



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL UNDER  
SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

**Appeal No. EA/2016/0143**

**BETWEEN:**

**KAREN PHILLIPS**

**Appellant**

**-and-**

**INFORMATION COMMISSIONER**

**Respondent**

**Before**

**Brian Kennedy QC**

**Jean Nelson**

**David Wilkinson**

**Date of Hearing: 26 August, at Field House, London.**

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**DECISION**

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**Subject matter: Application of section 40(5) of the Freedom of Information Act 2000 ("FOIA").**

The Tribunal dismisses the appeal.

## **REASONS**

### **Introduction:**

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 2 June 2016 (reference FS50612979) which is a matter of public record.

### **Factual Background to this Appeal:**

2. Full details of the background to this appeal, Ms Phillips’ request for information and the Commissioner’s decision are set out in the Decision Notice and are not repeated here, other than to state that, in brief, the appeal concerns the question of whether the employment status of named individuals is personal information and whether Kent Police were correct in their refusal to either confirm or deny under s40(5) FOIA whether they held the information.

### **Chronology:**

3.

8 Dec 2015	Appellant’s request for employment details of named individuals
8 Jan 2015	Kent Police refusal, citing s40(5) FOIA neither confirming nor denying holding the information
13 April 2015	Internal review upholds original position.
January 2016	Appellant complains to the Commissioner.

**The Relevant Legislation:**

4.

***s40 FOIA Personal information.***

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
  - (a) it constitutes personal data which do not fall within subsection (1), 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, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

- (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 or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
    - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

***Sch II – Conditions for Data Processing***

- (1) The data subject has given his consent to the processing.
- (2) The processing is necessary –
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
- (3) The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
- (4) The processing is necessary in order to protect the vital interests of the data subject.
- (5) The processing is necessary –
  - (a) for the administration of justice,
    - (aa) for the exercise of any functions of either House of Parliament,
  - (b) for the exercise of any functions conferred on any person by or under any enactment,

- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
- (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

**The Commissioner's Decision Notice:**

5.

The requested information clearly relates to identified living individuals who the complainant believes to be, or to have been, police employees or associates. By its nature the request identifies those individuals and that information, if held, would constitute their personal data.

Considering the conditions under Sch.II DPA information about employment will usually be inherently 'private' and police officers etc. will have a high expectation that such matters will not be placed in the public domain, as disclosure must be considered as being made to the world at large. As such, their reasonable expectation would be non-disclosure.

Disclosure of information could prove detrimental to any police employee or to a member of the public and could cause unnecessary and unjustified damage or distress to the individuals concerned.

Junior members of staff have a greater expectation of privacy than would more senior employees. In this matter, the police confirmed that none of its senior employees at the time cited in the request fell within the scope of the information request. Confirming or denying the holding of the information would be an unjustified breach of privacy.

**Grounds of Appeal:**

6. In summary, the Appellant's appeal can be described as follows

Complaints that the Commissioner took too long to get information from Kent Police.

Complains that a particular officer washed cars without tax or insurance but was sacked or moved forces, he has parked his car on the appellant's driveway and chased her dog with a hammer and was responsible for the appellant's arrest in 2013.

She has concerns he was in concert with another officer or person with the same name (possibly his father) working from Maidstone Police Station to frame her for a crime.

**The Commissioner's Response:**

7. The Commissioner argues that the Appellant's concerns about how the investigation was conducted is outside the remit of the Tribunal as *per* s58 FOIA and Carins v ICO.

**The Hearing:**

8. The Appellant appeared in person before this Tribunal for an oral hearing and at length explained her appeal was because of the delay in the Commissioner's' investigation. She did not indicate or suggest the delay she

complained of altered the reasoning within the Commissioner's Decision. More that it frustrated her annoyance at the police treatment of her.

9. The Appellant failed to, and in fact did not try to, argue that there was any error of law in the DN or in the reasoning therein. Her complaint was solely about the delay and the effect that had had and was continuing to have on her.
10. The Tribunal find no error of fact or of Law in the Decision Notice and furthermore accept and adopt the reasoning therein. Accordingly we dismiss this appeal.

Brian Kennedy QC

30<sup>th</sup> September 2016.