



**IN THE FIRST-TIER TRIBUNAL**  
**GENERAL REGULATORY CHAMBER**  
**INFORMATION RIGHTS**

**Case No. EA/2013/0188**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FS50485809  
Dated: 29 July 2013**

**Appellant: EDWARD SURRIDGE**

**Respondent: INFORMATION COMMISSIONER**

**On the papers: FIELD HOUSE**

**Date: 8 JANUARY 2014**

**Date of decision: 29 JANUARY 2014**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**DR HENRY FITZHUGH and NARENDRA MAKANJI**  
Tribunal Members

**Representations:**

For the Appellant: Mr Edward SurrIDGE  
For the Respondent: Richard Bailey, Solicitor for the Information Commissioner

**Subject matter:**

**Freedom of Information Act 2000**

Absolute exemptions

- Personal Data s.40

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 29 July 2013.

**SUBSTITUTED DECISION NOTICE**

**Dated:** 29 January 2014  
**Public authority:** The Home Office  
**Address of Public authority:** 2 Marsham Street  
London  
SW1P 4DF  
**Name of Complainant:** Mr Edward Surridge

**The Substituted Decision**

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal in part and substitutes the following decision notice in place of the decision notice dated 29 July 2013.

The relevant public authority, the Home Office, has 31 days to provide all the information currently redacted save the names of those who were the subject of the one incident involving the use of force at the Tinsley House Immigration Removal Centre, the time and date it occurred, the nationality of the family involved and its national language which formed part of the Appellant's information request.

**Action Required** As detailed above.

Robin Callender Smith

Judge

29 January 2014

**REASONS FOR DECISION**

Introduction

1. The Appellant requested a copy of an incident report regarding the use of force against a particular individual at the Tinsley House Immigration Removal Centre.
2. The Home Office originally withheld the requested information in its entirety on the basis of section 40(2) of FOIA, the personal data exemption.
3. During the course of the Commissioner's investigation the Home Office disclosed a redacted version of the report. The Commissioner is satisfied that the redacted parts of the report are exempt on the basis of section 40(2).

The request for information

4. Having received a response to a previous FOI request regarding complaints made by detainees at the Cedars Family Detention House (the Cedars), the Appellant submitted the following request to the Home Office on 28 September 2012 :

Previously earlier with this FOI you have explained that the large number of complaints has given difficulties to sharing the requested information.

You now offer 3 complaints [and the Appellant then focussed more specifically on the one involving Tinsley House which arose from the Home Office response in the further indented quoted figures below].

Please provide all the information [sic] on the incident using force and the 86 complaints of 2011.

"During our reporting period there was only one reported occasion where the need for use of force was used in the Family Suite.

Type of Complaint 2011 2010 2009

Food 25 2

Missing property 15 20

Medical 9 9

Staff conduct 4 6

Fellow detainees 8

Other 25 10

TOTAL 86 47 55"

5. The Appellant was contacted by the Home Office on 24 October 2012. It explained that it needed further time to consider the balance of the public interest test. Then, on 21 November 2012, the Home Office indicated to the Appellant that it was prepared to disclose redacted copies of the 86 complaints made by detainees at Tinsley House, along with the responses to these complaints.
6. During the course of the Commissioner's investigation, on 9 July 2013, the Home Office provided the Appellant with a redacted version of the information relating to the incident [involving the use of force].
7. It explained that redactions had been made on the basis of section 40(2).

#### The complaint to the Information Commissioner

8. The Appellant originally contacted the Commissioner on 14 February 2013 in order to complain about the Home Office's handling of his request. Following the Home Office's further disclosure of information on 9 July 2013, the Commissioner established with the Appellant that - although he did not dispute the Home Office's decision to redact the individual's names from the requested information, he considered the level of redaction was excessive.

9. The Commissioner considered whether the information redacted from the incident report (with the exception of the individual's names) was exempt from disclosure on the basis of section 40(2) of FOIA.

10. Section 40(2) of FOIA stated that personal data was exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The Home Office argued that disclosure of the redacted information would be unfair and thus breach the first data protection principle which stated that:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and

(b) the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

11. For section 40(2) to be engaged the information being withheld had to constitute 'personal data' which is defined by the DPA as :

...data which relate to a living individual who can be identified

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.

12. The Home Office explained that the 'Tinsley House Independent Monitoring Board 2011 Annual Report', which was published on the Ministry of Justice website provided a summary of the incident in question, confirming force was used against a mother holding her child due to her aggressive behaviour. The Home Office confirmed that the unredacted parts of the report in the version that was provided to the Appellant was the information that was used to create that summary.

13. The Commissioner appreciated that the Appellant had accepted that redaction was necessary in respect of the names of the individuals concerned.
14. The Commissioner had considered whether disclosure of the report, simply with the individuals' names redacted, would still constitute the disclosure of personal data. Could the redacted information still be used to identify the family in question even without their names being disclosed?
15. He concluded that it could still identify them and that it would breach the first data protection principle. Individuals being processed at detention centres such as Tinsley House had a strong and reasonable expectation that details of their detention would not be disclosed under FOIA.

#### The appeal to the Tribunal

16. Précising the Appellant's grounds of Appeal and arguments, he believes that there has been over-redaction.
17. He puts it succinctly:
- The claim by the Home Office that 40 (2) of the FOIA should apply to such a dispiritingly amount is in my view clearly translatable as using the law to hide bad news from the public and by doing so undermines its high aims. Not sharing threat present shared information could also show an aim to keep the information from the public eye.
18. He noted that there had been 20 unnatural deaths of detainees whilst detained within or travelling to or from removal centres to date with many more attempted suicides and acts of self-harm. The use of forcible restraint whilst detained caused the death of a detainee.
19. It was very much in the public interest that there was as little redaction of identifying detail in this case as possible.



### The questions for the Tribunal

20. Has there been over-redaction in respect of the requested information supplied to the Appellant?

21. Does the public interest justify greater disclosure of the personal data in this case?

### Evidence

22. The Tribunal has seen all of unredacted information in the incident report and been able to compare it to the redacted version supplied to the Appellant.

23. The Tribunal is conscious that, inevitably, this portion of the process excludes the Appellant. However the Tribunal applies rigorous critical standards in respect of the public interest in this area.

### Conclusion and remedy

24. The Appellant believes that the currently redacted information could be disclosed because, with the names redacted, there would be sufficient anonymisation for the report not to reveal personal data.

25. The Tribunal, having looked at the totality of the data currently disclosed and the information and personal data withheld, has concluded that – by keeping redacted the names of those involved, the time/date on which the incident occurred, the nationality of the family involved and the family's national language - the personal data of those involved in the incident is properly and proportionately protected.

26. There is a clear public interest in members of the public generally understanding the kind of event that can occur in immigration detention

centres both at the time this event occurred and as immigration issues remain a focus of general interest.

27. The Tribunal finds that, by keeping redacted the information mentioned in Paragraph 24, it would not be possible for the individuals concerned to be identified save among themselves as they already know that information.
28. The Tribunal is aware that – in addition to the Data Protection Act principles – there are particular duties in respect of the welfare of children and their best interests imposed on courts generally by s.55 of the Borders, Citizenship and Immigration Act 2009 linked with respect for their ECHR Article 8 private life rights.
29. These have been emphasised particularly by Baroness Hale in her phrase in the Supreme Court decision of *ZN (Tanzania)* [2011] UKSC 4 that the “*best interests of the child must be a primary consideration. This means that they must be considered first.*”
30. To name the family in question and identify its nationality could potentially prejudice the best interests and welfare of the children of the family.
31. The proportionate approach is to permit the generality of the information to be revealed without such identifiers.
32. The incident and details here – without the personal information that will remain redacted (and this includes the identities of all involved both staff and family) - remains sufficiently generic but yet allows the public to have an understanding of what happened within the event itself.
33. Our decision is unanimous.

34. There is no order as to costs.

Robin Callender Smith

Judge

29 January 2014