



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

Appeal No: EA/2015/0083

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50360330
Dated: 19 March 2015**

Appellant: John Brookes

First Respondent: The Information Commissioner

Date of paper hearing: 4 August 2015

Venue: Fox Court

**Before
HH Judge Shanks
Judge
and
Henry Fitzhugh and Narendra Makanji
Tribunal Members**

Date of Decision: 18th August 2015

Subject matter:

Freedom of Information Act 2000

s.40	Absolute exemption: <i>Personal data</i>
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DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal and upholds the Information Commissioner's decision notice dated 19 March 2015.

REASONS FOR DECISION

1. This appeal concerns a request for information relating to planning control on the Isle of Anglesey. Under paragraph 4.6.10 of Constitution of the Isle's County Council planning applications within various categories are reported to the relevant committee of councillors and not dealt with by officers under "delegated powers". Those categories include cases where the applicant is a "close friend" of a "relevant officer", a phrase which is defined to include all officers working in the Council's Planning Department.
2. On 4 August 2014 the Appellant, Mr Brookes, wrote to the Council in these terms:

Re Planning Application 14C164D

...

In the minutes of the Planning Committee it stated that this application had been referred to Committee as the Applicant was a friend of a Relevant Officer – who is the relevant officer? If this application was referred due to this why was the planning application number 14C64C/VAR not referred to committee ... ?

We have not been told anything about the details of the two planning applications or how they are related but Mr Brookes states in an email to the Tribunal that the applicant was a local builder and developer who does a lot of work on the island. The Council answered the questions asked by Mr Brookes in a letter dated 12 August 2014 as follows:

Any declaration of Interest made on planning applications by relevant officers is kept confidentially and are not made available to members of the public. In response to why such a declaration was not submitted on application 14C164C/VAR I am unable to comment

further as whether or not to declare an interest in relation to any application is a matter for the officer.

3. Mr Brookes was dissatisfied with that response and in due course complained to the Information Commissioner that he had not been supplied with the name of the officer. Following the complaint (and therefore rather belatedly) the Council wrote to Mr Brookes on 9 February 2015 relying on section 40(2) of FOIA (personal information) as the ground for withholding the name of the officer. In a decision notice dated 19 March 2015 the Commissioner upheld the Council's position and Mr Brookes now appeals. The sole issue on the appeal is whether indeed the Council was entitled to rely on section 40(2).

4. There can be no doubt that the information Mr Brookes seeks is the officer's "personal data" (and, indeed, the personal data of the planning applicant): it comprises the name of the officer, the fact he works in the Planning Department and the fact that he and the planning applicant are friends. The issue under section 40(2) is therefore whether its disclosure would contravene a data protection principle, in particular the first such principle. As in many such cases which come before the Commissioner and the Tribunal that issue boils down to the question whether or not its disclosure would satisfy condition 6(1) of Schedule 2 to the Data Protection Act 1998, ie whether the disclosure:

... is necessary for the purposes 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 ...

We therefore turn to consider whether the disclosure was necessary for purposes of Mr Brookes' legitimate interests and, if it was, whether it was unwarranted because of the prejudice to the officer and the planning applicant.

5. We are prepared to assume that Mr Brookes is a local resident who has a genuine and legitimate interest in the outcome of planning applications on the island. It also seems not unreasonable that he should want to obtain information which may help him to understand how it is that one planning application was referred to the Planning

Committee and another by the same person was not, a question which the Council has conspicuously failed to answer. He also says that it is in the public interest that, given that the planning applicant is a builder who does a lot of work on the island, everyone should know who among the planning officers is his friend for future reference. And he makes the point that when he speaks to different officers in the Department about the applications in question he has no way of knowing if the officer he is speaking to is the one who had declared an interest.

6. On the other hand, the Council says that the officer in question is not the senior planner in the Department and not deemed to be in a senior post within the overall structure of the Council and that, although he has a degree of contact with the public, his job does not involve representing the Department or the Council to the public at large. The Council says that it generally follows the principle that declarations of interest by officers are kept confidential and that officers are informed of this (which is no doubt designed to encourage them to make such declarations). We are also told that Mr Brookes has made related complaints to the Public Services Ombudsman for Wales who has concluded that the Council have followed their Constitution and that there has been no maladministration in the planning process. The Council says that, given the stance of the Ombudsman, it is difficult to see what Mr Brookes hopes to accomplish should he be provided with the information. A fear is expressed that the officer in question will be exposed to “unfair reputational damage”.
7. Taking all those points into account, we have reached the view that, even if (which we rather doubt) Mr Brookes does need the information for the purposes of his legitimate interests, that cannot justify the interference with the officer’s reasonable expectation of confidentiality and the possible unfair reputational damage he will suffer. Although we can see that there is a possible anomaly in the way the two planning applications were dealt with differently there may be an entirely innocent explanation for that and we would expect the Council to satisfy itself on the point and take any necessary steps in consequence, but that would not require further involvement on the part of Mr Brookes.

8. In the circumstances we conclude that disclosure of the information sought would involve a contravention of the first data protection principle and that the Commissioner was correct to find that the Council were entitled to rely on section 40(2) and that the appeal should therefore be dismissed.

9. This decision is unanimous.

HH Judge Shanks

18th August 2015