IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2013/0057**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No:
FS50478208

Dated: **4th. March, 2013**

Appellant: **Stephen Wears**

Respondent: **The Information Commissioner ("the ICO")**

Before

David Farrer Q.C.

Judge

and

Paul Taylor

and

Jean Nelson

Tribunal Members

Date of Decision: 21st October 2013

Representation:

The Appellant appeared in person

The Respondent did not appear

Subject matter:

FOIA s.40(2)

Data Protection Act, 1998 ("the DPA")

Schedule 1, Part 1 Requests for personal data.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 21st day of October, 2013

David Farrer Q.C.
Judge
[Signed on original]

REASONS FOR DECISION

The Background

1 In 2002, the Appellant occupied a flat as a tenant of Newcastle City Council ("the Council"). He was unemployed at the time and in receipt of housing benefit. For three months of that year he shared the flat with two male lodgers he had taken in because they were homeless, one of whom he understood to be in receipt of jobseeker`s allowance and the other of income support.

2 Since they were both in receipt of benefit, non – dependant charges were added to the payment of housing benefit to the Appellant..

3 The Council, unsurprisingly, required proof that the lodgers were in receipt of benefits but neither took steps to satisfy it that this was the case. Each, says the Appellant, was receiving the specified benefit and could easily have produced the evidence at the nearby council office.

4 Absent such proof, the Council claimed from the Appellant repayment of the supposed overpayments of housing benefit, amounting to over £2000. He could not possibly find such a sum, though his grandmother loyally reduced his apparent debt by regular small repayments. Inevitably, in the fullness of time, the Council took proceedings in the County Court to recover what appeared to be due. Judgment was entered against him, following a contested hearing for a large sum with costs and, no doubt, interest.

5 The Tribunal did not have before it any record of the county court proceedings and is dependant on the Appellant alone for any account of what took place. It seems clear that any defence required proof that there were no overpayments because the lodgers were, in fact, receiving benefits. A trained solicitor would know that such evidence could readily be obtained by a request to or, if necessary, a witness summons served on the Department of Work and Pensions. ("The DWP")The Appellant, representing himself, could not be expected to realise that that was the best course. He told the Tribunal that he had explained the position to the Court and had mentioned the possibility of getting the records somehow from the DWP. He said that he was met with the assertion from the Bench that such evidence could not be obtained from that source due to data protection concerns.

6 If that was indeed the response – and we reiterate that we are reliant on the Appellant`s clearly honest but unassisted evidence of events some years ago – it was a bizarre rebuff, clearly wrong in law since s.35 of the Data Protection Act, 1998, excepts from the restrictions on data processing information or evidence required for legal proceedings. If it did not, the DPA would represent a massive obstacle to the administration of justice.

The Request

7 On 13th. November, 2012 the Appellant made a request via the internet to the DWP for confirmation that, between 24th. June, 2002 and 22nd. September, 2002, one lodger was in receipt of job seeker`s allowance and the other (both were named) of income support.

8 On 15th. November, 2012 the DWP refused to supply such information and confirmed that refusal on review. It referred to personal information and the right to privacy and cited the absolute exemption provided by s.40(2) of FOIA.

Complaint to the ICO

9 The Appellant complained to the ICO who, in a Decision Notice dated 4th. March, 2013, upheld the DWP`s refusal on the ground that the provision of such information would amount to unfair processing of the personal data of those concerned, hence a breach of the first data protection principle. Having so ruled, he did not find it necessary to consider whether any condition in Schedule 2 to the DPA was met. The Appellant appealed.

Appeal to the Tribunal

10 In his grounds of appeal he recited the history of the matter given above. He argued that disclosure was in the public interest and would enable him to overturn the judgment against him. He emphasised that he wanted only confirmation of the fact that each was in receipt of benefit, not the amount nor any other detail.

Our Decision

11 The effect of s.40(2) and (3)(a)(i) of FOIA, so far as relevant to this appeal, is that personal data are exempt information where disclosure would contravene any of the data protection principles. The first data protection principle, as set out in Schedule 1, Part 1 paragraph 1 to the DPA, provides, so far as material, that personal data shall be processed *"fairly . . . and shall not be processed unless*

(a) at least one of the conditions in schedule 2 is met . . "

The only Schedule 2 condition which could, even arguably, merit consideration is (6) (1) –

"The processing is necessary for the purpose of legitimate interests pursued by the . . third party . . . to whom the data are disclosed, except where the disclosure is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject".

12 Information recorded on a computer file held by the DWP as to whether a named individual is or was receiving some form of state benefit plainly constitutes personal data as defined in DPA s.1(1).

13 It is information which the data subject, here the lodger, would certainly not expect to be disclosed to the public at large, even if limited to the fact that the particular benefit was paid to the identified individual. It is information which many would wish to keep private. Whilst general information as to the amount and distribution of state benefits is of considerable public interest, the identity of those receiving them is generally not.

14 We have no doubt that that the policy described by the DWP in its refusal notice correctly reflects the law and that disclosure of such information in a case like the present would constitute unfair processing of the data controlled.

15 Furthermore, Condition 6(1) of Schedule 2 could not be met here. The Appellant`s interests in seeking this information are legitimate but this request is not necessary because the proper course is the obtaining of such information or evidence through the powers of the court and therefore subject to the restrictions imposed on a party obtaining production of a document for use in court, in particular the obligation to use it only for the purposes of the particular litigation and to disclose it to nobody outside the parties to that litigation. That is very different from disclosure to the public at large pursuant to FOIA.

16 Finally as to Condition 6(1) of Schedule 2, disclosure would in such a case as this clearly be “unwarranted” within the specified exception for the reasons already given.

17 Those findings require the dismissal of this appeal but the Tribunal has considerable sympathy for the plight of the Appellant and, without, it is hoped, straying outside its function, wishes to add some further observations on this case.

18 FOIA is in some cases used by requesters in order to obtain information which is of little or no public interest but is sought in order to further their private interests. That does not, of itself, make the request vexatious nor provide to the public authority an exemption from the duty to disclose. This Tribunal regularly declares that FOIA is blind to the requester`s motive. Nevertheless, looking at this jurisdiction generally, securing private advantage, certainly private financial advantage, was not the purpose of the enactment of this ground – breaking statute.

19 However, there are cases – and this is one – where the Tribunal, dismissing an appeal and conscious that the statute was not enacted in order that requests such as this should be met, nevertheless understands why the requester, when all else fails, looks to FOIA for help and sympathises with a request even though it is doomed to refusal.

20 If this Appellant`s account is correct - and we found him to be a truthful and careful witness – he has suffered great financial loss in circumstances where a witness summons directed to the DWP in the course of a county court action, in which he acted in person, might well have produced an unanswerable defence to the Council`s claim, which, we acknowledge was entirely properly brought, given the evidence available to it. Our concern would be all the greater if it proved to be the case that the DPA had been quoted at the hearing as a barrier to the obtaining of the required evidence.

21 Whether or not it is too late to seek redress from the Court of Appeal, a question on which the Tribunal is neither qualified nor entitled to express a view, we hope that the Appellant, the Council and the DWP may be able to resolve this matter fairly to the Appellant, if necessary by informal procedures. The Council may feel

a still more urgent need to do so, if the DPA was indeed wrongly treated as an obstacle in the court proceedings in the manner described above.

Conclusion

22 Accordingly, this appeal is dismissed.

23 Our decision is unanimous.

24 We trust that the Appellant will obtain justice, if, as we believe likely on the available evidence, he has been denied it, by another route.

David Farrer Q.C.

Tribunal Judge

21st October 2013