



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2013/0003

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50442020

Dated: 10 December 2012

Appellant: Yiannis Voyias

Respondent: The Information Commissioner

2nd Respondent: The London Borough of Camden

Heard on the papers: Field House

Date of Hearing: 1 July 2013

Before

Christopher Hughes

Judge

and

Henry Fitzhugh and Pieter de Waal

Tribunal Members

Date of Decision: 13 August 2013

Subject matter:

Freedom of Information Act 2000

Data Protection Act 1998

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 10 December 2012 and dismisses the appeal.

Dated this 13th day of August 2013

C Hughes

Judge

[Signed on original]

REASONS FOR DECISION

The request for information

1. On 16 October 2011 the Appellant in these proceedings “Mr Voyias” made a request to the Second Respondent in these proceedings, the London Borough of Camden ("Camden") in the following terms :-

“I would like to know the following information, regarding every person directly employed by Camden Council in 2009:

- 1 Their position title*
- 2 Their rate of pay throughout the year*
- 3 Overtime rate of pay , and how much was received*
- 4 Any bonuses received during the year*
- 5 How many hours they worked, for every month*

please include people who are unpaid (by Camden Council)”

2. Following an exchange of correspondence it was clarified that the effect of the request was that for each person employed by Camden at the relevant times the following information was sought:-

“Employee A : post title, pay grade, overtime amount/rate/basis, bonus amount, hours worked each month, gender:

Employee B...”

3. On 21 November 2011 Camden responded; it provided a certain amount of information including what it said was a list of each position within the Council (rather than listing each employee’s position), a total figure for male and female employees and details of 26 bonus payments. It resisted disclosure of the remaining information relying on FOIA s40(2) because disclosure of the information would be to disclose personal data in contravention of the Data Protection Act (“DPA”). In a subsequent review Camden notified Mr Voyias on 14 February 2012 that it maintained its position.

The complaint to the Information Commissioner

4. Mr Voyias complained to the Commissioner and requested him to consider Camden's decision to withhold information about each employee's pay grade, overtime amount/rate/basis, hours worked and gender. He formed the view that the disclosure of pay grades would not breach the DPA. Camden then agreed to disclose:-

"a list of all position titles for each position used by Camden in the period, and the pay grade for each position title used by Camden in the period by person."

5. The Commissioner concluded his investigation and published his decision notice on 10 December 2012. He decided that Camden had been too restrictive in what they were prepared to disclose. He concluded that scrutiny of pay differentials by gender was an appropriate matter for public consideration and he required Camden to:-

"Disclose the gender, salary band and overtime rate of each person employed by the council in 2009 alongside their post title".

6. He also concluded that Camden was correct not to disclose individual information about total overtime payments, or the basis for overtime or the number of hours worked in each month since this amounted to personal data belonging to a third person.

The appeal to the Tribunal

7. In his appeal Mr Voyias confirmed that his reason for making the request was to explore whether there was a gender bias in Camden's payment of its employees.

8. He advanced a number of arguments against the Commissioner's conclusions:-

- He disputed the Commissioner's reasoning that where there were a number of people holding a post the extent of information sought would allow identification to take place. He rejected the claims that information might *"lead to a profile of particular employees being created"* on the basis that the information requested was from 2009 and *"it would seem quite a far-fetched suggestion that anybody would remember the working patterns of any specific employee in sufficient detail to allow them to be identified."*

- In the event that he did not succeed in that argument and the information constituted personal data, he submitted that the disclosure would be lawful as it met condition 6(1) of Schedule 2 to the DPA as being necessary for the purpose of legitimate interests pursued by the parties to whom the data would be disclosed and the Commissioner had failed to explain how disclosure of this information would “*prejudice to the rights and freedoms or legitimate interests of the data subject*” by revealing (as he described it) a person's “*work life balance, financial standing and potentially their domestic/family arrangements*” and, in any event, since the date of the request was now four years old it would be a remote possibility that anyone could be identified.
 - He further submitted that the effect of s32 DPA (which concerns data processing for the purposes of journalism, literature and art) was that the data could be processed since he intended to publish the information in question.
 - The final ground of appeal was based on condition 4 of Schedule 2 to the DPA which provides that personal data shall be treated as being processed fairly and lawfully if “*the processing is necessary in order to protect the vital interests of the data subject*”. Mr Voyias argued that in this case the vital interests would be the legal rights and interests of Camden employees in the sense that without the requested information they would be unable to determine whether or not they had a claim for discrimination.
9. The Commissioner resisted the appeal. He relied on the findings in his decision notice that all the requested information was personal data since the request was for the various categories of information in relation to particular individuals. In relation to a post where there was only one member of staff occupying that post, disclosure of the information would identify that individual. In posts occupied by more members of staff, the extent and uniqueness of the information requested meant that such information was also personal data. Camden would not be in a position to know which information was in the public domain or would be otherwise available and it would not be fair to disclose total overtime payments, or the basis of overtime pay or the number of hours worked each month as it was a reasonable expectation of the individuals concerned that such information would not be disclosed to the world at large. Disclosure would therefore be a breach of the first data protection principle. He affirmed his position that pay grade /salary band and overtime rates related to posts

rather than individuals and therefore the individuals concerned would have a reasonable expectation that such information could be disclosed, and similarly he concluded that it would be unlikely for employees to reasonably expect their gender to be a matter of privacy. The Commissioner therefore maintained his position in favour of disclosure of pay grade salary band, overtime rate and gender but against disclosure of specific individual overtime details (on the basis of section 40(2) FOIA). With respect to the argument based on condition 4 of schedule 2 DPA, he submitted that "vital interests" relate to matters of life and death and not legal, moral, financial and other issues.

- 10.** In its response to the appeal, Camden supported the Commissioner. It confirmed that as data controller it did not support the publication of the disputed information. It considered that the vital interests of individuals were not protected by such disclosure. In considering whether individuals could be identified from the material sought, it provided a specific instance which in its view demonstrated that it was not at all "far-fetched" for an individual to be identified from their overtime number of hours worked in combination with the rest of the information and to allow a "profile of particular employees" to be created. It put forward the plausible scenario of four individuals in a role which involved frequent dealings with members of the public. Three of the individuals were men and one a woman :-

"it would be extremely straightforward to identify that female and all the details of the hours worked, overtime, and bonuses that related specifically to her".

Furthermore domestic and family arrangements could also be revealed:-

"to return to the hypothetical female identified above if this same female worked fewer hours during school holiday months, a person may be able to establish that she had a child. Conversely, a normal or greater allowance for work during the school holidays in May revealed that she had no children.

If such a pattern was established in relation to this hypothetical female (e.g. greater hours outside the school holidays) and the overtime amount and hours worked in the month were also known, it could easily be established when and in which month that female would be likely to have more money available to her.

The Council's view therefore is that even if there were a legitimate public interest in disclosure, this would be significantly outweighed by the above-mentioned factors,

and would not be fair under the first data protection principle. Disclosure of such details is unwarranted as such disclosure could clearly lead to prejudice to the rights and freedoms or legitimate interests of the data subject. "

The questions for the Tribunal

11. The questions that the tribunal had to determine were whether disclosure of the information requested would indeed lead to the identification of particular individuals in breach of the DPA.
12. If individuals could be identified, does s32 DPA permit the disclosure.
13. If individuals could be identified, is disclosure be justified by the need to protect their "vital interests".
14. If individuals could be identified, is disclosure exempt under S40 FOIA.

Legal analysis

15. While Mr Voyias suggested that there are no real grounds for the Commissioner's conclusion that the identity of individuals could be revealed by putting together the various pieces of information that would be disclosed in response to his request, the Tribunal finds this unsatisfactory. The hypothetical group of four workers suggested by Camden seems to the Tribunal to be a very probable account of how the information could be interpreted and lead to the identification of an individual and her family characteristics. Furthermore, although Mr Voyias argues that the information is four years old, the time when a request is to be assessed is at the time when it was made.- The Tribunal is satisfied that disclosure of the disputed information would lead to the identification of individuals and would amount to a disclosure of personal data which is unfair because it would be inconsistent with the reasonable and legitimate privacy expectations of the affected individuals. Mr Voyias has not adduced any evidence or argument to justify disclosure beyond what the Commissioner has required.
16. The Tribunal also does not consider that disclosure of the disputed personal data would meet any of the conditions in Schedule 2 to the DPA, and in particular condition 6, because disclosure is not necessary for the purposes of legitimate interests pursued by Camden or by Mr Voyias or by any third party or parties to

whom the data is to be disclosed, and disclosure of the information would be unwarranted by reason of prejudice to the legitimate interests of the relevant persons.

17. The point which Mr Voyias raises with respect to journalism and publication may be dealt with briefly. This is a bad point. For this provision to have any relevance s32(1)(c) requires that: _

“the Data Controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest”.

Since the Data Controller in this case is Camden, who very clearly has not formed this belief since it is resisting disclosure of the disputed information, the provision is not relevant or of any application.

18. Mr Voyias has argued that “vital interests” of the data subjects are at stake because disclosure may reveal that they have been discriminated against and have a possible claim under equality legislation. The Tribunal finds this argument unconvincing. The term “vital interests” is undefined in the DPA and it falls to be interpreted as an ordinary English term. The dictionary definition of “vital” is “necessary for the maintenance of life”. It seems to the Tribunal that a data subject’s “vital interests” are matters closely related to her continued life and health and that a contingent possibility of litigating uncertain claims of discrimination fall well short of this. The Tribunal is satisfied that the submissions of the Commissioner and Camden are correct in this regard.

Conclusion and remedy

19. The Tribunal is satisfied that the decision notice is in accordance with the law and dismisses the appeal.
20. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 13 August 2013