



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

**Case No. EA/2013/0239**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50494253**

**Dated: 10 October 2013**

**Appellant:** Jacqueline Milopoulos  
**Respondent:** Information Commissioner  
**Public Authority:** Kent County Council

**Heard at:** Field House, London  
**Date of hearing:** 10 March 2014  
**Date of decision:** 26 March 2014

**Before**

Angus Hamilton

Judge

and

Dave Sivers

and

Rosalind Tatam

**Subject matter:** s 41 Freedom of Information Act 2000

**Cases considered:** Coco v AN Clark (Engineers) Ltd [1968] FSR 415; Webber v IC & Nottinghamshire Healthcare NHS Trust GIA/4090/2012

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal dismisses the appeal for the reasons set out below.

## **REASONS FOR DECISION**

### Introduction

- 1 Section 41 (1) of FOIA provides that information is exempt information if:  
  
‘it was obtained by the public authority from any other person (including another public authority), and 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.’
  
- 2 Section 41 provides a qualified exemption and in accordance with s2(2) of FOIA it is also necessary to consider whether:  
  
‘in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.’  
  
The Tribunal has described this as the ‘public interest balancing exercise’.
  
- 4 The factual background to this matter is correctly set out in the Commissioner's Decision Notice. In brief the appellant wrote the Kent County Council (the public authority) in relation to, it would appear, her mother's estate indicating that she believed that the public authority **was** a creditor of her mother's estate. The appellant asked whether the debt was included in the 2011/2012 accounts and, if not if it would be included in the 2012/2013 accounts. The appellant also asked the amount of the debt.
  
- 5 The public authority responded stating that the year of the relevant accounts would depend on the year in which the debt had been raised. The public authority declined to state the amount of the debt citing the section 41 exemption.

- 6 The appellant then complained to the Commissioner. The Commissioner proceeded to consider in his Decision Notice solely whether the council were correct to rely upon the exemption under section 41 in relation to the amount of the debt – the public authority having clarified that the specific amount of the debt would not appear in their accounts for any year.
- 7 The Commissioner issued a Decision Notice dated 10 October 2013 in relation to this matter in accordance with s. 50 of the Act. The Decision Notice stated that the public authority had correctly relied on section 41 of the Act and as such, required no steps to be taken.

#### The appeal to the Tribunal

- 8 The appellant submitted an appeal on 4 November 2013. The appellant indicated that she was still seeking answers to all her original questions – i.e. the year of the accounts in which the debt appeared as well as the amount. The Tribunal felt that the appellant's pursuit of the account year was based on a misunderstanding by her of the detail that would be provided in the public authority's accounts – although total creditors would be shown individual creditors would not.
- 9 The Tribunal found some of the appellant's submissions a little hard to follow. This is of course understandable in relation to a litigant in person who may not have had the benefit of legal advice. The Tribunal did their best to interpret the appellant's submissions in a manner that was consistent with the legislation. The Tribunal understood that the appeal raised two principal points – first, that the appellant doubted that the information attracted a 'duty of confidentiality' because it related to a deceased person and because it was her understanding that the public authority would have to publish the information in due course as part of their open accounting procedures. Ancillary to this first point, the appellant also appeared to suggest that as a close relative (but not a personal representative) of the deceased she was entitled to have the information disclosed to her.

- 10 Secondly the Tribunal understood the appellant to be contending that the public interest balancing exercise in s2(2) favoured disclosure as it was in the public interest to know what debts were owed to the public authority as it was principally an agency funded from public taxation. The appellant also drew attention to the general public interest in the funding arrangements of residential care home places, and the particular interest of care home residents who pay their own fees and, in the appellant's contention, may indirectly subsidise those residents whose fees are paid from the public purse.
- 11 The Tribunal did note that the appellant appeared to be contending that the Commissioner had upheld the public authority's refusal to disclose the sought information on the basis that it would involve the disclosure of personal data but the Tribunal accepted that neither the Commissioner nor the public authority had contended this and the Tribunal did not therefore consider this as an appeal point.

#### The questions for the Tribunal

- 12 The Tribunal considered that the questions for them were whether the s.41 exemption had been properly claimed by the public authority in relation to the amount of the debt and whether the public interest balancing test favoured upholding the exemption or disclosure of the information.

#### Evidence

- 13 All parties have agreed that this matter should be considered 'on the papers' only and we have heard no live evidence or oral submissions. No parties or representatives attended the hearing.
- 14 We have considered, from the Appellant, the Notice and Grounds of Appeal and supporting documents and the appellant's reply to the

Commissioner's response to the appeal. We have considered, from the Commissioner, the Decision Notice, the response to appeal and the final submissions. There were no submissions from the public authority and the Tribunal understood that they had not been joined as a party to the proceedings

### Conclusion

- 15 The Tribunal fully accepted that the amount of a debt owed by an individual to a public authority was in a category of information clearly covered by the s.41 exemption and attracted the requisite element of confidentiality. This point did not appear to be disputed by the appellant. The Tribunal also felt that it was inarguable that following an individual's death the information would remain confidential and the duty of confidentiality would be transferred to the personal representative(s) of the deceased's estate. The Tribunal noted that very strong support for this conclusion came from the case of *Webber* referred to by the Commissioner at p.33 of the bundle. The Tribunal did not consider that a next of kin would be entitled to the information unless they were an personal representative (or possibly a beneficiary) as they would have no (legal) interest in the financial details of the deceased's estate. The Tribunal did not reach a conclusion on whether a beneficiary would be entitled to the information as this was not relevant to this particular case.
- 16 The Tribunal therefore concluded that the s.41 exemption was engaged and was properly relied on by the public authority.
- 17 In relation to the public interest balancing test – the Tribunal accepted that there was a public interest in the public knowing the total amount owed to a public authority, the number of creditors and the steps being taken by the public authority to recover monies owed. The Tribunal also considered (but did not reach a conclusion) that there might be a public interest in the disclosure of the details of a single very large debt. The Tribunal however

considered that in this particular case the public interest in maintaining the confidentiality of the information outweighed the public interest in the disclosure of this single relatively modest debt and any general public interest in the funding arrangements of residential care home places and where the liability for funding lay. The Tribunal acknowledged that the appellant had a strong private or personal interest in the information but this in itself could not justify a disclosure under the terms of FOIA.

18 Our decision to dismiss this appeal is unanimous.

Signed:

Angus Hamilton DJ(MC)  
Tribunal Judge

Date: 26 March 2014

Promulgated: 27 March 2014