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

**Appeal No: EA/2014/0104**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50478716  
Dated: 27 March 2014**

**Appellant: Carolyne Willow**

**Respondent: The Information Commissioner**

**Heard at: Field House**

**Date of Hearing: 29 September 2014**

**Before**

**Chris Hughes**

**Judge**

**and**

**Michael Hake and Steve Shaw**

**Tribunal Members**

**Date of Decision: 30 November 2014**

**Date of Promulgation: 1 December 2014**

**Attendances:**

For the Appellant: Ian Wise QC

For the Respondent:

**Subject matter:**

Freedom of Information Act 2000

## **REASONS FOR DECISION**

### Introduction

1. Ms Willow, the appellant in these proceedings, is a qualified social worker with a considerable expertise in advancing children's rights. From 2000-2012 she was National Co-ordinator of the Children's Rights Alliance for England and in that role served on the advisory panel for Lord Carlisle's report on behalf of the Howard League for Penal Reform "An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes" 2006.
2. On 12 July 2012 she made a request to the Ministry of Justice (MoJ):-  
*"Please supply a full copy – without any redactions – of the Minimising and Managing Physical Restraint training manual published by the Ministry of Justice in July 2012."*
3. The request referred to a Decision Notice FS50173181 in which the Respondent in these proceedings, the Information Commissioner ("the ICO") had directed the Youth Justice Board to disclose part of the Physical Control in Care ("PCC") Training Manual used in Secure Training Centres.
4. On 6 August the MoJ responded directing her to where a redacted version of the document could be accessed and explaining that the unredacted version was a "restricted document". The response stated that the MoJ considered that the redacted parts engaged the exemptions under s31(1)(f) (law enforcement), s38(1)(a) and (b) (health and safety) of FOIA. The MoJ explained its view that disclosure would prejudice law enforcement by prejudicing the maintenance of security and good order in prisons and other institutions where individuals were detained and it was likely to endanger the physical and mental health of individuals.
5. In weighing the balance of public interest between disclosure and maintaining the exemption the MoJ acknowledged that full disclosure would aid transparency and accountability. It recognised the importance of public confidence that the techniques used were safe and effective and that young people were treated humanely. However

it considered that these were outweighed by the importance of being able to gain swift control of a person causing violence. With knowledge of the techniques some young people could develop countermeasures which could make the application of these techniques more difficult; thus leading to increased risk to young persons and staff. The MoJ further indicated that some techniques in this manual were similar to the techniques in "The Use of Force" the equivalent training manual for prisons, which was also available in redacted form. The publication of an unredacted version of Minimising and Managing Physical Restraint ("MMPR") would therefore provide assistance to prisoners in developing countermeasures and so prejudice the situation in prisons. The MoJ concluded :-

*"It is considered on balance, the likely threat to the good order and security of YOIs and prisons and the safety implications of this for young people and staff in both YOIs and prisons favours non-disclosure of the unredacted version of the MMPR training manual."*

6. A review was requested and on 1 March 2013 the MoJ set out its reasoning in confirming the previous decision. It noted arguments Ms Willow had advanced that there was no evidence that disclosure of PCC had resulted in children in secure training centres developing counter measures. However it distinguished between the contents of MMPR and PCC and made reference to FS50371302 in which the ICO had accepted that parts of the Use of Force manual should not be disclosed. It stated:-

*"MMPR is however very different from the distraction techniques referred to above and is not designed solely for use in STCs. It will also be used in Young Offender Institutions (YOIs), and there are significant difference between YOIs and STCs and the young people detained within them. YOIs accommodate an older group of young people, many of whom demonstrate a much higher level of dangerous and violent behaviour towards both other young people and staff alike. Staff must be able to respond to these situations in a way that supports the maintenance of the health and safety of both the young person and others..."*

*Finally I wanted to address the concerns you raise that the arguments in favour of disclosure made in the response of 6 August do not make specific reference to child protection or children's rights obligations. These arguments clearly refer to a public interest in ensuring that young people are treated humanely and decently, and that the*

*health and safety of young people is considered in the development and deployment of MMPR. Reference is also made to improving the public's confidence that the restraint techniques being used on young people provide for their safe and effective control. There are also many arguments in favour of non-disclosure that relate to child protection or children's rights obligations. For instance, restraint techniques are often used in order to end a violent assault by one or more young people on another young person. It is therefore essential that staff can be confident in using restraint techniques, and not concerned that in doing so both their health and safety and that of young people may be open to compromise."*

#### The complaint to the Information Commissioner

7. In her complaint Ms Willow challenged these conclusions. She argued that the background and educational status of children in YOIs made it unlikely that they would develop countermeasures and emphasised the vulnerability of these young people. She drew specific attention to the convention on the Rights of the Child with respect to children in custody and the specific duties of those having custody of them. She argued that the range of requirements laid down under the Youth Justice Board Code of Practice to safeguard young people could not work effectively without full disclosure of MMPR. She stated her view that:- *"NOMS staff responsible for the development of the new Manual have transplanted even more of C & R (adult) techniques to children's settings"*. She drew attention to the number of deaths of children in custody.
8. In his decision notice the ICO referred to (and noted that he was not bound by) his two previous decisions. He reviewed the information provided by the MoJ in particular noting its view that PCC and MMPR were designed for different age groups. The PCC was inadequate for the older age group and as a result of an independent review the Government had commissioned the development of MMPR. He noted the MoJ statement that:- *"The MMPR syllabus was designed specifically for young people and incorporates risk assessed physical restraint techniques within an overarching behaviour management and ethical approach."*
9. He concluded that the exemption in s31 (law enforcement) was engaged and that the balance of public interest lay in withholding the information.

10. In her appeal Ms Willow set out the background of the MMPR. She did not dispute that s31(1)(f) was engaged however she considered that the arguments in favour of the exemption were overstated and that the public interest in disclosure was very great indeed. She noted the UN Convention on the Rights of the Child and the Article 3 requirement “*the best interests of the child shall be a primary consideration.*” She provided information as to the vulnerability of children in detention giving statistics of injuries and details of inquiries and reports on the issue. She noted that UN Committee on the Rights of the Child had urged the UK “*to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child and others*”. She argued that there was an over-use of force which was unsafe. She would not be able to make an assessment of the differences between PCC and MMPR without full disclosure. She submitted that the safeguarding procedures which provided scrutiny of incidents involving young people could not be effective for children and young people in detention without full disclosure. She argued that children were unlikely to use the manual to learn about the techniques; that staff would continue to be able to control children subject to restraint and arguing that the MoJ was inconsistent on whether the techniques were designed for young people or were for use in adult prisons.
11. In responding to the appeal the ICO relied on his decision notice and reaffirmed his position that the public interest favoured upholding the exemption. He noted the importance of maintaining security and good order in prisons and that the potential wider impact on the wider prison estate outweighed disclosure. He noted the extent of information already disclosed, the warnings in the material and that the text clearly indicated the importance of avoiding pain. He noted that much of the argument about deaths or injury in custody related to matters pre-dating the MMPR and therefore were less relevant to the current arrangements.

The question for the Tribunal

12. The question for the Tribunal is simply put and is where the balance of public interest lies between disclosure of the material in the interests of transparency and upholding the exemption to avoid prejudice to “the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.”

Evidence

13. In her evidence Ms Willow described her experience of working in the field of children's rights in care and the importance of openness and transparency in questions of institutional child abuse. She expressed her concern at the possibility of the deliberate inflicting of pain as a form of restraint and argued that statutory guidance would need to be amended. She acknowledged that in rare situations it could be justified as a means of protecting individuals from immediate and serious harm. She was critical of the process of commissioning the manual.
14. Mr Noyes has spent 34 years working for NSPCC and is the Chief Advisor on Child Protection. He set out the NSPCC's concerns about the treatment of detained children and the steps it had taken to raise the issue with international agencies. He set out his concerns as to the effect of secrecy which he felt would make children more vulnerable to abuse of power in detention; and argued that for those in safeguarding roles full transparency with respect to the manual would assist them in responding effectively to allegations of abuse by children.
15. Mr Smith manages a secure children's home which cares for up to 24 children between the ages of 10 and 17. He is Chair of the Secure Accommodation Network – a national association of providers of such homes. In his unit he was transparent about the use of restraint and documentation was available to parents and young people on the techniques used. He did not consider that there was a security risk and he did not consider that publication would enable young people to develop mechanisms to avoid being restrained. He was concerned at the possibility of MMPR being introduced into secure children's homes "at some point in the future" and if it were he would feel an obligation to be transparent about it.
16. Mr Fayle is also a highly experienced social worker and former Head of Policy for Secure Accommodation for the Youth Justice Board. One of his current roles is Vice Chair of the National Association of Independent Reviewing Officers whose role is to scrutinise and oversee the cases of children in the care system (including those in secure accommodation) ensuring that the child is safe and that safeguarding issues are addressed. He considered it vanishingly unlikely that detained children would use the manual to subvert discipline and argued that children had a right to information about the rules, regulations and procedures which affect the way that they are cared for.

Analysis

17. The Tribunal noted the considerable amount of information which had been placed in the public domain about MMPR. The online (redacted) version is 154 pages long; redactions occur on approximately 65 pages. For each redaction, this version sets out an indication of the nature of the information which has been removed. For example on page 27 “1.4.2 Inverted wrist hold – thumb only” the first redaction has been replaced by the text:-

*“This sentence has been redacted. It describes how members of staff will take hold and control the young person’s arm, hand and thumb without applying undue pressure or pain when employing the inverted wrist hold.”*

18. The text of the manual then continues with the sentence:-

*“It must be noted that the technique applied in this format may raise the risk of fracture dislocation and ligament tendon damage to the thumb”*

19. Throughout the document as published there are similar warnings; at page 55 (“2.8 Thumb flexion prone, supine and on side”):-

*“However, the use of a pain inducing technique may be justifiable if that is the only viable and practical way of dealing with a violent incident which poses an **immediate risk of serious physical harm** to the young person, other young persons or staff.”*

20. The Tribunal considered that given the extent and detail of what is already in the public domain the benefit in terms of transparency and of public confidence in the lawfulness and humanity of the system was limited. It noted the extent of supervision of the detention of young people and the need for recording of incidents. The Tribunal did not consider that the investigation of incidents would be obstructed by the protection of the contents of the MMPR and its non-disclosure to the world at large.

21. It acknowledged that there was some force in the argument that few young people were likely to consult the manual and seek to learn from it how to resist restraint. The Tribunal noted that MMPR had been developed for an older age group than those detained in STCs. The client group within YOIs was older and could demonstrate the



capacity for a higher level of dangerous and violent conduct to staff and other clients than those within STCs. In developing the techniques to safely and humanely control such clients; techniques used for adult prisoners and set out in the “Use of Force” manual used in adult prisons had been considered and where appropriate adopted or adapted. The Tribunal considered that the relevance of the manual to the far larger numbers of potentially violent adults within the prison sector, some of whom would clearly be capable of learning from and applying the manual, was decisive (it may be noted that Ms Willow was of the view that there were considerable similarities between MMPR and “Use of Force”; paragraph 7 above). The Tribunal endorsed the conclusion of the ICO in his letter to Ms Willow of 11 July 2013:-

*“On balance, by quite a margin, the likely threat to the good order and security of YOIs and prisons and the safety implications of this for young people and staff in both YOIs and prisons favours non-disclosure of the withheld information.”*

#### Conclusion and remedy

22. The Tribunal therefore concluded that the ICO, in weighing the public interest, correctly concluded that the public interest favoured maintenance of the exemption. The ICO’s decision was correct in law and the appeal is dismissed.
23. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 30 November 2014