevant office.
25. Their direct dial numbers and mobile numbers might be used internally and provided to staff from other investigative bodies – such as the police – so the contact could be made quickly to address urgent matters during the course of a prosecution.
26. That is a very different situation for allowing the Appellant to have access to these personal and private numbers because publication to the Appellant would be publication to the world at large.
27. That could result in senior individuals having their professional effectiveness interfered with or slowed down because of uncontrollable direct calls by members of the public making general enquiries. It would also mean that they were unavailable to deal with the high-level matters and enquiries relating to prosecutions that their senior function required.

28. Disclosure of this detailed information would also mean that the individuals might well receive out of hours calls from members of the public which, too, would reduce their efficiency.

29. The Tribunal notes that it would, in effect, open up these individuals to direct and personal harassment with no pressing social need for the information to be disclosed to the public.

30. The Tribunal can see no possible justification of personal signatures being revealed in such situations. While letters signed by CPS lawyers would obviously be sent to specific individuals involved in cases from time to time, that was a very different situation from releasing signatures under the Freedom of Information Act which would put them in the public domain and make them available to the public at large.

31. The Tribunal notes that, even in terms of its own decisions, the signature of the Judge appears only on the original of the decision – kept on file at Leicester – and that none of the Information Rights decisions that appear on the Tribunal's web-site have individual personal signatures of any Judge attached to them.

32. For all these reasons the Tribunal dismisses this appeal unanimously.

33. There is no order as to costs.

Robin Callender Smith

Judge

17 January 2013