



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

Appeal No: EA/2018/ 0004

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50676094

Dated: 18 December 2017

Appellant: Joseph Baldwin

Respondent: The Information Commissioner

Heard at: Fleetbank House London EC

Date of Hearing: 11 May 2018

Before

Chris Hughes

Judge

Anne Chafer and Mike Jones

Tribunal Members

Date of Decision: 22 May 2018

Attendance:

The Appellant: In person

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 18 December 2017 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. For many years Mr Baldwin lived with and cared for his mother and father (who according to his death certificate was born on 03/07/1922 although other dates appear in documents) as they became increasingly frail. His mother died in November 2009. In 2010 the father suffered from a range of disorders including dementia and there were concerns as to his capacity to make decisions relating to his care. Concerns were raised by other children as to the care that was being providing to the father. They felt their brother was excluding them from the house and over-medicating their father. The father was admitted to a nursing home for respite care for a period of two weeks from 9 April 2010, he was removed by his son prior to the end of this period. During the admission staff were concerned about over-medication. An adult safeguarding meeting was held on 27 April where various concerns about the quality of care were expressed, as a consequence a Detective Sergeant attended at the Baldwins' home on 6 May. The concerns included the adequacy of feeding arrangements and the son's insistence that the time of attendance of care staff to address his father's hygiene needs should be postponed, leading to the father lying in excrement for hours each morning. His GP reported being thrown out of the property by the son and the son's desire for high levels of medication for his father. Mr Baldwin junior was arrested on 26 May and Mr Baldwin senior was conveyed to the Oakhurst Court nursing home in Surrey on the same day. The police sought advice as to whether there was sufficient evidence to charge the son with neglect under the Mental Capacity Act 2005. The CPS concluded that the failure of the various agencies to act earlier had undermined the case against the son. The CPS decision noted that those making the complaint had been concerned to ensure that Mr Baldwin senior received appropriate care (extract from police report/CPS considerations included in the bundle pages 185-187).
2. Mr Baldwin senior resided in the nursing home from 26 May 2010 until his death on 27 June 2010. He was assessed in hospital on 30 May as he had become chesty, slightly wheezy and coughing sleepy and weak (medical report bundle pages 149-151). He was repeatedly seen and treated by GPs in the nursing home in subsequent weeks. On 26 June Mr Baldwin junior reported to staff at the care home that his father was unwell and confused. The care home provided some treatment, he was

checked overnight and at 6 am he was found not to be breathing. An ambulance was called and resuscitation was unsuccessful.

3. A death certificate was issued following a post-mortem without inquest listing under the cause of death Biventricular Failure, Ischaemic Heart Disease, Chronic Obstructive Pulmonary Disease, and also listing Parkinson's Disease and Dementia (bundle page 153).
4. Mr Baldwin junior is deeply aggrieved by the course of events and has over the years sought information from the Police, the nursing home, Kent County Council (where he and his father lived) and Surrey County Council (SCC), where the nursing home was located. He has complained to the Local Government Ombudsman. As a result of his efforts he has obtained a considerable amount of material relating to the issues summarised above from various sources.

The request for information

5. Mr Baldwin has made repeated requests for information from SCC seeking records the Council hold's about his father. He made the request on 25 March 2011, 15 February 2013 and 19 December 2013. On each occasion SCC refused to supply the information relying on s41 FOIA which provides:-

“ Information provided in confidence.

(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

6. In responding to the first request SCC explained on 11/04/2011 that s41(1) meant that his father's personal representatives could take legal action against SCC if it disclosed the information and indicated that if he obtained the written consent of the personal representatives SCC would be pleased to consider his request outside the framework of FOIA.
7. In the internal review following on from the 2013 request SCC explained to him that:-

“The information you have requested is exempt in accordance with section 41 of the Freedom of Information Act (FOIA) ... The disclosure of the information you have requested would result in a breach of confidence over which the deceased’s appointed personal representative could take legal action against the council if it was disclosed under FOIA.

8. On 24 July 2017 he made a further request:-

"I would like all information that you hold supplied to the Local Government Ombudsman, and Oakhurst Court Nursing Home between 26th May 2010 until 27th June 2010 and all investigations that took place after this date."

9. SCC replied on 9 August 2017. It refused the request relying on both s14(2) FOIA as it was a repeat request, *“as you have already previously requested this information and a further review of our response to that request was only recently completed. Our position remains unchanged regarding disclosure”*; and s14(1) that the request was vexatious *“In applying this exemption we have taken into account the continuous correspondence that the County Council has had with you through the access to information regimes of the subject access process, freedom of information requests and internal reviews and come to the conclusion that this request has already been dealt with appropriately.”*

The complaint to the Information Commissioner

10. Mr Baldwin junior complained to the Information Commissioner (IC) who investigated. In her decision notice she recorded SCC’s explanation that Mr Baldwin’s father was not a social care client of SCC but of Kent County Council. Safeguarding concerns were raised by Mr Baldwin after his father’s death and these fell to be considered by SCC, the main social care records were held by KCC. She further noted SCC’s requirement for the consent of the personal representatives of the deceased which had not been forthcoming. She reviewed her previous decision upholding KCC’s reliance on s14 (incorrectly stated to be s41) in response to Mr Baldwin’s requests which had been upheld by the first-tier Tribunal, that the issues had been considered by the Local Government Ombudsman.
11. She noted that Mr Baldwin had been supplied with all the information to which he was entitled, that there was little value in the records given how much information he had obtained, the issues had been considered by an independent body, Mr Baldwin

consumed a considerable amount of time of staff at SCC and KCC seeking to reopen his grievances and causing unjustified disruption. He was unreasonably persistent in keeping the matter open. She concluded in the light of the history that the request was vexatious.

The appeal to the Tribunal

12. Mr Baldwin submitted an appeal accompanied by 77 documents. He argued that he had a serious purpose in seeking the information and accordingly the request is not vexatious.
13. In responding to the appeal the IC noted that considerable material had been supplied which the IC had not previously seen and that there was further information (such as the LGO's decision on his complaint and the reasons for the striking off the professional register of a social worker involved in the case) which had not been provided by Mr Baldwin. The IC noted that the material provided did not undermine the point that the Mr Baldwin had repeatedly made similar requests to SCC which had each been refused under s41 FOIA. Mr Baldwin had continued to seek disclosure of information which had been properly withheld.
14. In his oral argument he argued that he had been "trapped" into seeking information from bodies which would not give it to him. He had had no contact with his father's executors who he blamed for much of what had happened. He felt that he was entitled to the information and despite his efforts his concerns had not been properly addressed. He misinterpreted correspondence with the IC (bundle page 47, letter 20/12/2013) to claim that the IC considered the death of his father "suspicious". He argued that the safeguarding inquiry by SCC had been botched and the police had left the nursing home to investigate its own mistakes. He articulated a sense of grievance against SCC officers who had not spoken to him. He stated that he had received information from KCC and other bodies and did not see why SCC insisted he have the consent of the personal representatives when it knew that they would not consent. He emphasised that he wanted information from the nursing home so that he could understand what had happened to his father. He felt that if the IC requested the information from SCC and then gave it to him, "it would take the heat off Surrey". He stated that he was "at a loss to understand how the law works". He felt that "The Council left my dad to die and I am building up a case in the background". He stated

that “all I want to do... I will never forgive the police for arresting me...and what happened to my dad”.

Consideration

15. Mr Baldwin’s father died in 2010 at a considerable age after it became impossible for him to be adequately cared for at home. The circumstances of his removal to a nursing home have left his son with an acute sense of grievance against the various agencies concerned as well as considerable hostility to some members of his family. He has sought information from numerous parties and has pursued complaints with those parties (a safeguarding inquiry conducted by SCC) and with the LGO. There has been independent scrutiny of his concerns by the LGO.
16. The initial refusal of his request by SCC relied on s41 FOIA which provides an absolute exemption to disclosure. Although Mr Baldwin feels entitled to any information that there is and has argued that he wants to bring legal proceedings against various persons the simple point is, as has repeatedly been explained to him, that a duty of confidentiality is owed to the executors and if he wants the information held by SCC then it is the consent of the executors he must seek.
17. He has repeated the request on several occasions and received the same answer. He is absorbing significant amounts of resource of SCC in his repeated requests. SCC is fully entitled to rely not only on s41 but also on s14(1) and s14(2) in refusing these repeated requests as vexatious.
18. The tribunal is satisfied that the IC’s decision is correct in law and dismisses the appeal.

Judge Hughes

Date: 22 May 2018

Promulgation date: 23 May 2018