



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

**Appeal No: EA/2014/0100**

**BETWEEN**

**JANET TREHARNE OAKLEY**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**Before**

**Brian Kennedy QC  
Jacqueline Blake  
Gareth Jones**

**DECISION**

**Promulgated Decision:**

19<sup>th</sup> January 2015

The Tribunal refuses the Appeal.

We direct that the Decision Notice in question is correct and should stand.

**Introduction:**

**[1]** The appeal is brought under section 57 of the Freedom of information Act 2000 (“FOIA”). The Tribunal and the parties worked from an Open Bundle (“OB”) indexed and paginated and from a smaller Closed Bundle (“CB”) also indexed and paginated. The appeal was heard at an oral hearing at Cwmbran Court , Wales on 19 November 2014.

[2] The impugned decision under appeal is the Decision Notice (“DN”) from the Respondent dated the 16 April 2014: Reference FS50529798.

### **Background to the Appeal:**

[3] The Appellant had made a complaint to the Parliamentary and Health Service Ombudsman (“PHSO”) about the Information Commissioner. The PHSO considered the complaint but concluded that there were no grounds to conduct an investigation.

[4] The Appellant then complained about the decision under the PHSO’s internal review process. The Appellant believed that her complaint was being blocked. The Appellant wrote an e-mail to the operations manager concerning this though received no response.

[5] By e-mail on 1 November 2013 the Appellant wrote to the PHSO explaining that she wished to submit a complaint about the Chief Operating Officer whose line manager is the Ombudsman and requested as follows: “*How would a complainant make their complaint to Dame Julie Mellor?*”.

[6] In response, the PHSO informed the Appellant that she can make a complaint about the Chief Operating Officer by writing to the Ombudsman.

[7] In providing its outcome to the internal review, the PHSO interpreted the scope of the request to be for the telephone number and e-mail address of the Ombudsman (“the withheld information”). The PHSO explained that it considered that the e-mail address and telephone number of the Ombudsman to be exempt under section 40(2) of the FOIA.

### **The Decision Notice:**

[8] In the course of his investigation, the Commissioner accepted that the scope of the quest concerned the e-mail address and telephone number of the Ombudsman to be exempt under section 40(2) of FOIA.

[9] The Commissioner served the DN concluding that the PHSO had applied the exemption under section 40(2) correctly.

### **The Notice of Appeal:**

[10] The Notice of Appeal in this case, dated 23 April 2014. It is common case that the parties are agreed that the withheld information is the personal data of the Ombudsman who is the data subject for the purpose of processing under Data Protection Act 1998 (“the DPA”) in this case. The Appellant confirmed this to the Tribunal at the oral hearing and agreed that the essence of the appeal was the issue as to whether or not disclosure of the withheld information to a member of the public under FOIA would contravene the first data protection principle.

### **REASONS:**

[11] After hearing on the grounds and reasons for her appeal it was apparent that much of the complaint was about what she regarded as the inefficiency and inability of staff to provide information she sought. She described her frustration at an apparent inability of staff to understand her requests and even of delegation by the Ombudsman to more senior staff

who she felt misunderstood the nature and extent of her requests for information. She described how her complaints to the Ombudsman “ — *just get lost* —”. The Tribunal understand, and in deed accept much of her criticism. However the Tribunal discussed the reasoning of the Respondent in the DN with the Appellant and discussed further the detailed reasoning and justification in the Response from the Respondent for the finding in the DN. We distinguished her noted dissatisfaction from the issues before us. The Appellant understood the reasoning of the Respondent as discussed and did not present any substantive argument against it.

For the avoidance of doubt, the Tribunal accept the assertions and reasoning of the Respondent on the facts of this case and in particular unanimously agree with the following assertions by the Respondent Commissioner herein:

- a) Section 40(2) of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the DPA states that the personal data must be processed fairly and lawfully.
- b) The withheld information is personal data as defined under section 1(1) of the DPA.
- c) We unanimously accept, on the facts in this case, the proposition that on consideration of the reasonable expectations of the data subject, the consequences of disclosure, and the balance of the rights and freedoms of the data subject and the legitimate interests of the public, that any legitimate interest in transparency is outweighed by the right of the individual in this case to perform her role without the disruption of direct personal calls and e-mails from members of the public.

**[10]** The Tribunal are of the view that disclosure of the withheld information would probably result in a disproportionate demand on the data subjects time and resources and on balance an inefficient use of her time. We are also of the view that it would amount to a disproportionate invasion of her personal space both at work and beyond.

**[11]** In the factual circumstances of this case and for the reasons given above the Tribunal refuses this appeal

Signed:

Brian Kennedy QC

19 January 2015.