



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS50876680**

Appeal Reference: EA/2020/0098

Considered on the papers

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

SUZANNE COSGRAVE & ALISON LOWTON

Between

DAVID SEMPLE

Appellant

and

INFORMATION COMMISSIONER

First Respondent

DECISION

The appeal is dismissed.

REASONS

1. As a result of a previous information request to Guildford Borough Council, the Council has disclosed to Mr Semple the organisational chart for the Council's senior management, including the names of the five senior managers in the Planning and Regeneration Department.
2. On 18 June 2019 Mr Semple sought further information:-

"...could you supply me with an organisational structure chart for the Planning Department and Planning Enforcement Team showing how many employees there are in each team, the reporting lines for each team and the names of the team members."

3. The Council refused to provide this information on the grounds that it was the personal data of the individual staff members. Mr Semple was dissatisfied, commenting:-

"Many thanks for your e-mail below and I am surprised by your statement that the individual managers have not given their consent to disclose their names and as such are entitled to have their names withheld. The planning and enforcement officers perform a public facing role in that they go out and meet the public on an almost daily basis (site visits etc) and their names are freely published against the applications they are in charge of reviewing (a quick search on the planning section of GBC confirms this). So, I do not see how they can have a realistic expectation of privacy/anonymity?? Furthermore, they are responsible for shaping and protecting the landscape/built up environment we live in i.e. their decisions have a direct impact on the residents of the borough. As such I would argue that there is a genuine and legitimate public interest in knowing who these people are."

4. On internal review the Council provided structure charts for the two relevant parts of the Council showing the job titles but not the individual names of staff relying on s40(2) of FOIA. Mr Semple complained to the Information Commissioner who investigated. During the course of the investigation the Council also relied on the health and safety exemption in s38(1) FOIA to withhold the names explaining:-

"I should emphasise the fact that Planning in particular is a public facing service area, and deals with a large number cases which are a matter of local contention and generate a great deal of controversy and opposition. This often puts officers in vulnerable positions and exposes them to criticism, particularly in the wake of unpopular decisions made by the Council. We have had cases in the past where members of the Planning team have been targeted. Disclosure of certain officers' names could therefore make staff vulnerable to violence or abuse and/or lead traumatic experiences among the employees affected."

5. In her decision notice the Information Commissioner accepted that the names were personal data as *"the individuals in this case would be identifiable from the information and that this information would relate to them. Therefore, she finds that the information in the context of this request would fall within the definition of 'personal data' in section 3(2) of the DPA."* She then considered the application of s40(2) FOIA (which provides, so far as is relevant):-

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

...

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

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act –

(a) would contravene any of the data protection principles

6. She applied the first data protection principle:-

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

7. The criteria for lawful processing are set out in Article 6 of GDPR. The only one which could be applicable in this case is (f):-

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data,"

8. The Commissioner accepted that there was a legitimate public interest in understanding in disclosing information to promote accountability and transparency and *"that there is a legitimate interest in knowing who the people who participate in certain stages of decision making in planning matters are, since those decisions may have an impact on the lives of members of the public."* However in considering whether the disclosure was necessary to achieve that public interest she formulated the test to be applied:-

"'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question."

9. In the context of the information sought the Commissioner noted that the organisational structure chart and the names of the senior managers had been disclosed.

"44. In the present case, since the request was not in relation to a policy but rather for an organisational structure, the Commissioner considers that it is not necessary to disclose the names of Council officers who are not in senior management roles."

45. In addition, the Commissioner notes that the Council, as described in paragraph 8 when dealing with a previous request, disclosed the names of the senior managers responsible for decision-making processes related to planning matters. The Commissioner does not consider that disclosure of names of all Council officers would significantly contribute to the Council's transparency on how their decision-making process and the accountability lines are designed and organised."

10. In the light of this the Commissioner concluded that while there was a legitimate interest in the disclosure of the names it was not necessary in order

to achieve that legitimate interest; accordingly, the s40(2) exemption applied and the information should not be disclosed.

11. In challenging this decision Mr Semple argued that the names of the individual staff are available on the Council's website in connection with the planning applications they are dealing with, that they are public facing staff, who attend the public meetings of the planning committee and they are public servants who shape the environment for residents so "the general public has every right to know who they are" In support of his appeal Mr Semple submitted a copy of an e-mail which he stated the Council has circulated for public consumption revealing the identities of the staff concerned.

Consideration

12. Mr Semple's suggests that some of the names are available on the Council's website, that the names have been circulated in a list for public consumption but that they should be disclosed in response to a FOIA request.
13. While it is clear that some names are available in certain contexts, there is no publicly available list of all the staff in these departments. The email referred to in paragraph 11 above was not a comprehensive list and was not publicly available. It is headed "Planning Services – update email Spring 2020" and it was sent to the clerks to the parish councils in the borough and referred to personnel changes within the department, as well as discussing performance of the department. Since the parish councils are statutory consultees for planning applications in their respective areas, this was a targeted sending of information to those with a continuing professional relationship with the planning department who had a continuing need to be abreast of developments in the department. There is no general public availability of names, and it is clear that, while of course those members of the public who deal with the Council on a specific planning matter will know with whom they are dealing, there is no necessity to know everyone's name for such dealings to be effective.
14. The legitimate interest put forward by Mr Semple is succinctly stated:-

"Planning officers are public servants who through their decisions shape the environment of thousands of local residents. So, the general public has every right to know who they are."

15. In the terms put forward by Mr Semple it is an argument for the direct accountability of each and every planning officer to each and every resident of the area through the publication of every council officer's name. This is to misrepresent the planning system, which is a system of law and policies decided on by Parliament, Ministers and Local Government. Within that system of law and policy, councillors are responsible for formulating local

policies and making substantive decisions. They are advised and supported by the professional staff of the planning departments who are controlled managed and directed by the senior managers through whom they are accountable to the Council. Councillors are accountable to their electors for their decisions. In individual planning decisions there is the possibility of appeal or challenge through the court process. Since the request was a general request for information about how the Council worked, rather than a request about a particular planning issue, there was no necessity for disclosure.

16. The information already in the public domain – names of councillors, senior managers and organisational structures of departments is sufficient to ensure effective accountability and transparency – these legitimate interests are met. There is no necessity for the names of the other staff to be disclosed. They have not consented to it and the Council has, in discussing the potential application of s38(1) (health and safety) shown good reasons why even if there were a necessity to disclose the names, the countervailing balance of the interests rights and freedoms of the less senior staff would mean that the information should not be disclosed.
17. The tribunal is satisfied that the decision of the Commissioner is correct and the appeal is dismissed.

C. Hughes
Judge of the First-tier Tribunal

Date of Decision: 17/11/2020
Dated Promulgated: 19/11/2020