



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

Appeal No: EA/2012/0215

BETWEEN:

BARRY HATCHER

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

SURREY COUNTY COUNCIL

Second Respondent

**Strike out under Rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal)
(General Regulatory Chamber) Rules 2009**

1. Near Mr Hatcher's house is a disabled parking bay for the benefit of his daughter. There have been changes to the bay over the years and Mr Hatcher applied to the Surrey County Council as the local highway authority for it to be made more convenient for his daughter.
2. The Council consulted his neighbours on the proposal, received rather more responses than it anticipated, and in the light of the responses decided not to make the changes which Mr. Hatcher wanted.
3. He applied to the Council under FOIA to see what the responses from his neighbours were. The Council responded on 13 October 2011 indicating that the responses were exempt under S.41 (confidential information supplied by a third party) and S.40(2) (information which amounted to personal data about a third party where breach of the Data Protection Act would result from the disclosure). The Council confirmed that the comments could not be sufficiently anonymised to prevent the identification of the individuals

concerned. The decision not to supply the information was upheld following an internal review.

4. Mr Hatcher complained to the Information Commissioner who issued his decision notice on 16 August 2012. He concluded that the requested information was the personal data of the individuals as the letters provide personal opinions and views, the letters were written by the individuals themselves and they are identifiable from the letters.(DN§13) He examined the possibility of removing identifying information to provide the Appellant with the remainder of the comments; but decided that it was not possible to edit the information in a way to leave it both meaningful and anonymous. (DN§§14-16)
5. The Commissioner then looked at the issue of whether the information could be disclosed without breaching any of the data protection principles. The first principle is whether the proposed data processing (in this case the public disclosure of the information) would be 'fair' (DN§18)
6. The reason he decided that it would not be fair to the people who had sent in the comments was because the comments were about proposals to change an existing parking bay, they were not a planning application. In planning applications the comments received are normally available and are shown to the applicant, people making comments are informed that this is the case. In the case of this issue concerning the parking bay the people would not expect the comments to be shown, (DN§20) also they would not have expected their responses to be disclosed to the world at large. In short they considered their representations to the Council were made in confidence. (DN§22)
7. The Commissioner also considered whether there any legitimate public interests public which would outweigh the intrusion into the privacy of the individuals. However he concluded that Mr Hatcher's concerns are primarily private concerns about the disabled parking bay and his wish to make a complaint about it with the Council. The disclosure would not provide a great degree of transparency about the actions of the Council. It would interfere with the privacy of the individuals. He decided on that basis that section 40(2) meant that the information should not be disclosed (DN§§24-28). As he had

found in the Council's favour he did not go onto consider the claim of confidentiality by the Council

8. In his appeal Mr Hatcher explained the history of the matter and his desire to pursue a complaint against a council officer.
9. In his response to the appeal the Commissioner maintained his position.
10. The Council supported the Commissioner's analysis, provided sample consultation letters to residents showing the difference between a planning consultation and the consultation with respect to the change to the parking bay on the highway which triggered this dispute. There was no suggestion in the parking consultation letter that the replies would be made public. It also made detailed submissions with respect to s.41 FOIA:-

*"41 (1) Information is exempt information if—
(a) it was obtained by the public authority from any other person (including another public authority), and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*

11. The Council submitted that since the people responding to the consultation had done so believing that their responses would be kept confidential, to publish the responses (as would be the effect of disclosure under FOIA) would be a breach of confidence which would entitle the individuals affected to sue the Council. This is an absolute exemption and accordingly the Council could not disclose the information under FOIA or otherwise without breach of confidence.
12. In his submissions on the possible striking out of his appeal Mr Hatcher provided detail of the parking bay issue and its history. He argued the merits of his daughter's position and what he perceived as the unfairness that he was not able to see the comments. He did not enter into the reasoning of the Commissioner or the Council with respect to FOIA.
13. This is a very clear cut case. The reasoning of the Commissioner with respect to data protection is clearly correct, and the Council with respect to confidentiality and S.41 also unimpeachable. Mr Hatcher has been unable to show an error in the reasoning of the Commissioner and I am entirely

satisfied that there is no reasonable prospect of success in this appeal. I
strike it out.

[Signed on original]

Judge Hughes

18 January 2013