



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

Appeal No. EA/2011/0120

**BETWEEN:-**

**IAN BENSON**

**Appellant**

and

**THE INFORMATION COMMISSIONER**

**First Respondent**

and

**THE GOVERNING BODY OF THE UNIVERSITY OF BRISTOL**

**Second Respondent**

---

**Ruling on the Appellant's Application for Permission to Appeal**

---

**DECISION**

**Permission to appeal is hereby refused.**

## REASONS

### Background

1. This application for permission to appeal concerns a decision of the First-tier Tribunal (Information Rights) dated 10 November 2011 by which the Tribunal upheld the Information Commissioner's Decision Notice FS50310776.
2. The Appellant had made an information request under the Freedom of Information Act 2000 ("FOIA") to the Second Respondent for the workplace e mail addresses of all the University's staff. The First Respondent concluded in his Decision Notice that the Second Respondent had correctly applied s. 21(1) FOIA and that the information requested was reasonably accessible to the Appellant. The First Respondent's Decision Notice noted that the Second Respondent had adopted a publication scheme pursuant to s. 19 FOIA. He stated at paragraph 36 that: "*The Commissioner...is satisfied that the contact directory was available via the scheme at the date of the request and remains so now*". He concluded that s. 21(3) of FOIA operated so that information made available under the terms of the publication scheme was to be regarded as reasonably accessible to the applicant.
3. The parties agreed that this appeal should be determined on the papers and the Tribunal concluded that this was an appropriate mode of hearing. There was no closed material before the Tribunal. The Tribunal considered an agreed hearing bundle consisting of over 150 pages of evidence and argument.
4. The issues for the Tribunal were:
  - (i) whether the First Respondent had erred in law in concluding that the information requested by the Appellant was reasonably accessible by means other than FOIA so that the Second Respondent had no duty to disclose it;
  - (ii) if the s. 21 exemption were not available, whether the information requested was exempt under s. 40(2) FOIA (data protection).

5. The Tribunal concluded that information which is available under the terms of a publication scheme is to be regarded as reasonable accessible. This was essentially a question of the interpretation of the statutory provisions of s. 21(1) and s. 21(3) of FOIA. In view of the Appellant's arguments that s. 21(3) should not be relied upon by the Tribunal in considering whether s. 21(1) was satisfied, the Tribunal considered what view it would take if s. 21(3) did not apply. It concluded that even without the publication scheme, the information was "reasonably accessible to the applicant" within the terms of s. 21(1) of FOIA. In reaching this conclusion, the Tribunal noted that the information requested was not said by the Appellant to be difficult for him to find on the website, merely that it was spread across a number of web pages so that he found it inconvenient to harvest and re-use the information. In the circumstances, the Tribunal did not go on to consider issue (ii) above.

#### Grounds of Appeal

6. The Appellant has submitted Grounds of Appeal dated 12 November 2011. These may be summarised as follows:
  - a. It is accepted that the information requested was accessible to the Appellant.
  - b. It is not accepted that the information was "reasonably accessible" to the Appellant.
  - c. The Tribunal should have specified what "reasonably accessible" and "unreasonably accessible" means and where the requested information in this case sits on the spectrum.
  - d. The Tribunal should have been specific about the number of web pages involved (5,000) in order for its decision to "have more value as a precedent".
  - e. The Tribunal should have taken into account that the Appellant's keyboard strain was relevant to his ability to access 5,000 web pages rather than only his ability to copy and paste the information into a list for re-use.

## Ruling on Application

7. On receiving an application for permission to appeal, the Tribunal must first consider whether to undertake a review of its decision pursuant to rule 44 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. The Tribunal may review its original decision if it is satisfied there was an error of law in it. I have accordingly considered whether the Grounds of Appeal as summarised above identify what may be described as “errors of law” in the First-tier Tribunal’s decision.
8. Firstly, I note that the Appellant has misdirected himself in looking for the First-tier Tribunal to “set a precedent”. Decisions of the First-tier Tribunal have no precedential value. In any event, the failure to set a precedent cannot be described as an error of law in the Tribunal’s decision.
9. Secondly, I note that the Appellant argues that the words “reasonably accessible” have not been given sufficient consideration by the Tribunal. Whilst it is correct that the Tribunal considered what the position would be if s. 21(3) FOIA did not apply, this was in deference to the Appellant’s arguments and did not form the central plank of the Tribunal’s decision. The correctness of the Tribunal’s decision clearly rests on the question of whether s. 21(3) had the effect of rendering the information reasonably accessible by virtue of the publication scheme. The Appellant has not sought to impugn that conclusion in his grounds.
10. Finally, as noted in the Tribunal’s decision, the issue of the Appellant’s keyboard strain was presented to the Tribunal in the papers as a question of his ability to harvest and re-use the information. The Appellant appears to make a new argument in his grounds which was not in evidence before the Tribunal. The Appellant disagrees with the Tribunal’s finding but has not in his grounds argued that the Tribunal reached a perverse conclusion on the evidence before it so as to amount to an error of law.
11. I have accordingly concluded that the Appellant’s grounds do not identify any errors of law. In all the circumstances, I conclude that there is no power for

the Tribunal to review its decision in this case and I have also, for the same reasons, concluded that permission to appeal should be refused.

12. The Appellant now has the right to renew his application for permission to appeal to the Upper Tribunal (Administrative Appeals Chamber) directly, within a month of the date on which this decision is sent to him. Any such application should be sent to The Upper Tribunal (Administrative Appeals Chamber), 5th Floor Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL. Further information is available at <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/aa/index.htm>.

Signed:

Dated: 22 November 2011

Alison McKenna  
Tribunal Judge