



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2014/0029

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50499885
Dated: 14 January 2014**

Appellant: DALE HASLAM
1st Respondent: INFORMATION COMMISIONER
2nd Respondent: BOLTON COUNCIL
On the papers: FIELD HOUSE
Date: 13 JUNE 2014
Date of decision: 3 JULY 2014

Before

ROBIN CALLENDER SMITH
Judge

and

John Randall and Marion Saunders
Tribunal Members

Written representations:

For the Appellant: Mr Dale Haslam
For the 1st Respondent: Mr Mark Thorogood, Solicitor for the Information
Commissioner

Subject matter: FOIA

Absolute Exemptions

- Personal Data s.40

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 14 January 2014 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Dale Haslam (the Appellant) works as a senior reporter on the Bolton News, the Bury Times and the Prestwich and Whitefield Guide. He requested Bolton Council (the Council) to provide him with the names of five councillors who had received reminders for non-payment of Council Tax since May 2011. Two of those councillors had also received court summons for non-payment.

The request for information

2. On 13 November 2012 the Council told him that since May 2011 six councillors had received reminders through the post about unpaid council tax and that two had been summoned to court. It also explained how much money had been owed in each case and how much was still outstanding. On 16 November 2012 the Appellant asked for the names of the specific councillors.

3. The Council responded on 21 December 2012 and stated that it considered the names of the councillors to be exempt from disclosure as personal data on the basis of section 40 (2) FOIA. This position was maintained after an internal review.

The complaint to the Information Commissioner

4. During the course of the Commissioner's investigation it had become apparent that only five councillors actually fell within the scope of the Appellant's request.
5. Having considered the requested information in the context of section 40 (2) the Commissioner concluded that it clearly constituted personal data of each of the five councillors. Disclosure would allow each of them to be identified and would reveal that the Council had taken some form of action in the light of their failure to pay their council tax on time either by issuing a reminder or – in some cases – issuing a court summons.
6. In two of the cases the Commissioner also concluded it would have revealed sensitive personal data on the basis that the information concerned “any proceedings for any offence committed or alleged to have been committed [by the Data Subject], the disposal of such proceedings, or the sentence of any court in such proceedings”.
7. On that basis the information requests were validly refused.

The appeal to the Tribunal

8. In the Appellant's Grounds of Appeal he maintained that it was reasonable for the public to expect certain standards of behaviour from their elected councillors – which would include timely payment of their Council tax liabilities – and it was reasonable for the public to know if their councillors fell below those standards.

9. As elected representatives and in charge of public finance they were not in the same position as other private citizens. By standing for public office they had surrendered some of the rights to protection of their data in cases where they abused the trust placed in them by the electorate.
10. He pointed out that any councillor who did not keep council tax payments up to date ran the risk of being barred from voting at the annual Budget Council Meeting. When councillors were elected one of the first things they were told was the importance of keeping their council tax affairs up-to-date as, otherwise, they ran the risk of being barred from the voting process.
11. On Bolton Council's paperwork and website there were references to seeking help if individuals were unable to pay on time. If the councillors had a reasonable excuse for late payment they could have contacted their own Council before the issue arose. Because they had not done they did not deserve sympathy in terms of any expectation that they would not be publicly named.
12. When a resident in Bolton did not pay Council Tax on time a reminder was sent followed by a second reminder – which was a demand for the total fee for the existing tax year – and then a court summons was sent.
13. He pointed out that in the Annex to the Decision Notice for Cases 1 and 5 it appeared that both councillors reached the final stage in 2011/2012 and then reached that stage again in 2012/2013. If they had not learnt their lesson the first time that had happened then they deserve no sympathy when it happened again and they should be publicly named.

Conclusion and remedy

14. To an extent the Tribunal appreciates that – in upholding the Commissioner's decision in respect of this matter (and the Council's position) – the protection given to the local councillors may appear to be

counterintuitive. We explain, below, why we are satisfied on the balance of probabilities we should continue to give the local councillors the protection they have been allowed so far.

15. For the record, the anonymised results provided by the Council in respect of the six ward councillors originally thought to be within the information request were as follows:

(1) Conservative

In 2011/2012 a summons was issued £1331.18 that had been paid in full and for 2012/2013 summons was issued for £1353.18 of which £753.18 was outstanding and was being paid by arrangement.

(2) Conservative

In 2012/2013 a reminder was sent for £103.37 and the account had been paid in full for the year.

(3) Conservative

In 2011/2012 reminders were sent for £300.51 and the account had been paid in full for the year.

(4) Labour

In 2012/2013 a reminder was sent for £141 and the account was up-to-date.

(5) Labour

In 2011/2012 the summons was issued for £936 which had been paid in full and for 2012/2013 a summons had been issued for £1039.89 of which £439.89 was outstanding and being paid by arrangement.

(6) Labour

In 2012/2013 reminders were issued for £144.92 and the account had been paid in full.

16. Section 40 (2) of FOIA means, in simple language, that personal data can only be disclosed if to do so would – among other things – be fair. In assessing “fairness” some or all of the following are indicators:

- whether information is sensitive personal data;

- the possible consequences of disclosure on the individual;
- whether the information relates to employees in their professional role or to them as individuals;
- the reasonable expectations of the individual, taking into account – for example – expectations both at the time the information was collected and at the time of the request, privacy rights under Article 8 ECHR, the nature and content of the information itself, the circumstances in which the information was obtained, whether the information is in the public domain, any particular circumstances of the case and, finally, whether consent had been given or explicitly refused.
- Any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the individuals who were the data subjects.

17. It is clear from case law in the House of Lords (*Common Services Agency v Scottish Information Commissioner*) that there is no presumption that openness and transparency of the activities of public officials should take priority over their personal privacy.

18. In his Decision Notice the Commissioner had considered the following factors:

- The disputed information narrowly related to the private rather than the public lives of the councillors.
- Although the payment of council tax was a private matter those in public office could reasonably expect a higher degree of scrutiny, and information which impinged on that public office might be subject to disclosure.
- It was reasonable to expect that a recent failure to pay council tax in a private capacity was likely to impact on public perceptions of confidence in those in such a public role and councillors, generally should have a reasonable expectation that they might be identified as having failed to pay council tax on time.
- Despite that, there were particular mitigating circumstances as to why each of the councillors had failed to pay their council tax on time in respect of these information requests. The Commissioner concluded that the nature of those personal circumstances would

“significantly and legitimately” frustrate the councillors’ expectations that they would not be publicly named.

19. The Tribunal has seen and considered – as closed and confidential information – the personal mitigating circumstances in the instant cases. When this process is used, it is used with rigour in respect of the public interest in disclosing matters where possible.
20. The Tribunal has no doubt that those personal circumstances placed the individuals in a position where they could “significantly and legitimately” have expected not to be named.
21. To give any further detail in respect of these requests will in fact identify the individuals in question and would be counter-productive.
22. Bolton Council, in its response in this appeal, dealt with the issue of the information being – for a time – in the public domain. It did not publish information about council tax arrears or information about members of the public to whom a reminder had been sent nor details about whom it had issued court process against for non-payment of council tax.
23. The Tribunal accepts that the councillors had not consented to this information being disclosed.
24. It has concluded, considering carefully the issues of balance and proportionality that properly arise out of the private life issues in this appeal – which are clearly engaged – and the Article 10 issues of freedom of speech in terms of local newspapers’ duties to inform the public (which are equally clearly engaged), that releasing the information could potentially cause unnecessary and unjustified damage and distress to the individuals.
25. There was a specific “fair processing” notice attached to the Council’s information with a commitment to abide by the Data Protection Act 1998

principles. Releasing this information would breach the first data protection principle.

26. It accepted that the information became temporarily in the public domain when cases were brought to the Magistrates' Court for consideration. Information would only normally be published about non-payment of council tax if a journalist attended the Magistrates' Court and listened to and then reported on the cases being heard.
27. The Council used to publish information about people who had failed to pay their Poll Tax but stopped doing that because of the impact on the individuals. The Council had not been assisted in the council tax collection process by publication of names. In any event it believed – correctly, in the Tribunal's view - that such publication would be contrary to the Article 8 ECHR private life rights of the individuals.
28. The Tribunal notes that the Bolton News had clearly tried to obtain the information from the court but could not because that is the effect of the absolute exemption of s.32 FOIA in terms of court records.
29. It is not as if the newspaper cannot ever obtain such information. But, to do so, it must be physically present in court during the council tax "lists" at the Magistrates' Court. That attendance, on behalf of the public, provides a platform for legitimate and legally privileged publication of the information.
30. The appeal is dismissed.
31. Our decision is unanimous.
25. There is no order as to costs.

Robin Callender Smith
Judge
3 July 2014