



**Appeal number: EA/2019/0351/P**

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

**Ian C Fitzsimmons**

**Appellant**

**- and -**

**Information Commissioner**

**Respondents**

**Before:  
JUDGE MOIRA MACMILLAN  
Sitting in Chambers on 26 May 2020**

**DECISION**

1. The appeal is allowed.
2. The Decision Notice reference FS50808064 dated 22 August 2019 contains an error of law and is set aside. This Decision of the Tribunal is substituted.
3. Hampshire Police and Crime Panel is a public authority for the purposes of the Freedom of Information Act 2000.
4. No further directions are necessary.

**MODE OF HEARING**

5. The hearing was conducted by a Judge, sitting alone. The Tribunal was satisfied that it was appropriate to conduct the hearing in this way.

6. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.

7. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 58.

## REASONS

### *Background to Appeal*

8. The Appellant made a request for information to Hampshire County Council ('HCC') on 1 October 2018. He subsequently decided that the request should be directed to Hampshire Police and Crime Panel ('HCPC').

9. HCC refused the information request in reliance upon section 40(2) of the Freedom of Information Act ('FOIA'). It also stated that HCPC was not a public authority for the purposes of s. 3(1) of FOIA.

10. The Respondent issued Decision Notice FS50808064 on 22 August 2019, upholding HCC's decision. The Respondent found that the exemption had been correctly relied upon, and that HCPC is not a public authority pursuant to s. 3(1) FOIA.

### *Appeal to the Tribunal*

11. The Appellant's Notice of Appeal dated 25 September 2019 challenged the Commissioner's decision that HCPC is not a public authority.

12. The Respondent's Response dated 3 December 2019 maintained the analysis as set out in the Decision Notice. She applied to the Tribunal for the appeal to be struck out under rule 8(3)(c) of the Tribunal Rules, on the basis that it had no reasonable prospect of success.

### *The Tribunal's decision on strike out*

13. On 14 February 2020 the Tribunal considered the Commissioner's application. It considered whether the Grounds of Appeal make a cogent challenge to findings in the Decision Notice. It noted that HPCP is described in the Decision Notice as a joint committee, set up under statutory provisions. Membership of the committee includes representatives from local authorities within Hampshire Police's area. The Tribunal further noted that HCC is the designated lead authority with administrative responsibility for HPCP.

14. The Tribunal concluded that, although HCC describes itself as having responsibility for responding to FOIA requests on behalf of HPCP, there is clearly some confusion about this within HCC and HPCP. It reached this conclusion because, both in relation to the request under appeal, and in response to a later request by the same Appellant, HCPC headed paper has been used to send responses under FOIA.

*The Commissioner's revised position*

15. The Commissioner has more recently reviewed her position in light of the Tribunal's analysis, and in light of her Decision Notices issued under references FS50810487 and FS50827941. The Commissioner now considers HCPC to be a public authority under FOIA.

*The Law*

16. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

*"If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."*

*Conclusion*

17. As the Commissioner now accepts that HCPC is a public authority for the purposes of FOIA, the appeal is no longer contested. The appeal is therefore allowed.

18. I note that the Appellant has not appealed the Commissioner's decision that HCC was entitled to rely on the exemption in s. 40(2) of FOIA in respect of his request. The Tribunal therefore adopts the Commissioner's decision in this regard.

19. The Decision Notice is set aside and the Decision of this Tribunal is substituted. No further directions are necessary.

**Judge Moira Macmillan**

**DATE: 26 May 2020**  
**DATE PROMULGATED: 5 June 2020**