**IN THE FIRST-TIER TRIBUNAL** **Case No.** EA/2014/0180
**GENERAL REGULATORY CHAMBER**
**INFORMATION RIGHTS**

**ON APPEAL FROM:**

**The Information Commissioner's**
**Decision Notice No:** FERO533531
**Dated:** 18 June 2014

**Appellant:** C Phillips

**Respondent:** Information Commissioner

**Date of paper hearing**: 19 January 2015

**Date of Decision:** 3 February 2015

**Date of Promulgation:** 5 February 2015

**Before**
Melanie Carter
(Judge)

and

David Wilkinson
Henry Fitzhugh

## DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal decided to dismiss the appeal.

## REASONS FOR DECISION

### Introduction

1. This appeal arises from a letter of request for disclosure by Mr Phillips ("the Appellant") to Dartmoor National Park Authority ("DNPA"). The letter of request was dated 6 December 2013 and was for the following information:

*"I therefore request the following:*

*(i)* *Copies of any correspondence since 2005 which has taken place between DNPA and the owner* (named individual]*) or any other person at her address which directly or indirectly concerns my property or any part of it or works undertaken on it.*

*(ii)* *The date(s) of any attendances by any DNPA employee(s) or other representative(s) at* ([named address])

*(iii)* *The name(s) and job title(s) of any employee(s) or other representative(s) of DNPA who attended there*

*(iv)* *A copy of any file note(s) made of any meeting(s) which took place including the names of all persons present at any discussions*

*(v)* *If no related file notes exist, statement(s) by your employee(s) of what was discussed and what opinions were expressed on behalf of DNPA."*

2. DNPA refused to confirm or deny whether it held the information under regulation 12(5)(f) and 13 of the Environmental information Regulations ("EIR"). Regulation 13 provides that third party personal data is exempt from disclosure under the EIR if its disclosure would contravene any of the Data Protection Principles set out in schedule 1 of the Data Protection Act ("DPA"). In this case it was asserted by DNPA that there would be a breach of the First Data Protection Principle if it were to confirm whether or not it held the information. The First

Data Protection Principle requires that personal data be processed fairly and lawfully including that a condition of Schedule 2 DPA must be met. It was asserted by DNPA that confirmation whether or not it held the requested information would in itself amount to a disclosure of personal data in breach of the First Data Protection Principle in that it would indicate whether or not the named individual had made a complaint to DNPA – this being the named individual's personal data.

3. The Appellant was unhappy with DNPA's refusal and complained to the Information Commissioner. He in turn, after an investigation, upheld DNPA's refusal to confirm or deny whether such information was held in his Decision Notice of 11 June 2014. That led to the appeal to this Tribunal. Our task is to review whether the Decision Notice is in accordance with law.

4. It seems to us that the Information Commissioner was entitled to form the view that disclosing whether or not the information was held would be a breach of the First Data Protection Principle. The Tribunal agreed with the various factors taken into account by the Information Commissioner in this regard, set out at paragraphs 13-25 of the Decision Notice. The Decision Notice was, without expressly citing the provision, referring to the test contained in the most likely relevant condition to be met in Schedule 2, DPA, that is paragraph 6 of that Schedule. Thus, the Information Commissioner was considering whether, in the absence of consent to disclosure by the named individual, paragraph 6 of Schedule 2 applied. This provides for processing to be lawful where it is:

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

5. The Tribunal accepted the Information Commissioner's analysis of the factors set out in the Decision Notice as mentioned above, and agreed that paragraph 6 Schedule 2 did not apply. Under EIR, the legitimate interests, per the provision above, had to be ones that arose from public, rather than private interests,

disclosure being to not just to the Appellant but to the world at large. Thus, the private interests put forward by the Appellant, arising from a long running dispute with his neighbour, did not amount to a legitimate interest for disclosure of whether the information in question was held. No reason had been put forward for public disclosure of this information – for instance on the basis that there was a particular need for transparency and accountability in relation to DNPA's public functions. It appeared that the only interests at stake were those of the requester himself. Whilst sympathetic to those caught up in neighbour disputes, it was not, without some wider public interest arising from this, the function of the EIR to assist in their resolution. The Tribunal took the view that, giving the Appellant the benefit of doubt, that is that the interests at stake were legitimate, nevertheless, it could not be said to be "necessary" per the provision above, for the Appellant to be informed whether the data requested was held. On the assumption that a legitimate part of the Appellant's interests were that there should be transparent and appropriate regulation by DNPA, there were other ways in which this could be pursued. Most notably, by the Appellant engaging directly with DNPA rather than via the handling of any complaint. Further, the Tribunal was of the view that the named individual would have had a reasonable expectation that, if a complaint had been made, that fact would not be made public to the world at large.

6. Nor was it the role of the DNPA or the Information Commissioner to seek the consent of the data subject in question. Apart from any other consideration of appropriateness of role, it would be clear that had this information been available via consent, there would have been no need for the request in the first place. Thus, it was reasonable for both bodies not to have sought the consent of the individual to disclosure whether or not the requested information was held.

7. Finally, it was irrelevant that DNPA had previously disclosed the fact that the Appellant had made a complaint. That disclosure had been in a letter to the named individual, not disclosure under EIR to the world at large.

**Conclusion**

8. In light of the reasons set out, the Tribunal was of the view that the appeal should be dismissed.

9. Our decision is unanimous.

Signed

Melanie Carter
Judge Date: 3 February 2015