



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

Appeal No: EA/2014/0162

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50535162
Dated: 9 June 2014**

Appellant: Roslyn Bullent

Respondents: The Information Commissioner

Date of "paper" hearing: 23 October 2014

Venue: Fox Court, Gray's Inn Rd

Before

HH Judge Shanks

Judge

and

Nigel Watson and Narendra Makanji

Tribunal Members

Date of Decision: 29 October 2014

Subject matter:

Freedom of Information Act 2000

s.41	Information provided in confidence
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Case cited:

Webber v Information Commissioner (UKUT (AAC), 12.9.13)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses Ms Bullent's appeal and upholds the Commissioner's decision notice dated 9 June 2014.

REASONS FOR DECISION

Factual background

1. The Appellant's mother died in a care home on 25 January 2013 aged 91. It seems that Ms Bullent did not know that her mother had been put into the care home or that she was dying.
2. Understandably, Ms Bullent wished to obtain information about her mother's last few weeks. On 8 October 2013 she visited Norfolk County Council's offices and made a request for such information under FOIA.
3. There is no issue that the Council holds social care records which come within the terms of Ms Bullent's request but in a letter dated 10 October 2013 the Council refused to supply her with those records in reliance on the exemption in section 41(1)

of FOIA. Ms Bullent complained to the Information Commissioner but in a decision notice dated 9 June 2014 he found that the Council had correctly applied the exemption. Ms Bullent has appealed against that decision notice to this Tribunal.

The appeal

4. There is no dispute that Ms Bullent is who she says she is and that she has a legitimate and understandable desire to see the records. Nor does there appear to be any dispute that her mother had no will and no estate of any substance and that no personal representatives have been appointed. The only issue for this Tribunal is whether the Commissioner was correct in his conclusion that the section 41(1) exemption applies to the information in question.

5. Section 41(1) says this:

Information is exempt information if-

(a) it was obtained by the public authority from any other person ...

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidentiality actionable by that or any other person.

6. There can be no doubt that the information in the social care records was obtained by the Council from Ms Bullent's mother or her carers, so (a) is clearly satisfied. Nor can there be any doubt that such information was confidential to Ms Bullent's mother and she would have been able to bring an action against the Council to stop its publication during her lifetime. Further, it is clear from the case of *Webber v Information Commissioner* decided by Upper Tribunal Judge David Williams on 12 September 2013 (which is binding on us) that the fact that the subject of such confidential information is dead does not mean that its disclosure to the public would not "... constitute a breach of confidentiality actionable by ... another person" even in the absence of an appointed personal representative. No overriding public interest in its disclosure has been suggested by way of a defence to such an action. In those

circumstances it is clear that (b) is also satisfied and the section 41(1) exemption applies.

Disposal

7. Section 41 provides an absolute exemption. That means that the Council is under no obligation to supply the requested information under FOIA. This Tribunal is only concerned on this appeal with whether the Council has acted in accordance with FOIA. Although we have considerable sympathy with Ms Bullent's position we must therefore dismiss her appeal.

8. Having said that, we would invite the Council to consider once again the possibility of giving Ms Bullent what she wants voluntarily. For our part we think the chance that anyone is going to bring an action for breach of confidence if Ms Bullent is shown her mother's social care records must be vanishingly remote and we do wonder how reasonable it is to expect her to go to the trouble and expense of being appointed a personal representative for her mother in circumstances where she left no will or estate.

9. This decision is unanimous.

HH Judge Shanks

29 October 2014