



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

**Case No. EA/2013/0095**

**ON APPEAL FROM:**

The Information Commissioner's  
Information Notice Case Reference Number: ENF0466326  
Dated: 3 April 2013

**Appellant:** NORFOLK FOSTER CARE ASSOCIATION  
(NFCA)

**Respondent:** INFORMATION COMMISSIONER

**Heard at:** NORWICH MAGISTRATES' COURT

**Date of hearing:** 18 SEPTEMBER 2013

**Date of decision:** 8 OCTOBER 2013

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**NARENDRA MAKANJI and ANDREW WHETNALL**  
Tribunal Members

**Attendances:**

For the Appellant: Mr Raymond Bewry, Chair of NFCA.  
For the Respondent: Mr Robin Hopkins, Counsel instructed on behalf of the  
Information Commissioner.

**Subject matter: Data Protection Act 1998**

Information notices s.43

### **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the Information Notice dated 3 April 2013 and dismisses the appeal.

### **REASONS FOR DECISION**

#### **Background**

1. Norfolk County Council (NCC), on 20 March 2012, asked the Information Commissioner (IC) to investigate an apparent disclosure and dissemination of personal data by Mr Raymond Bewry, the Appellant in this appeal.
2. Mr Bewry is the Chair of the Norfolk Foster Care Association (NFCA). The NFCA represents the interests of foster carers in the private sector in Norfolk and the young people in their care.
3. The NCC's complaint was that the Appellant – in his capacity as Chair of the NFCA - had sent a letter to Tim Loughton MP on 13 November 2011 which appeared to have been copied to all 84 members of the County Council as well as to foster carers on the NFCA ([norfolkfca@gmail.com](mailto:norfolkfca@gmail.com)) mailbox. The NCC was concerned that that general email list could include over 100 people.
4. The Appellant had been written to by the NCC's legal advisors on 18 November 2011. That letter asserted that, although no names were

revealed, sufficient personal data was used relating to children and young people in the care of NCC to put at risk the identification of five young people to some of the people who would have received the letter.

5. The Appellant's response to this was – and remained throughout the appeal - that there were three versions of the letter and that the iterations that were sent to the 100-plus members of the NFCA and to the NCC membership were further anonymised.

### The Information Commissioner's Investigation

6. The IC considered the NCC's complaint under the provisions of s. 42 of the Data Protection Act 1998. That provides:
  - (1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Act.
  - (2) On receiving a request under this section, the Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he has not been supplied with such information as he may reasonably require in order to –
    - (a) satisfy himself as to the identity of the person making request, and
    - (b) enable him to identify the processing in question.
7. In a letter dated 9 August 2012 the IC issued his assessment under s.42. He considered it unlikely that NFCA had complied with the requirements of the Data Protection Act.
8. The Appellant complained on NFCA's behalf about that assessment. The IC, in a letter dated 3 October 2012, explained that while there had been errors in the assessment process that did not alter the decision and that he remained of the view that NFCA was unlikely to have complied with the requirements of the Act.

9. That letter also explained that the case had been referred to the IC's Enforcement team so it could consider whether or not to issue an enforcement notice under s.40 of the Act. That provided:

(1) If the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commissioner may serve him with the notice (in this Act referred to as an "enforcement notice") requiring him, for complying with the principle principles in question, to do either or both of the following –

(a) to take within such time as may be specified in the notice, or to refrain from taking after such time as may be so specified, such steps as are so specified, or

(b) to refrain from processing any personal data, or any personal data of a description specified in the notice, or to refrain from processing them for a purpose so specified or in a manner so specified, after such time as may be so specified.

10. The Enforcement team investigated the alleged contravention. The information provided by the NCC included:

- An email sent by the Appellant on behalf of the NFCA on 17 November 2011 to all 84 members of the NCC as well as to the [norfolkfca@gmail.com](mailto:norfolkfca@gmail.com) email address.
- Correspondence that followed between the NCC's solicitors and the Appellant.
- The Appellant's response to the letters. He had stated:

"In any event, there were three versions of the same letter, none of which could allow identification of any child or young person without further input – the first was sent to the Minister; a second version removing the identity of foster carers was sent to local MPs and County Councillors; another version, further edited to preserve the anonymity of all parties, was circulated to members".

11. The Appellant maintained that position in his Grounds of Appeal and at the appeal hearing itself. The IC did not consider that the Appellant had supported that position with any evidence.

#### The Appellant's position

12. The Appellant explained that the NFCA had been established to advance the education and training of foster carers by providing them and their

households with peer support, advocacy, advice and information in relation to the care of children and young people. It was a registered charity run entirely by volunteers and had been continuously active for over 39 years.

13. He did not believe that the IC had explained how the information contained in the letter copied to the IC by the NCC contained sufficiently detailed information to allow for the identification of any of the children or young people whose cases had been referred to.
14. He believed the IC had misrepresented the complaint received from the NCC and that, in issuing the Information Notice, the IC was being unreasonable and misdirecting himself.
15. The claim that the letter sent to Tim Loughton MP – the former Parliamentary Under-Secretary of State Children & Families – had also been copied to 84 Norfolk County Councillors and to foster-carers on the [norfolkfca@gmail.com](mailto:norfolkfca@gmail.com) mailing list was totally false. That letter had only been copied to HM Chief Inspector at Ofsted.
16. The IC's request for information about who had access to the NFCA's inbox was intrusive and unreasonable as it was not related to the complaint and was simply a "fishing" exercise.
17. He noted that the IC had refused to disclose the original letter of complaint from the NCC dated 20 March 2012 for nearly a year and had not done so until 8 March 2013. That was unreasonable and presented an appearance of bias in the IC's handling the case.
18. He stated that the names and email addresses had appeared in the way they had simply because he had copied that list to himself and not because he had circulated the contents of the original letter to Tim Loughton MP to everyone on the list.

## Conclusion and remedy

19. The Tribunal takes it from Mr Bewry's evidence that the letter at issue exists in three forms, each seen by a different set of people. These were not all placed before us or before the Information Commissioner. The NFCA's letter of 13 November 2011 to Tim Loughton MP included most detail but was not copied widely. When circulated to Members of the County Council and Members of Parliament the letter was redacted. It appeared to the County Council staff to be the original letter, although the complaint to the IC concerned the text as seen, and rested on the belief that it had been copied to a number of NFCA members, who in turn might have been able to work out the identity of the cases described.
20. Mr Bewry says that some of the cases described have been the subject of court proceedings which have disclosed identities, and the child concerned in the remaining case is now an adult who has given no authority to the Council to pursue matters on her behalf. These are not matters on which we need to decide.
21. Mr Bewry told us that a further redacted version of the letter had been sent separately to a small group of NFCA members, and there had been no general circulation to the membership of the letter as sent to County Councillors.
22. It would have reduced the possibilities for misunderstanding and expense if Mr Bewry had provided the Information Commissioner with the three versions of the letter and their circulation lists at an earlier stage. It would also have been helpful to explain earlier that the NCFA e-mail address which the Council had taken to signify a wide circulation did not amount to a circulation list at all. Mr Bewry in turn might have been more ready to do this if he had received earlier than he did a copy of the Council's letter of complaint.

23. The Tribunal observes that the Appellant stated he did not have any confidence in the way in which the NCC operated in respect of him and others working in the private sector dealing with foster carers. His reluctance to supply information to the IC seems to have been coloured by a fear that the IC might disclose that information to the NCC.
24. The Tribunal does not believe that fear, however real it may be to the Appellant, is sustainable as a reason for not providing the specific information requested by the IC who has statutory responsibility for this area of law and is fully cognizant of duties of confidentiality in relation to data supplied to him.
25. It is quite reasonable – and the IC has a statutory duty in respect of his duties – to investigate issues surrounding the email address in order to determine whether or not enforcement action might be appropriate.
26. Even if different iterations, in terms of redactions, went to County Councillors and members of the NFCA then the IC properly needed to satisfy himself about whether the five data subjects who had been referred to in the primary letter to Tim Loughton MP could still be identified.
27. That could only be determined by a full understanding of who had received the various emails and what their relationship was to the NFCA.
28. Even if the Appellant could demonstrate that the unredacted letter had not been sent to everyone with apparent access to the [norfolkfca@gmail.com](mailto:norfolkfca@gmail.com) mailbox, the IC needed to investigate and establish whether the versions that were sent included personal data processed in accordance with the Act.
29. It may well be that the only individuals with access to that email address are the Appellant and, for instance, an administrative assistant. His reluctance to address this point specifically and to allow the IC to establish the exact position has not been helpful.

30. The Information Notice was not unduly intrusive and the Tribunal finds that the specified information would be easy for the Appellant to obtain and provide. The Notice asked only for the number of people with access to the inbox and their relationship with the NFCA. That is both reasonable and proportionate.
31. The Tribunal has noted, however, that there appears to have been an unfortunate delay of almost a year in providing the Appellant with the information he requested under FOIA about the NCC's original complaint.
32. That does not justify the Appellant in continuing to resist the Information Notice.
33. For the reasons set out in Paragraphs 19 to 30 above, the Appellant's appeal fails.
34. Our decision is unanimous.
35. There is no order as to costs.

Robin Callender Smith

Judge

8 October 2013