



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

**Case No. EA/2012/0147**

**ON APPEAL FROM:  
Information Commissioner's  
Decision Notice No: FS50421215  
Dated: 20 June 2012**

**Appellant: Alan Matthews**

**Respondent: Information Commissioner**

**Heard at: Worcester Magistrates Court**

**Date of Hearing: 30 September 2014**

**Date of decision: 31 October 2014**

**Before  
CHRIS RYAN  
(Judge)  
and  
MIKE JONES  
MELANIE HOWARD**

**Subject matter:** Whether information held s.1  
Personal data s.40

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

**Case No. EA/2012/0147**

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The appeal is allowed in part and the Decision Notice dated 20 June 2012 substituted by the following.

### **Decision Notice**

**Public Authority:**        **The Department for Business, Innovation  
and Skills**

**Address:**                **1 Victoria Street  
London  
SW1H 0ET**

**Complainant:**         **Mr Alan Matthews**

The Decision Notice dated 20 June 2012 stands, save that the Public Authority is directed, within 35 days, to disclose the name of the consultant as requested in the fourth element of the Complainant's request for information dated 26 April 2011.

### **REASONS FOR DECISION**

#### Background Information

1. The route by which the request for information in this case, submitted three and a half years ago, reached this Tribunal has been a long and unhappy one. It is necessary to record it in some detail as it is relevant to the issues we have to determine.
2. In February 2011 the Appellant submitted a tender to Business Link West Midlands Ltd, ("Business Link") under the auspices of its 100% shareholder Advantage West Midlands ("AWM"). Advantage West Midlands was itself a Regional Development Agency.
3. The tender was for the provision of certain marketing workshops. The Appellant was unhappy that his tender had been eliminated at the first

stage of the evaluation process, with the result that he did not progress to the second, interview, stage. He was told that his tender had been evaluated by reference to four criteria (skills, methodology, credibility/track record and price) and that it had received a relatively low mark under the criterion "credibility/track record". This, it was said, was because the tender document lacked evidence to substantiate and amplify the Appellant's claimed skills and experience. The Appellant was provided with a copy of the "score sheet" showing his scores on each criterion, compared with those of the other (anonymised) individuals or organisations who had submitted tenders.

4. The Appellant was also informed that the tendering process had been reviewed by an independent consultant, who had approved its use.

#### The Appellant's Request for Information

5. The Appellant then submitted the following request for information ("the Request") to Business Link on 26 April 2011:

*"1. What was the composition of the evaluation panel which received and scored my tender for delivery of the marketing workshops, in terms which include the name, job title and the material experience and qualifications of each?"*

*2. What exactly were the tender evaluation guidelines, including the weighting of the criteria and scoring rules, to which the panel worked?"*

*3. What exactly was the guidance including approval, regarding its processing of such tenders, which the Business Link obtained from the consultant referred to in its letter of 7 April 2011 (copy attached)?"*

*4. Who was the consultant, and what were his/her material qualifications and experience?"*

6. On 5 May 2011 Business Link wrote to the Appellant purporting to respond to the Request. The letter stated that Business Link was not a governmental organisation and was not subject to the FOIA. The letter's author did not believe that it was necessary to respond to the first part of the Request but did volunteer the information that the "evaluation panel" comprised three members of staff who were all experienced members of the marketing team, with appropriate experience and qualifications for the task. The letter added:

*"The scores that were provided were arrived at after they independently reviewed the applications against the criteria set out in the tender brief. There was no weighting of scores; each element carried 25% of the total marks".*

The letter also volunteered the information that the consultant was independent and experienced *“with specific expertise in tender processes and EDRF funding ...”*

7. Following an intervention by the Information Commissioner in September 2011, Business Link conceded that, as a wholly owned subsidiary of a public authority (in the form of AWM), it was itself subject to the FOIA. On that basis the Appellant then asked it to conduct an internal review of its original response to the Request.
8. On 4 October Lorraine Holmes, Business Link’s Chief Executive wrote to the Appellant to report on the outcome of the internal review.. She responded to each element of the Request in order:
  - a. As to the first element of the Request, Ms Holmes stated that, having received advice from the Information Commissioner, she did not believe it would be *“appropriate to provide the full details of members of staff as this would breach the conditions of the Data Protection Act”*. She did not identify the exemption relied on or explore whether information on experience and qualifications of the relevant individuals could have been released in a way that did not disclose their identities. She did, however, assert that *“the three people involved were all experienced members of the marketing team, with appropriate experience and qualifications for the role.”*
  - b. The response to the second element recorded that the Appellant had already been provided with a copy of the tender documents and the *“scores allocated by the evaluation panel”*. It did not say whether that disclosure comprised all the information falling within the second Request, which Business Link held at the relevant time. It repeated the information previously given regarding the independent review carried out by *“the panel”*.
  - c. As to the guidance provided by the consultant, as requested in the third element, Ms Holmes asserted that there were *“no additional documents”* in the possession of Business Link. The reference to *“additional documents”* is surprising as no documents had previously been disclosed under this heading.
  - d. Ms Holmes repeated her reliance on the advice said to have been received from the Information Commissioner on the impact of personal data rights in order to justify the refusal by Business Link to disclose the name of the consultant. She, again, did not consider whether the rest of the information sought in the fourth Request (*“material qualifications and experience”*) could have been disclosed without revealing personal information, although she repeated the assertion that the consultant had been *“independent, experienced and had specific expertise in tender processes.”*
9. We record in passing at this stage that there is no suggestion in Ms Holmes’s letter that any of the requested information no longer existed at that date. The essence of the response is that Requests 1 and 4 were being rejected in order to protect personal data and that Requests 2 and 3

had been answered in full. It is clear, too, that she was aware at that stage that any withheld information was the subject of an information request. It may well be that, given the rather casual approach to the FOIA (evidenced by the failure to identify any exemption being relied on or to consider an anonymised response to some of the Requests), those responsible for Business Link's activities at the time were unaware that the effect of FOIA section 77 is that, once an information request has been submitted to a public authority, criminal liability may arise for those who destroy any relevant records with the intention of preventing disclosure. The existence of that potential sanction certainly did not lead to a more responsible approach to document retention being adopted during the later stages of the process, which we describe below.

### The Information Commissioner's investigation and decision notice

10. On 7 October 2011 the Appellant complained to the Information Commissioner about the way in which the Request had been handled. This was just under three weeks before Business Link ceased operating. The Information Commissioner, apparently aware of that development, started his investigation by writing to the Department for Business, Innovation and Skills ("the Department") on 12 December 2011, recording his understanding that the Department had assumed responsibility for the "*now disbanded area office of Business Link*". However, the Department wrote back by email on the same day saying:

*"Although the Business Link service closed to the public on 25 November 2011 Business Link West Midlands Limited remains operational at present. Please therefore direct your enquiry to Lorraine Holmes..."*

11. There then followed a very unsatisfactory phase of the investigation during which the Information Commissioner:

- a. Received no response to a letter addressed to Ms Holmes at Business Link on 15 December 2011;
- b. Was informed by the Department on 19 January 2012 (changing its previous position) that it was, in fact, AWM, as the parent company of Business Link, which had responsibility for the matter and should be asked to respond;
- c. Was re-directed to Business Link in an email from AWM on 20 January 2012 and informed that Ms Holmes was still working at the company;
- d. Received an email from Business Link on 25 January 2012 denying that its management had seen the letter referred to in a. above;
- e. Eventually received a letter from Business Link dated 31 January 2012 which included this passage:

*"As requested, I enclose all of the file papers relating to this matter. I am not able to include the CVs of the evaluation panel, or further details of the consultant referred to, because the records have been destroyed. You may be aware that*

*the funding for the Business Link service has been withdrawn and accordingly this company is closing-down and is currently preparing to enter into Members Voluntary Liquidation in mid February. In preparation for that, all records not required for archiving by DBIS, are systematically being destroyed.”*

The letter concluded:

*“Additionally, I find it difficult to understand what Mr Matthews hopes to gain by pursuing his complaint, in particular, as you will see from the documentation, that the unsuccessful tender contract value was a relatively minor amount (£3,000)”*

- f. Received no response to a letter he wrote to Business Link on 15 February 2012 seeking further information.
- g. Was told by a member of AWM's staff, (by email dated 1 March 2012 responding to a letter from the Information Commissioner chasing for a reply) that *“We've forwarded this on to the ex-Business Link staff and asked them to respond”*.
- h. Received an email from Business Link on 5 March 2012 disclosing the names of the individuals who had constituted the “assessment panel” and informing the Information Commissioner that Business Link had gone into Members Voluntary Liquidation (in fact this had happened just a few weeks previously, on 23 February 2012) but that most of its documentary records had been destroyed between January 2011 (when the closure of its business had been confirmed) and March 2011 (when its operations were shut down). The letter went on to assert that Business Link had no legal requirement to keep any records. It concluded:  
*“There is no more information and there are no more records. The building has been vacated and handed back to the Landlord. The building is empty. All of the records have been destroyed!”*
- i. Was told by AWM, in an email dated 16 March 2012, that, following the commencement of the voluntary liquidation, responsibility for any issues about Business Link's affairs had passed to AWM but that the Department would assume responsibility with effect from 31 March 2012. The email included arguments for the withholding of the names of those on the “decision panel” but made an offer to disclose their job titles in order to demonstrate their seniority and experience.
- j. Was informed by the Department, by an email whose date of transmission is unclear, that AWM had *“reached operational closure”* on 30 March 2012 and that the case had been *“transferred to [the Department] to handle as the relevant successor Department”*

12. By April 2012 responsibility for the case had therefore been taken over by the Department and on 27 April 2012 it revealed, for the first time, that the names of those on the selection panel were entirely irrelevant because the

Appellant's tender had been rejected before it reached the stage of being considered by the panel. As to the individual or individuals who had made the decision to reject the tender at the pre-interview stage, their identities could not be established from the materials retained in the Business Link archive. The email also disclosed that, contrary to what had been said previously, the name of the consultant had been retained. It argued, however, that the name should not be disclosed because this would breach data protection principles.

### The Information Commissioner's Decision Notice

13. In compliance with FOIA section 50(1) the Information Commissioner recorded the findings emerging from his investigation in a decision notice dated 20 June 2012. It named the Department as the Public Authority to which it was addressed and summarised the communications with Business Link, AWM and the Department, which led the Information Commissioner to the conclusion that this was the correct approach to adopt.

14. The Information Commissioner also recorded his concern about Business Link's conduct. The Decision Notice included this passage in paragraph 23:

*"BLWM was less than helpful throughout, and there were unnecessary delays in the course of his investigation as both BLWM and AWM's preoccupation with imminent closure took priority. Although understandable, the Commissioner did not feel that he was able to expedite matters for the complainant when faced with attempts to shift responsibility and a degree of incomprehension as to why he was asking any questions at all with regard to this matter."*

15. Despite the frustration which the Information Commissioner evidently experienced he felt compelled to reach the conclusions that:

- a. no information had been retained as to:
  - i. the identity of the person or person who determined the outcome of the Appellant's tender (first Request); or
  - ii. the qualifications of the decision maker(s) (also first Request); and that
- b. no information had been retained as to the qualifications of the consultant (fourth Request);

He also concluded, in respect of the identity of the consultant (the only piece of relevant information retained by Business Link) that:

- c. his or her identity was exempt information under FOIA section 40(2) as it was the personal data of that individual and disclosure would breach the data protection principles.

### The Appeal to this Tribunal - Procedure

16. The Appellant filed an appeal against the Decision Notice which was received by this Tribunal on 17 July 2012.
17. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.
18. On 9 October the appeal was struck out on the basis that there was no realistic prospect of most of the grounds of appeal succeeding and the Tribunal lacked jurisdiction in respect of the only other ground. That decision was set aside by the Upper Tribunal in a decision dated 23 May 2014 ([2014] UKUT 0239 (AAC)) and a direction was given that the issue of strike out should be determined at an oral hearing of this Tribunal.
19. On 3 July 2014 the Registrar of this Tribunal directed that the hearing should take place on 30 September 2014 and that the Tribunal Judge should first consider whether the appeal should be struck out. If he or she should decide that the appeal should not be struck out a full panel of three tribunal members would then decide the merits of the appeal.
20. In the event the tribunal judge decided that the appeal should not be struck out and the hearing therefore proceeded with the Appellant representing himself and the Information Commissioner opting to rely on his written submissions and not to attend the hearing.

### The Appeal to this Tribunal – The Issues

21. The Notice of Appeal was accompanied by seven grounds of appeal. Grounds 2, 6 and 7 were not pursued during the appeal hearing. We deal with each of the remainder in turn.  
  
*First Ground of Appeal – Decision Notice was addressed to the wrong body.*
22. The Appellant argued that the only organisation which owed him an obligation to provide the information he requested was Business Link, which remained in existence as a legal entity long after, first, its operations had come to an end and, secondly, it had entered into voluntary liquidation. This was a point the Appellant made to the Information Commissioner on several occasions during the latter's investigation, pointing out that at least one director remained in office at all relevant times and that a liquidator was also in place from February 2012 until Business Link was dissolved. In a note submitted after the hearing the



Appellant informed the Tribunal that the date of dissolution was 5 March 2014 (21 months after the publication of the decision notice).

23. The Information Commissioner was placed in a difficult position by the confusion, created by Business Link, AWM and the Department, as to the identity of the organisation having responsibility for the Request. It is not surprising that he switched his attention from one to the other in an attempt to establish the truth. And in fact by doing so he did ultimately establish the truth from the Department about how the Appellant's tender had been assessed, what information Business Link held at the time of the information request and the extent to which relevant information had been destroyed. We are sympathetic, also, with the Information Commissioner's understandable wish to identify an existing body that would be capable of carrying out any direction he might include in his decision notice. However, in circumstances where the public body which received the original information request continues to exist, albeit subject to the restrictions on its activities imposed during the liquidation process, it seems to us to be an error in law to treat another organisation as the public body to which the decision notice should be addressed. We note, in this connection, that the Information Commissioner neither asked for, nor received, any evidence of the assets and obligations of Business Link having been formally transferred to the Department.
24. The difficulty we face is that, as appears from a later section of this decision, we have concluded that certain information covered by the original request for information should be disclosed. Yet the public body that in our view should have provided that information when asked for it no longer exists. It did, however, exist at the date of the Decision Notice and, through its liquidator, could at that date have carried out any direction which the Information Commissioner made.
25. We conclude that the Decision Notice was not in accordance with the law in naming the Department as the public body to whom it should be addressed. However, at the date of this decision Business Link no longer exists as a legal entity and it is right that we treat the relevant public body as its legal successor, the Department.

Ground three – the Information Commissioner's investigatory processes were faulty.

26. The Appellant criticised the Information Commissioner's investigation of his complaint on a number of grounds. He said that the Information Commissioner had not sought his views on responses received from Business Link and AWM. In particular he suggested that the confusion over whether the Appellant's tender had ever been submitted to the assessment panel would have been avoided had he been consulted.
27. The Tribunal's role is not to assess whether the Information Commissioner carried out his investigation efficiently or with sufficient forensic rigour. It is to decide whether his conclusions were correct. Clearly, he is more likely

to reach a sound conclusion if he has carried out an effective investigation, but our focus is on the outcome and not the process.

28. The Appellant was not able to point to a specific error in the Decision Notice that was said to have resulted from the failure complained of. Even in the case of the tender assessment process the Decision Notice did record the correct position about the stage at which the Appellant's tender was rejected, albeit only as a result of the Department's staff applying greater diligence in answering the Information Commissioner's questions than Business Link had previously done.
29. We conclude that, whether or not the Appellant's criticism was justified, it did not lead us to identify an error in the Decision Notice.
30. The Appellant also criticised the Information Commissioner for proceeding during his investigation on the basis that Business Link had followed due process in its tendering process. We will consider that issue when we come to review the factors relevant to the application of data protection principles to the request for disclosure of individual's names or identifying characteristics.

*Ground 3 – the names of those on the assessment panel should have been disclosed*

31. As we have indicated this was argued in correspondence as a possible application of the exemption provided by FOIA section 40(2) (third party personal data) until the Department acknowledged that Business Link had failed to realise that this was not what the Appellant sought. By that time the information which he did seek had been destroyed. The issue we have to determine, therefore, is whether on a balance of probabilities the identity of the individual or individuals who considered and scored the Appellant's tender was held by Business Link at the time of the information request. We believe that information about its staff would have been held by Business Link at the time when the Appellant submitted his request. That was just two months after the tendering process had been instigated and seven months before Business Link closed its operations. It would be remarkable had Business Link already started to destroy this type of information at that stage. We think it very likely that Business Link would also have had information at that stage as to which member of staff carried out the assessment of the Appellant's tender.
32. Although, therefore, we believe that, on the balance of probabilities Business Link did hold the information covered by the first part of the Request at the time it was requested, it is equally clear that it destroyed it, or allowed it to be destroyed, at some time during the period when the Appellant was pursuing his request either with Business Link itself or through the Information Commissioner's investigating team.

*Ground 5 – name, qualifications and experience of Business Link's consultant should have been disclosed.*

33. The position with regard to the consultant whose details were requested in the fourth part of the Request is that Business Link originally claimed that it had not retained the individual's name but offered reassurance that he or she held the seniority and specialist knowledge required for the task undertaken. By the time the Department came to investigate the position properly it became clear that the name had been retained but there was no longer any information about his/her qualifications and experience.
34. No argument was put forward at any time to justify the refusal to disclose anonymised information about qualifications and experience. We would have had no hesitation in ordering the disclosure of that information. Its relevance to the Appellant's concern about the tendering process, which transfers very easily to a public interest in the effective conduct of public tendering processes, is evident from the approach adopted by Business Link at the outset – it rushed to assure the Appellant that the tendering process had been approved by an independent consultant with an appropriate level of experience.
35. The only argument for withholding any information about the consultant was that the name and any other information that might identify him or her was exempt information under FOIA section 40(2).
36. FOIA section 40(2) provides that information is exempt information if it constitutes personal data of a third party the disclosure of which would contravene any of the data protection principles.
37. Personal data is itself defined in section 1 of the Data Protection Act 1998 ("DPA") which provides:

*"personal data' means 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"*

38. The data protection principles are set out in Part 1 of Schedule 1 to the DPA. The only one having application to the facts of this Appeal is the first data protection principle. It reads:

*"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 ..."*

Schedule 2 then sets out a number of conditions, but only one is relevant to the facts of this case. It is found in paragraph 6(1) and reads:

*"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the*

*processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”*

The term “processing” has a wide meaning (DPA section 1(1)) and includes disclosure.

39. A broad concept of protecting individuals from unfair or unjustified disclosure (in the event that their personal data has been publicly requested) is a thread that runs through the data protection principles, including the determination of what is “necessary” for the purpose of identifying a legitimate interest. In order to qualify as being “necessary” there must be a pressing social need for it - *Corporate Officer of the House of Commons v Information Commissioner and others* [2008] EWHC 1084 (Admin).

40. In determining whether or not disclosure of the names would be contrary to the data protection principles we have to consider:

- i. whether disclosure at the time of the information request would have been necessary for a relevant legitimate purpose; without resulting in
- ii. an unwarranted interference with the rights and freedoms or legitimate interests of the individual.

And if our conclusion on those points would lead to a direction that the information should be disclosed we have also to consider:

- iii. whether disclosure would nevertheless have been unfair or unlawful for any other reason.

41. In respect to the issue of fair and lawful processing under 40 iii. above we have to bear in mind guidance provided in paragraph 1(1) of Part II of Schedule 1 to the DPA, which provides:

*“In determining for the purposes of the [first data protection principle] whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.”*

42. The Information Commissioner acknowledged in his Decision Notice that there was a public interest in tendering processes for public contracts being conducted fairly. Although the Appellant clearly had a personal interest in the manner in which his own tender had been handled, his arguments on the hearing of the appeal concentrated on the public interest. He drew our attention to a letter he had received from the liquidator of Business Link which, he said, demonstrated that the tendering process had not in fact been carried out properly and that the legitimate public interest in disclosure was therefore greater than the Information Commissioner had accepted. The Appellant was very open in disclosing that the letter had been written to him in the context of a civil claim he had

brought against Business Link in respect of the tendering process, which was settled following negotiations between the liquidator and himself. The relevant part of the letter, written on 25 September 2012, reads:

*“...my client concedes that the correct process was not followed in relation to considering your tender application ... As a result this produced an anomaly resulting in a lower score for your tender application that would otherwise have been the case.”*

43. It may be that this letter was not available to the Information Commissioner when he prepared his Decision Notice. It was, however, included in the agreed bundle of documents prepared for the appeal and attracted no comment from the Information Commissioner, in the form of a written submission to the Tribunal or otherwise. For our part we believe that it justifies attributing greater public interest to disclosure than the Information Commissioner did.

44. The Information Commissioner accepted in his Decision Notice a number of arguments put to him in support of the argument that identifying the consultant would have constituted an unwarranted interference into his privacy. He was not employed in a senior management role and had no direct line management responsibilities. He was not involved in the selection itself and would have been entitled to assume that his limited advisory role would not be disclosed. The Information Commissioner concluded that it would not be fair to identify him. He stated, at paragraph 34 of the Decision Notice, that:

*“The Commissioner is not convinced that the public interest is served by members of the public conducting their own assessment of the value of advice provided by a consultant based on their views as to the merits of that consultant’s qualifications.”*

45. The Appellant argued that as, in his words, “something went wrong” in the tendering process, there was a strong public interest in disclosing the identity of the individual whose overview and approval of the system Business Link set up was relied upon in defending it. Without a name, he said, the statements made by Business Link were, again in his own words, “unauditable”.

46. Although we think the Appellant pitched his arguments a little high, we believe that there is a significant public interest in the disclosure of the identity of a consultant whose approval of a public contract tendering process is relied upon by a public authority to provide assurance as to its effectiveness and fairness. Against that we do not think that an individual accepting a role in the design and operation of such a process should expect to remain anonymous. He or she has taken on a public role and should expect to be answerable, alongside his or her client, for their respective roles in the project.

47. We conclude, therefore, that the disclosure of the name of the consultant would not have been a breach of the data protection principles and that this information was not exempt information under FOIA section 40(2).

### Conclusion

48. The Information Commissioner was wrong to conclude that Business Link had been entitled to refuse to disclose the name of the consultant referred to in the fourth part of the Request and that information should be disclosed. Following the demise of Business Link we direct that the party now holding that information on behalf of Business Link, namely the Department, should disclose it.
49. Our decision is unanimous.

### Postscript

50. It would follow from our decision to order disclosure of the name of the consultant that other, less intrusive, information about him or her (namely detail of qualifications and experience) should also have been disclosed. It is a matter of deep regret that the actions of Business Link and those responsible for its direction at the relevant time allowed that information to be destroyed, after the date when the Appellant asked for it to be disclosed to him.
51. We would also have considered ordering the disclosure of the job title, experience and qualifications of the individual or individuals who made the decision that the Appellant's tender should not proceed to the second stage of the tendering process, to the extent that this could be done without disclosing their identity. However that, again, is information which is no longer in existence.
52. The reason for the non-existence of some parts of the relevant information, which we think the Appellant was, or might have been, entitled to receive, is due to the actions and omissions of Business Link and those having control of it from time to time. In summary, Business Link:
- a. claimed to be unaware that the FOIA applied to it until told otherwise;
  - b. appears to have been oblivious of any obligation to preserve information once its disclosure had been requested and proceeded to order, or at least not prevent, its destruction;
  - c. failed to realise that the Appellant's clearly expressed request had nothing to do with any assessment panel, but to those who determined the fate of his tender before it went near such a panel;
  - d. ignored the fact that anonymised information about the experience and qualifications of the decision maker(s) and the consultant might have been disclosed;

- e. contributed to the confusion as to whether it, AWM or the Department took responsibility for the information request and the consequences of its refusal;
- f. claimed that the name of the consultant had been lost, although the Department appeared to have no difficulty in finding it among the records; and
- g. demonstrated a degree of irritation that the Appellant should bother it with his pursuit of rights given to him under FOIA.

**Chris Ryan**  
Judge

31 October 2014