



IN THE FIRST-TIER TRIBUNAL

Case No. Appeal No. EA/2015/0203

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM Information Commissioner's Decision Notice FS50566285

Dated 24th August 2015

BETWEEN

Mr Rob Waugh

Appellant

And

The Information Commissioner

Respondent

Determined on the papers on 2nd February 2016

Date of Decision 7th April 2016

Date of Promulgation: 11th April 2016

BEFORE

Ms Fiona Henderson (Judge)

Mr Michael Hake

And

Mr John Randall

Subject: s40 FOIA personal data

Case Law: *Commons Services Agency v Scottish Information Commissioner [2008] 1 WLR 1550 HL*

Goldsmith International Business School v IC and Home Office [2014] UKUT 563 (AAC)

Decision: The Appeal is refused

REASONS FOR DECISION

Introduction

1. This appeal is against the Information Commissioner's Decision Notice FS50566285 dated 24th August 2015 which held that the Rotherham NHS Foundation Trust (the Trust) correctly applied s40 FOIA to the request.

Background

2. The Medical director of the Trust was absent for a significant period in 2013-2014 and left the role without returning to work at the Trust. He last attended a Trust board meeting on 31st October 2013 and did not attend another prior to his departure at the end of October 2014. He was on full pay throughout his period of absence. He began employment in the same role with North Devon Healthcare NHS Trust (NDH) on 3rd November 2014 (announced on 23rd October 2014) there was no break in his employment on full pay at the Trust prior to commencing his role at NDH. During his period of absence he was undertaking other NHS funded paid work (relating to Clinical Commissioning Group work).

3. The Trust has not commented upon the reasons for his absence and departure apart to confirm that he resigned. NDH issued a press release on 18th November 2014 in the following terms:

[The data subject] was off work due to a significant illness towards the end of 2013 and into 2014.

[The data subject] said:” I would like to thank [the Trust] for their support during and since my illness.

I am 100% fit and well and can’t wait to get started in my new job in [NDH]...”

“

The Information Request

4. Mr Waugh had made a request dated 17th April 2014 asking:
“Given [the data subject’s] remuneration recorded in the last annual report was £185,000 I would be grateful if the Trust would clarify the reason for his absence” – the Trust withheld that information on the basis of s40(2) FOIA which was upheld in decision notice FS50548518. Mr Waugh did not appeal this decision however, following the data subject’s employment elsewhere and the press release, he contacted the press office with some questions relating to the data subject’s absence.

5. On 27th November 2014 Mr Waugh asked the Trust¹ in the context of the “*re-emergence of the former medical director [name given] at another Trust*”:

i) for all recorded information held on any investigation into [named individual's] conduct...

ii) and all relevant correspondence and recorded information relating to [named individual's] departure from the trust.

6. Following the intervention of the Commissioner, as the Trust had not responded within 20 working days, the Trust responded on 28th January 2015 and neither confirmed nor denied that it held the information relating to the first request (s40(5) FOIA) and identified that it held the resignation letter of the data subject in relation to the second request but refused to provide the information pursuant to the second request under s40(2) FOIA (personal data).

7. The Trust upheld this position on 3rd March 2015 following an internal review.

8. Mr Waugh complained to the Commissioner on 5th March 2015. Following an investigation, the Commissioner upheld the Trust's decision. Mr Waugh appealed to the Tribunal on 1st September 2015 on the grounds that:

- a) The Commissioner had not drawn the parameters of the request accurately (namely that the reason for the absence was at the heart of the request).
- b) The Commissioner had not investigated fully the legitimate interests in disclosure,
- c) The Commissioner had not given the legitimate interests for disclosure sufficient weight.

9. The Tribunal understands that the Trust have been made aware of this appeal and chosen not to apply to be joined. Both parties have consented to the case being determined upon the papers and the Tribunal is satisfied that it can properly determine the issues without a hearing pursuant to rule 32(1) GRC Rules. In

¹ Mr Waugh also asked for additional information triggered by his approaches to the press office on the same matter. He was provided with information in relation to this element of his request and this did not form part of his complaint to the Commissioner and is not therefore before this Tribunal.

reaching this conclusion the Tribunal has had regard to the overriding objective as set out in rule 2 GRC rules. We have had sight of the disputed information as defined in the case management note and the Trust's unredacted representations to the Commissioner in this case in addition to the closed annex of Decision Notice FS50548518 which in light of the terms of that request explains why the data subject was absent. We are satisfied from this that we have sufficient material to determine the case without a hearing and that there is no reason to join the Trust.

Scope

10. In his grounds of appeal, the Appellant observes that:

“the Decision Notice does not specifically refer to information surrounding the absence being sought when this was the case”.

He has included copies of some of his correspondence with the press office in support of his contention that it was clear that this was the information sought rather than just information relating to his departure and any investigation (which may or may not have been a reason for absence).

11. Mr Waugh contacted the press office with some questions relating to the data subject's absence in November 2014, he received some information as to his remuneration and the sick pay policy but was told on 13th November 2014:

“The Trust has a duty to protect the personal information of its employees and therefore is unable to disclose reasons for absence of any of its staff”.

There is no evidence that any consideration was given to FOIA in relation to this response.

12. On 27th November 2014 Mr Waugh wrote to the Director of Corporate Affairs/Company Secretary pursuant to his correspondence with the press office:

The issues you highlight are outstanding but in addition the issues highlighted in the email below remain unanswered.

A key element here is that both [data subject] and his employer [NDH] have publicly commented on his absence at [the Trust], giving the impression that ill-health was the reason for his absence. If that was indeed the entire reason for his

absence, the trust should explain why a director received full pay for a year and if that is indeed policy across the trust.

If it is not the entire reason, equally the trust is in a position to put matters straight to ensure the public are not misled.”

13. He wrote separately to a dedicated FOIA email address with the request that is the subject of this appeal later the same day and did not repeat the request for information about “absence” rather than departure. It is apparent that the Trust and Mr Waugh considered this to be a separate mechanism to FOIA. Mr Waugh did not receive a substantive response from the Director of Corporate Affairs/Company Secretary but was told by email on 3rd December that:

“since your emails below, you have submitted an FOI regarding this matter which has requested far more detailed information than that requested below.”

Therefore it has naturally been assumed that you had decided to pursue your enquiries through that statutory route rather than informally and actions are currently being taken by the Trust to fulfil your formal request for information...”

14. Mr Waugh responded the same day stating :

“I have submitted an FOI request but that is a separate matter to my request for a response from the press office...”²

The Tribunal does not have a complete set of the correspondence with the Press Office before it, but is satisfied from this that Mr Waugh’s intention was to pursue two different avenues of enquiry at the time and is satisfied that it is not reasonable to infer that the wording of the FOIA request should be altered to reflect the information sought from the press office which the Trust highlights is different in scope.

15. The Tribunal does observe that s8 FOIA defines a freedom of information request as:

² P45 OB email 3.12.14

(1) In this Act any reference to a “request for information” is a reference to such a request which—

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

In these circumstances the Tribunal questions why the requests made in the correspondence to the Trust were not treated as FOIA requests. The requests as articulated to the press office are however, not before the Tribunal as Mr Waugh has not complained to the Commissioner about the handling of these specific requests and they are not therefore the subject of the Decision Notice under appeal.

16. In correspondence with the Commissioner, Mr Waugh stated:

“I am a wee bit concerned that it might not be sufficiently clear what was being sought despite my attempts to obtain a response from [the Trust] ie that I was seeking an explanation for [data subject’s] absence in the context of significantly changed circumstances from those originally considered by the ICO...”³

17. In his response to the Tribunal, the Commissioner notes that the reasons for the absence were sought specifically in the April 2014 request. He was “aware” from the surrounding correspondence that the Appellant was concerned with the reason for this, from correspondence with the Trust, but argues that his requests for recorded information in the present matter did not specifically refer to the absence, but rather sought to ascertain in particular whether any investigation into the data subject’s conduct had taken place. He observes this is a wider request and may or may not have revealed information pertinent to the Data Subject’s absence.

18. The Tribunal acknowledges the wording of the request and is satisfied that it is clear in its terms. The April 2014 request asked for the reason for the absence, the second did not. The Trust were entitled to assume that the wording was used for a

³ P69 OB email 25.03.15

particular reason. In subsequent correspondence relating to this request and arguments Mr Waugh is conflating departure and absence however, the words have different meanings. Additionally many of his arguments are predicated on the assumption that the reason for absence was an investigatory process when this is speculation. Insofar as the request that is the subject of this decision notice and appeal is concerned we are satisfied that the request is confined to its terms and that the Commissioner has drawn the parameters of the request accurately.

19. Despite its findings that the legal scope of the request was correctly identified, the Tribunal observes nevertheless that in light of Mr Waugh's arguments in correspondence, (reopening the issue of the reasons for absence generally) the Trust ought to have considered whether to offer advice and assistance or seek clarification under s16 FOIA⁴ or s1(3) FOIA⁵ respectively. Before the Commissioner it is clear what Mr Waugh had intended to ask for was the reasons for the absence, however, the Decision Notice does not address the arguments of scope as raised in Mr Waugh's correspondence. We observe that for clarity the Commissioner ought to have explained why he was confining scope to the objective construction of the terms of the request in his decision notice.

Personal Data

20. Personal data is defined under s1 DPA as:

data which relate to a living individual who can be identified –

(a) From those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or by other person in respect of the individual...

21. We are satisfied that:

⁴ Advice and assistance

⁵ Clarification of a request

- i) information relating to the personnel record of an individual (namely whether there has been any investigation into their conduct) and
 - ii) the letter of resignation which is information from and about the data subject and his departure from his job,
- is biographically significant and constitutes his personal data. The Tribunal is also satisfied that information cannot be redacted because the data subject is identified both by his job title at the Trust and also by name in the information request.

22. S40 FOIA provides insofar as it is material upon the facts of this case:

... (2)Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data [of which the applicant is not the data subject], and

(b) either the first or the second condition below is satisfied.

(3)The first condition is—

(a)in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i)any of the data protection principles...

...

(5)The duty to confirm or deny—

(a)does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b)does not arise in relation to other information if or to the extent that either—

(i)the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles ...

23. The first data protection principle, as set out in Schedule 1, Part 1 paragraph 1 to the DPA, 1998 provides, that personal data shall be processed:

“...fairly and lawfully and, in particular, shall not be processed unless

(a) at least one of the conditions in schedule 2 is met and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

24. In determining whether disclosure is fair, part II of Schedule 1 provides:

(1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

Consequently we are satisfied that it is appropriate to have regard to the expectation of the data subject.

The first information request: -All recorded information held on any investigation into [named individual's] conduct

Expectation

25. The Commissioner argues that confirmation or denial of whether there was an investigation into the data subject's conduct relates to his personnel record and that there is a reasonable expectation based on practice within the Trust and more general business practice, that this would not be disclosed to the world at large. This expectation is rooted in the prejudice to the data subject in disclosure. If an investigation were confirmed it would prompt concerns relating to the data subject's conduct, this would be likely to lead to a trial by media in the absence of public detail regarding the circumstances of his absence and departure which would be prejudicial in terms of career prospects, and distressing. Disclosure that there had been no such investigation would be likely to increase speculation for the reasons for the data subject's absence and also distressing (as there could be numerous personal reasons for absence).

26. Mr Waugh urges a proportionate approach with consideration given to some disclosure rather than all, he maintains that limited details can be given focusing on the fact of any investigation or not as the case may be, and its outcome rather than the details of the investigation itself. He disputes that the data subject would have any expectation of privacy in light of his seniority. Further, he argues that future prejudice to the data subject's career is irrelevant in this case because the data subject was already in new employment at the date of the request.
27. Mr Waugh includes the fact that the data subject has been in that new role for almost a year at the time of exchange of pleadings. The Tribunal reminds itself that it must confine the arguments to the relevant date, which was around the time of the request and the Trust's response. However, the Tribunal accepts that notwithstanding his new employment, the Commissioner's argument relates to information that would be placed in the public domain and remains relevant as he may choose to move employment again.
28. The Tribunal accepts that personnel matters (particularly at the investigation stage where it has not yet been determined whether the allegation is baseless, or should be upheld) are generally dealt with in confidence regardless of the seniority of the data subject. The Tribunal observes that the outcome of an investigation can have an impact upon the expectation and fairness of disclosure (e.g. if an internal investigation were to lead to criminal proceedings).
29. We accept that confirmation of an investigation, if there has been one, is prejudicial to the data subject. The Tribunal observes that the fact of an investigation is not probative of any wrongdoing, the context in which an allegation is made and the reasons for which it is upheld or not, will also constitute personal data. In order for a data subject to counter the suspicion of wrongdoing (even in the face of no sanction or a complaint not being upheld), or to mitigate the impact of a finding against them, would be likely to require the disclosure of more of the data subject's personal data and possibly the personal data of others such as any complainant or witnesses. The Tribunal accepts the

Commissioner's arguments that prejudice relates to future employment as well as to the health and wellbeing of the data subject, who could be expected to be under stress (in light of the potential consequences of an investigation such as loss of employment).

30. Mr Waugh provided the tribunal with examples of cases where public authorities have confirmed reasons for absences including investigations into conduct, he relies upon this in arguing that there should be (and was) no reasonable expectation of privacy for someone in such a high profile role. However, the Tribunal is not satisfied that these examples of disclosure constitute the general practice or norm such that the expectation relied upon is unreasonable. We observe that public statements can be provided through consent, and in the context of information that is already in the public domain. Each case can be expected to have been assessed upon its own facts. In assessing the fairness of disclosure the Tribunal accepts that there is no absolute right to privacy and that this is a balancing test.
31. Public comments have been made by and on behalf of the data subject (in the press release). The Commissioner concedes that public comments are relevant but argues that a brief reference to ill health as a reason for his absence does not warrant disclosure of all information that may be held regarding conduct and departure.
32. Mr Waugh argues that the data subject has chosen to put the information in the public domain – in which case it is reasonable to expect scrutiny of the consistency and rigours of the processes applied. It is Mr Waugh's case that the Commissioner in his reply has underplayed the significance of the press statement and the fact that it included direct quotes from the data subject. He argues that it was issued to answer questions raised by the data subject's previous unexplained absence from the role.
33. The Tribunal accepts that it is important that the public are not misled and that if the public pronouncements made by or with the consent of the data subject are incorrect or dishonest there would be a strong public interest in disclosure of

information that would correct erroneous statements. The Tribunal is unable to comment on the contents of the disputed information in the open decision but sets out its approach to the significance of the press release in general terms. In assessing whether the contents are or are not misleading the Tribunal has had regard to the information that it has as to why the data subject was absent. Additionally the Tribunal has looked at what appears to be the purpose of the statement. Mr Waugh has read the press release as being issued in order to explain the past absence. Whilst this is an element, the Tribunal has had regard to who has issued the statement (NDH who bear no responsibility for the past absence and therefore do not need to justify it), and also considers (from its content) its function to be reassurance of ongoing good health and fitness to perform the current role of the newly appointed medical director.

34. The Tribunal observes that in his reply to the Commissioner⁶ Mr Waugh states: *“despite public references to ill health in relation to at least a portion of the absence...”* the Tribunal considers this to be tacit acknowledgment by Mr Waugh that the information disclosed does not purport to be a detailed explanation of the situation. The Tribunal observes by way of generality that there can be one or several reasons for absence and if more than one, these can be interlinked or independent of each other, a situation can be fluid or evolve. The data subject has not elaborated upon the nature of the ill-health, what precipitated it (e.g. accident, disease or environment), whether there was a period of recovery following an acute phase etc. For this and the reasons set out in the closed schedule we are satisfied that notwithstanding the limited public comment by the data subject the legitimate public interests are not sufficient to make disclosure of the disputed information fair.

Consequences

35. We have had regard to the consequences of confirming or denying that the information is held. Confirmation is likely to lead to prejudice and further speculation as set out above. If the information is not held, we accept that this is likely to increase public scrutiny as to the reason or reasons for absence which, on

⁶ Paragraph 45

the basis of the press release referring to ill health, can be certain to include some sensitive personal data. Whilst Mr Waugh has indicated that he does not wish to know any medical details, disclosure is to the world at large and not limited to Mr Waugh.

Legitimate interests:

36. Mr Waugh argued that the Commissioner had not identified the legitimate interests or given them sufficient weight. The appeal constitutes a complete rehearing and we are not bound by the Commissioner's findings of fact. Whilst the Commissioner has not recited Mr Waugh's arguments in full, and could have set out his reasoning more fully, we are not satisfied that this amounts to an error of law and as set out in this decision we agree with his conclusion as to the assessment of fairness.
37. Many of Mr Waugh's arguments are aimed at the public interest in disclosure of the reasons for the data subject's absence in light of the press release citing ill health; whereas as set out above the request relates to disclosure relating to any investigation of his conduct and the reason for his departure. The Tribunal has addressed the arguments in relation to the disputed information on the basis that confirming or denying whether an investigation had taken place would inform debate relating to whether ill health was or might be the only reason for absence. Consequently it would further debate relating to the application of sick pay policies, additional work undertaken etc.
38. The Tribunal accepts that the data subject's role is public facing, he was the Trust's highest paid full time employee, with a substantial remuneration package which was publicly disclosed (as shown in the Trust's annual accounts) and that the data subject's expectation would be tempered by an understanding of transparency, accountability and the need for public confidence, and that in light of the financial monitoring of the Trust and the length of absence involved, the data subject would expect some scrutiny.
39. We accept that there are strong public interests in scrutiny, transparency and accountability however, in assessing the balance of fairness the Tribunal reminds

itself as stated in Commons Services Agency v Scottish Information Commissioner [2008] 1 WLR 1550 HL at [7]:

“there is no presumption in favour of the release of personal data under the general obligation that FOISA lays down⁷. The references which [the Freedom of Information (Scotland) Act] makes to provisions of [the Data Protection Act] must be understood in the light of the legislative purpose of that Act which was to implement Council Directive 95/46/EC. The guiding principles, the protection of the fundamental rights and freedoms of persons, and in particular their right to privacy with respect to the processing of personal data...”

40. Mr Waugh argues that the need for scrutiny was enhanced because the Trust has been struggling to manage a deficit and control costs and was overseen by Monitor (the regulator for NHS foundation trusts). Transparency was needed to understand the context of the additional financial expense of the absence:

- The Trust had to appoint an acting medical director in addition to paying the data subject.
- The data subject was on full pay throughout the period of absence.
- The period of absence was significant amounting to approximately 1 year.

41. From the information available Mr Waugh contends that there was cause for concern as to the Trust’s management of the absence or alternatively it called into question the good faith of the data subject. The Tribunal observes that if bad faith is involved that is important in light of his continuing public office.

42. Mr Waugh argues that if his absence was due to sickness alone then his full payment during the period would appear to be in contravention of the NHS sick pay rules – this raises the issue of consistency for other employees⁸.

⁷ Referring to the equivalent provisions in the Freedom of Information (Scotland) Act 2002

⁸ NHS sick pay regulations (NHS handbook paragraph 14.2) state that employees with over 5 years service are entitled to 6 months on full pay and 6 months on half pay yet despite ill health being given as a reason for absence in the press release, Trust records show that the Appellant was on full pay for the entirety of his absence, a much longer period.

43. The Tribunal is satisfied that the Trust was already subject to scrutiny from Monitor, and by way of audit. Some information is already in the public domain in terms of the expenses incurred and the public already have sufficient information to ask the auditors to check the propriety of the sums paid out. In relation to the April 2014 request the Trust had stated that:

There were no grounds for the inference that “the Trust’s decision to continue to pay the data subject is improper or does not follow established policies or legal obligations...

...the difficulties it has experienced do not include allegations of improper payments or financial impropriety⁹” . We accept this evidence which is consistent with the closed material before us which includes the unredacted submissions of the Trust to the Commissioner.

44. Mr Waugh analyses the reference to ill health in the press release and questions how, if the data subject was sick, he could undertake other work¹⁰, manage a no doubt rigorous recruitment procedure, and be ready to start work elsewhere the moment his period of sick leave for the Trust concluded? Mr Waugh questions whether the public had been misled as to the reasons for absence and argues that it is in the public interest that they are not so misled.

45. The Tribunal repeats its analysis of the significance of the press release as set out above and, in relation to the inference that the Trust have not managed the situation appropriately, is satisfied that on the material before it there are no grounds for concluding that the trust’s actions were in any way improper. If Mr Waugh continues to have concerns relating to e.g. overpayment of sick pay, there

⁹ P29 OB

¹⁰ Whilst absent (and not attending Trust board meetings) he attended Erewash Clinical Commissioning Group board meetings during the relevant period and declared an interest in February 2014 in relation to work he had agreed to do on behalf of Southern Derbyshire CCG

are other forms of scrutiny available which do not require the disclosure of the data subject's personal data to the world at large.

Schedule 2 condition

46. The Tribunal therefore concludes that confirming or denying that the information is held would not be fair and would therefore breach the first data protection principle. If any personal data were held the Tribunal is also satisfied that no Schedule 2 condition would be met. In light of the nature of the information asked for the only possible applicable condition would be condition 6:

(6) (1) – The processing is necessary for the purpose of legitimate interests pursued 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”.

47. The test to be applied in relation to Condition 6(1) of Schedule 2 to the DPA is that of *Goldsmith International Business School v IC and Home Office [2014] UKUT 563 (AAC)* where the Upper Tribunal endorsed the principles to follow which include insofar as it is material on the facts of this case:

“Proposition 1: Condition 6(1) of Schedule 2 requires 3 questions to be asked namely:

- i) Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?*
- ii) Is the processing involved necessary for the purposes of those interests?*
- iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?*

Proposition 2: The test of “necessity” under stage (ii) must be met before the balancing test under stage (iii) is applied.

48. We accept that there are legitimate public interests in scrutiny, transparency and accountability to understand the context of the additional financial expense of the

absence, public confidence in the Trust's management of the absence and consistency of the application of sick pay regulations.

49. The second question is whether the processing involved (in this case disclosure of any information if it is held) is necessary for the purpose of those interests. "Necessity" carries its ordinary English meaning (more than desirable but less than indispensable or absolute necessity)¹¹, and following *Goldsmith* we are satisfied that the test is one of "reasonable necessity"¹², which involves the consideration of alternative measures¹³ i.e. a measure would not be necessary if the legitimate aim could be achieved by some other less intrusive means.
50. We are satisfied that there are other methods of scrutiny and accountability (such as the oversight by Monitor and the requirement to be audited). We are not therefore satisfied that necessity is made out, but even if it were, as set out above, any such disclosure would be unwarranted in light of the expectations rights and freedoms and legitimate interests of the data subject.

The Second Information request -All relevant correspondence and recorded information relating to [named individual's] departure from the trust.

51. The Commissioner argues that there is a reasonable expectation that the contents of the resignation letter would remain private as it relates to internal personnel matters. The Commissioner accepts that there would be an expectation of some disclosure e.g. a public statement, but that this would not extend to private correspondence. The data subject has not consented to disclosure, which he argues supports the expectation.
52. The Tribunal repeats the arguments and analysis as set out above insofar as it relates to the resignation letter both in relation to the assessment of fairness and to Schedule 2 condition 6 DPA applying the *Goldsmith* Principles and makes the following additional points. There has been some public disclosure including the

¹¹ Proposition 3 *Goldsmith*

¹² Proposition 4 *Goldsmith*

¹³ Proposition 5 *Goldsmith*

dates at which the decision was announced, the end date of employment at the Trust and the start date at NDH. The Tribunal comments upon the specific content of the withheld document in the closed annex to this decision but makes general observations about the nature of resignation letters in the open part of the decision in order to show its approach.

53. We observe that correspondence is likely to include more than just the fact of resignation and any administrative details such as the date. It can be expected to be in the data subject's own words, it may include negotiated terms of the resignation such as notice periods, attitude towards individuals and organisations, a reflection upon the experience of working in a role, as well as circumstances leading to the resignation. Whilst there is no absolute right to privacy the practice of the organisation and therefore the expectation of the data subject when they chose what to include in the letter is, in our judgment, relevant to the fairness of disclosure under FOIA.
54. We adopt our analysis as to the legitimate interests in disclosure as set out above and add that having viewed the withheld information we agree with the Commissioner that there is nothing remarkable or exceptional about the withheld information which in our view would add very little to the public understanding of the circumstances surrounding the departure.

Conclusion

55. For the reasons set out above and in the closed annex we are satisfied that s40(2) and 40(5)FOIA were applicable as disclosure would breach the data protection principles and thus would not be fair. The appeal should be refused.
56. Our decision is unanimous.

Dated this 7th day of April 2016

Fiona Henderson
Tribunal Judge