



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

Appeal No: EA/2015/0122

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50568760
Dated: 5 May 2015

Appellant: Norman Bradbury

Respondent: The Information Commissioner

Heard on the papers: Arnhem House, Leicester

Date of Hearing: 28 August 2015

Before

Chris Hughes

Judge

and

Anne Chafer and Paul Taylor

Tribunal Members

Date of Decision: 8 September 2015

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 5 May 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Transport for Greater Manchester (“TfGM”) has been building a guided busway. As part of that process it has acquired land. On 18 November 2014, the Appellant in these proceedings (“Mr Bradbury”) a councillor serving on Wigan Metropolitan Borough Council and on the Transport for Greater Manchester Committee (the committee of members of the various local authorities in Greater Manchester which is responsible for oversight of TfGM) made a request for information:-

“What land has been purchased in the route of the Guided Busway?”

The price for these plots of land?

The names of the previous owners of the land who have received payment?”

2. TfGM responded on 18 December providing information in response to the first part of the request, but refusing the second part under section 43(2) FOIA in order to protect its commercial interests and the third part under section 40(2) to protect the personal information of the individuals concerned. On review TfGM upheld their position. Mr Bradbury appealed and in his decision notice the Respondent in this appeal, the Information Commissioner (“ICO”), concluded that information as to

price should be revealed but upheld TfGM's reliance on section 40(2) with respect to the previous landowners.

3. Mr Bradbury appealed against this decision arguing that there was public concern at the lack of transparency about the transactions and who had benefitted from the deals. He submitted that without knowledge of the names of those who had sold the land the public would question the propriety of the transactions and speculate about the reason to withhold the information.
4. The ICO resisted the appeal. He argued that Mr Bradbury had not advanced an argument that the ICO was wrong in law or any argument which the ICO had not considered in coming to his conclusion.
5. The ICO, in a detailed explanation of the relevant law, set out the interaction between FOIA and the DPA and explained that the request for information was for personal data and the data could only be lawfully processed (i.e. in this case published to the world) if the provisions of the Data Protection Act for such processing were met. In setting out the statutory framework he addressed DPA Schedule 2 which lists conditions, one of which will need to be satisfied for the processing to be allowed. The only relevant criterion is 6(1):-

The processing 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.

6. The tribunal noted that in this case therefore the question is whether the disclosure of the names of the individuals is necessary for the purpose that Mr Bradbury identified and if so, where the public interest lay between maintaining the privacy of individuals and the benefits flowing from disclosure. Already in the public domain are the identity of the plots of land and the prices paid for them, the question therefore is whether it is necessary for the identities of the former owners to be revealed in order to address any public concerns there may be as to propriety. The ICO argued that it was not necessary for names to be disclosed as well and that if there were any evidence of wrongdoing regarding these individuals the issues could be pursued by other means without disclosing their names to the public at large.

7. The tribunal agreed with the ICO's position. "Necessity" is a significant challenge for Mr Bradbury to prove. He has not advanced any case explaining why the information already in the public domain is insufficient for any governance concerns that the public may have. He has therefore failed to establish the necessity of what he is seeking; accordingly he has not met the statutory tests required before the information can be disclosed and the appeal must fail.
8. Furthermore the ICO rightly emphasised the importance of protecting the right to privacy attaching to individuals' personal data and that there was no presumption in favour of the release of personal data under FOIA legislation. The tribunal accepted the ICO's argument that, given the controversy that Mr Bradbury claimed attached to the project, the disclosure of the names of individuals concerned could lead to harassment and would cause distress to the individuals concerned.

Conclusion and remedy

9. For the reasons stated above the tribunal is satisfied that the appeal should be dismissed.
10. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 8 September 2015