



Neutral citation number: [2024] UKFTT 775 (GRC)

Case Reference: EA/2023/0071

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

**Heard by Cloud Video Platform
Heard on: 20 December 2023
Decision given on: 28 August 2024**

Before

**JUDGE NEVILLE
MEMBER E YATES
MEMBER P TAYLOR**

Between

ANNETTE CARRABINO

Appellant

and

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: Annette Carrabino in person

For the Respondent: No attendance

Decision: The appeal is allowed.

Substituted Decision Notice: Within 35 days of being sent this decision, the Royal Borough of Kensington & Chelsea must disclose the requested information.

REASONS

1. On 20 September 2017, the Daily Mail reported as follows:ⁱ

“London musician wins battle against council over piano

A Young Musician of the Year finalist has won his battle against a council which tried to stop him practising piano in his £5 million family home.

James Carrabino, 19, was banned from playing for more than one hour a day thanks to complaints from his neighbour, Joao Baptista, 59, in Kensington, West London.

His parents succeeded in overturning the ban last year, with a judge ruling that the pianist and his younger brother can play for five hours, up until 9pm.

But the council appealed the decision by Westminster Magistrates' Court.

However, this week James's banker father Jim Carrabino and his wife Annette were delighted to learn that RBKC [*the Royal Borough of Kensington and Chelsea*] has withdrawn the council order and finally ended legal proceedings against them. ..."

2. The article continues with further details and photographs of all concerned. The same year, Private Eye's "Rotten Boroughs" column described the dispute in more florid terms:

"One bizarre consequence of the Grenfell Tower fire on 14 June was the decision of Kensington and Chelsea council to pull the plug on funding a bitter dispute between wealthy neighbours over... piano practice.

The Carrabino and Baptista families live in Scarsdale Villas, Kensington, where houses command £5m-plus prices. They fell out over the long hours spent on piano practice by the Carrabinos' teenaged son James, a talented player who was a Young Musician of the Year finalist in 2015 and is now a student at the Royal College of Music.

The Baptistas claimed that hearing James tinkling the ivories through the walls for hours every day was "torture". Neighbours on the other side denied any problem. K&C council took the well-connected Baptistas' part. Since 2014 it has spent an astonishing £200,000 in legal costs supporting their claims.

Following the service of a noise abatement notice by the council, in April 2014 the Carrabinos successfully appealed, with the High Court ordering the council to pay the family's costs in full. A judge can only make such an order if the council is deemed to have acted either dishonestly or unreasonably.

Rather than accepting the ruling, the council hired counsel from three different chambers for an appeal, including the prominent and expensive James Pereira QC. A week before the hearing set for 4 July, and two weeks after the Grenfell fire, the council abruptly dropped the action. ..."

3. The fourth paragraph in the above report is inaccurate: it was District Judge Roscoe in the Magistrates Court who ordered RBKC to pay the Carrabinos' costs in the sum of £61,509.86. This was on the basis that RBKC had behaved unreasonably in refusing to accept alternative solutions to the noise dispute.

4. The withdrawal of the noise abatement order was not the final chapter in Mrs Carrabino's dispute with RBKC; she was concerned as to why RBKC had pursued the matter in the way it did. A flavour of these concerns can be taken from her written submissions to the Tribunal:

"11. At the highest levels of RBKC, elected Members and Senior Executives responded to the Appellant and her husband's requests for assistance against the abusive behaviour of lower level officers, with a "doubling down" and a hardening of the Council's position. When the Appellant and her husband approached their Member of Parliament, Victoria Borwick (whose husband was in the House of Lords at that time) for assistance, Lady Victoria, who was also a senior RBKC councillor at that same time and had already been made aware of the dispute, responded with a similar "doubling-down", if not outright hostility. It was as if an impenetrable "brick wall" of senior, well-connected and inter-connected councillors had "circled the wagons" to protect RBKC officers and to carry out the bidding of the complainant in the dispute, Mr Joao Baptista, the Carrabinos' unyielding next-door neighbour."

5. Mrs Carrabino's allegations go further than that, describing Mr Baptista as having "extraordinary authority" over council officers against whom she alleges dishonesty and corruption. We should make clear to anyone reading this decision that no one has been given any opportunity to respond to Mrs Carrabino's allegations, and it is neither necessary nor appropriate for us to decide whether they are well founded.
6. Mrs Carrabino pursued various avenues to investigate RBKC's motivations, obtaining a significant number of documents. While the dispute was still ongoing she requested information from RBKC under the Environmental Information Regulations 2004 ("EIR"), as described in a decision of this Tribunalⁱⁱ promulgated on 27 November 2017. On 13 February 2020 she made a further request for a large volume of information. In a decisionⁱⁱⁱ promulgated on 10 December 2021, this Tribunal rejected RBKC's claim, which had been supported by the Commissioner, that the request was "manifestly unreasonable" within the meaning of regulation 12(4)(b) of EIR.

The present request for information

7. The present request for information is undated, but RBKC's initial response is dated 27 July 2021. Much of the request concerned Mrs Carrabino's personal data, so was dealt with as a subject access request under UK GDPR.
8. All that remains in issue before us is a single email from one of the council's officials to one of its councillors, James Husband, as well as an unidentified recipient. The email can be reproduced as follows: (we have omitted email addresses)

From: Mehaffy, Keith
Sent: 23 February 2015 08:56
To: Cllr-Husband; [REDACTED]

Cc: Seraphim, Georgina

Dear Councillor Husband,

Thank you for your email.

My colleague Miss Seraphim is currently very involved in this case. I am copying her into this email so she can update you and [REDACTED] on the matter.

Kind regards

Keith Mehaffy

9. Mrs Carrabino requested the identity of the recipient whose name had been redacted. In its initial response dated 27 July 2021, RBKC refused to provide that information on the basis that it was "third party data". Mrs Carrabino complained to the Commissioner, and during the subsequent investigation wrote the following:

"RBKC has also redacted the name of one of the recipients of an email to the RBKC councillor, Cllr Husband. I asked RBKC if this recipient is a third person other than the complainant in the piano dispute, Mr Baptista or his then-wife Ms Allen. RBKC responded that they would not disclose this because it is third party information. RBKC has disclosed many items of information containing Mr Baptista's and Ms Allen's name and involvement in the dispute, therefore it seems likely this third person is someone else who intervened on the Baptistas' behalf."

10. In a revised response dated 18 May 2022, RBKC decided as follows:

"Having reviewed this e-mail the council continue to rely on the exemption that this is third party personal data and this email will not be disclosed. The Council has an overriding duty to ensure that the personal information of third-party individuals remains confidential. On occasion the council have taken the decision to release third party personal information but this decision is only made after they have scrutinised the content of the information, taking in to account a number of factors including the relationship between the data subject and the third party, the nature of the third party personal information, any potential negative impact on the third party individual directly due to the disclosure of their personal information and whether the third party is acting in a professional or personal capacity. In this instance the information is withheld."

11. In a Decision Notice^{iv} issued on 16 January 2023 under reference IC-187230-W0D5, the Commissioner upheld RBKC's refusal to provide the requested information.

The appeal

12. Dissatisfied with the outcome of the Commissioner's decision, Mrs Carrabino appealed to the Tribunal. RBKC made no application to join the proceedings.

13. The documents before the Tribunal were contained in an Open Bundle compiled by the Commissioner, and Mrs Carrabino had provided a skeleton argument. The Tribunal had also been provided with a Closed Bundle containing an unredacted version of the email, an unredacted version of a letter dated 22 September 2022 from RBKC to the Commissioner stating why withholding the individual's identity was thought appropriate, and the Commissioner's letter in reply. Applying the principles set out in Browning v Information Commissioner [2014] EWCA Civ 1050, we considered it appropriate to confirm pursuant to rule 14(6) that the closed documents could be provided to the Tribunal without being disclosed to any other person. The Tribunal can only fulfil its task of deciding whether the exemption has been correctly claimed by RBKC if able to inspect the withheld information for itself. Disclosing it, and such submissions as by necessity refer to it, would defeat the purpose of the appeal. We have been anxious to ensure that Mrs Carrabino receives a fair hearing, and conclude that the limited extent of the closed material means that she has had a fair opportunity to provide evidence and submissions in support of her appeal.
14. The appeal was heard by video, Mrs Carrabino attending remotely. She spoke to her witness statement, skeleton argument and the other documents before the Tribunal. The Commissioner was not represented, and relied on the written submissions already provided. Our decision was reserved.

Legal Principles

15. In Information Commissioner v Malnick [2018] UKUT 72 (AAC), at [45] and [90], it was confirmed that the Tribunal exercises a full merits appellate jurisdiction. We make any necessary findings of fact and decide for ourselves whether the provisions of the Act have been correctly applied. But we do not start with a blank sheet: the starting point is the Commissioner's decision, to which we should give such weight as we think fit in the particular circumstances. The proceedings are inquisitorial save that we are entitled to respect the way in which the issues have been framed by the parties. We address matters as they stood at the date of the relevant response by RBKC: Montague (Information rights - Freedom of information - public interest test, qualified exemptions) [2022] UKUT 104 (AAC) at [62]-[63].
16. It is not in dispute that the relevant legal regime is the EIR rather than the Freedom of Information Act 2000.

Personal data

17. Regulation 12(2) provides a presumption in favour of disclosure. This is subject to regulation 12(3), which provides that:
 - (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
18. Regulation 13 provides, so far as relevant:

(1) To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if –

- (a) the first condition is satisfied, or
- (b) the second or third condition is satisfied and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(2A) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations –

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(2B) The second condition is that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

- (a) Article 21 of the UK GDPR (general processing: right to object to processing), or
- (b) section 99 of the Data Protection Act 2018 (intelligence services processing: right to object to processing).

19. This means, in effect, that the requested information should not be disclosed unless there is a lawful basis for doing so under UK GDPR. Mrs Carrabino argues that Article 6(1)(f) of UK GDPR provides that lawful basis:

Article 6 – Lawfulness of processing

(1) Processing shall be lawful only if and to the extent that at least one of the following applies:

...

- (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, in particular where the data subject is a child.

20. The Tribunal therefore approaches the issue in three stages: (i) whether a legitimate interest is being pursued, (ii) whether disclosure of the information is necessary to meet the legitimate interest in question, and (iii) whether the above interests override the legitimate interests or fundamental rights and freedoms of the data subject. In

doing so, the Tribunal must recognise that ‘necessary’ means that an outcome cannot be achieved in another, more reasonable way, and that likewise any interference with the data subject’s right to respect for their private life must be the least possible to achieve the legitimate aim pursued. The Commissioner submits, and we accept, that if disclosure is lawful under Article 6(1) then it will also be compliant with the data protection principles at Article 5.

The parties’ cases

Mrs Carrabino

21. Mrs Carrabino puts forward the noise dispute as providing the context for her legitimate interest. RBKC’s conduct was found to be unreasonable by District Judge Roscoe and has been the subject of adverse comment in the media, both in the articles we have cited above and in several others that were provided to us. It was an action by the state which had a serious and adverse effect on her family, cost the taxpayer a six figure sum for no appreciable benefit, and there is a legitimate interest in exposing whether this was done at the behest, or under the influence of, a third party. She refers to the Commissioner’s own guidance on the subject^v, which states:

“Examples of a legitimate interest include the general requirement for transparency in public life, or in the issue that the information in question relates to. This particularly applies to issues of interest to the wider public and where disclosure demonstrates accountability. For example, disclosing the expenses claims of a public official may lead to increasing accountability and transparency in the spending of public funds.”

22. In support of her arguments, Mrs Carrabino refers to two previous decisions by the Information Tribunal: DBERR v Information Commissioner & Friends of the Earth, IT, 29 April 2008, EA/2007/0072^{vi} and Creekside Forum v Information Commissioner & Department for Culture Media and Sport, 28 May 2009, EA/2008/0065^{vii}. In each, the Tribunal accepted that there was a legitimate interest in understanding how lobbyists influence government decisions and policy. In the latter case, the Tribunal found that disclosing names of local residents who had provided their views to a proposal was not necessary to meet the applicable legitimate interest, so long as the substance of their views and the capacity in which they were made could be understood. Mrs Carrabino distinguishes her situation, in which she is unaware of the contribution the unidentified person made and in what capacity they did so. We have also been referred to Evans v Information Commissioner [2012] UKUT 313 (AAC), where at [7] the Upper Tribunal held that:

“Confidential interaction between government ministers and others, in a context where those others are seeking to advance the work of charities or to promote views, would generally be disclosable – especially where those others have privileged access to ministers.”

There is a legitimate interest, Mrs Carrabino argues, in finding out whether that is what happened here.

23. On necessity, and whether the rights of the data subject are outweighed by the legitimate interest, Mrs Carrabino's point is simple: the context of the email means that the unidentified individual must either be one of the Baptistas or an as-yet-unknown third party who RBKC wished to keep informed of its progress. If the former, then their identity as complainants is already well-known and widely reported. Identification would have no adverse effect whatsoever on their interests or rights. If the latter, then no open basis has been provided why their rights or interests should be protected against fulfilling the legitimate interest of exposing whether RBKC may have been influenced by a third party.

The Commissioner

24. The Commissioner's submissions are contained within the Decision Notice and the rule 23 Response. It is sufficient to set out the following paragraph from the Decision Notice:

"27. The Commissioner is mindful that disclosure under the EIR differs from disclosure under the right of subject access. Disclosure under the EIR is to the public at large, rather than to interested individuals. The Commissioner must therefore be careful to avoid inadvertently disclosing withheld information in his analysis. The Commissioner can say that in his opinion, the withheld information itself would not indicate whether or not inappropriate intervention as envisaged by the complainant actually occurred. It would not inform the public as to how the Council handled the noise complaint, or made decisions regarding it."

Consideration

25. We agree with Mrs Carrabino's arguments as summarised above, subject to two qualifications:

- a. It is not necessarily the case that the unnamed individual must be either the Baptistas or an interlocutor whose involvement is inappropriate. There might be others who unobjectionably wished to be kept informed, or had an interest in the case that demanded their anonymity be preserved due to their own particularly circumstances.
- b. On principle, we would go further than Mrs Carrabino suggests and hold that in some circumstances the public interest in transparency may support debunking undue influence as well as exposing it.

26. We should stress that the above qualifications are purely hypothetical, and should not be taken to anticipate the identity of the individual concerned.

27. Our conclusions are that:

- a. Mrs Carrabino is pursuing a legitimate interest;
- b. Disclosure of the information is necessary to meet that legitimate interest;

- c. This overrides the legitimate interests or fundamental rights and freedoms of the data subject;
- d. Processing the subject's personal data by disclosure in response to the request therefore has a lawful basis under Article 6(1) of UK GDPR and is consistent with the data protection principles at Article 5;
- e. The prohibition at regulation 12(3) therefore does not apply, and the presumption of disclosure at regulation 12(2) means that the requested information should be provided.

28. Our reasons for those conclusions cannot be stated without revealing the withheld information. We have therefore set them out in a confidential schedule which will initially be provided only to the Commissioner and to RBKC. If there is no in-time application for permission to appeal this decision to the Upper Tribunal then the confidentiality of that schedule will lapse and it will form part of our open reasons.

Signed

Date:

Judge Neville

22 August 2022

ⁱ <https://www.dailymail.co.uk/news/article-4902284/Musician-wins-battle-against-council-playing-piano.html>

ⁱⁱ

[https://webarchive.nationalarchives.gov.uk/ukgwa/20191001144017/http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2110/Carrabino,%20Annette%20EA-2017-0010%20\(21.11.17\).pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20191001144017/http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2110/Carrabino,%20Annette%20EA-2017-0010%20(21.11.17).pdf)

ⁱⁱⁱ

<https://webarchive.nationalarchives.gov.uk/ukgwa/20220601103837/https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2957/023%20091221%20DECISION.pdf>

^{iv} <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4023588/ic-187230-w0d5.pdf>

^v <https://webarchive.nationalarchives.gov.uk/ukgwa/20220213031213/https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

^{vi}

https://webarchive.nationalarchives.gov.uk/ukgwa/20191001144006/http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i181/DBERRvIC_FOEFinaldecision_web0408.pdf

^{vii}

[https://webarchive.nationalarchives.gov.uk/ukgwa/20230601105916/https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i314/Creeside_Forum_v_IC_&_DCMS_\(0065\)_Decision_28-05-09_\(w2\).pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20230601105916/https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i314/Creeside_Forum_v_IC_&_DCMS_(0065)_Decision_28-05-09_(w2).pdf)