



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

Appeal No: EA/2015/0076

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50537142

Dated: 16 March 2015

Appellant: Matthew Kirk

First Respondent: The Information Commissioner

Second Respondent: The Government Legal Dept

Date of paper hearing: 4 August 2015

Venue: Fox Court

Before
HH Judge Shanks
Judge
and
Henry Fitzhugh and Narendra Makanji
Tribunal Members

Date of Decision: 11 August 2015

Subject matter:

Freedom of Information Act 2000

s.40 Absolute exemption: *Personal data*

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal and upholds the Information Commissioner's decision notice dated 16 March 2015.

REASONS FOR DECISION

1. Mr Kirk was seconded for a period to the Foreign and Commonwealth Office. A dispute arose about payments and the Government Legal Department became involved. On 9 September 2013 a solicitor in the Department (who we shall refer to as A) stated to Mr Kirk in an email that a claim he was submitting was fraudulent.
2. On the same day Mr Kirk made a request under FOIA to the Department asking how many times A had accused claimants of submitting fraudulent claims in the last 6 months. The Department replied on 24 September 2013 stating the answer was "none". Mr Kirk sought an internal review and on 10 January 2014 the reviewing officer wrote to him in these terms:

I have now reviewed the reponse to your request. I can see that the way that the response was drafted was potentially ambiguous. [The writer] interpreted your request to mean *How many times apart from your own case has [A] accused claimants of submitting fraudulent claims* to which the accurate answer was "none". You are well aware from her emails to you of 9 and 10 September 2013 that [A] had stated that your own claim was fraudulent, and therefore [the writer] understandably assumed that this was not the information that you sought. I trust that the information is now clear – [A] has accused you of submitting fraudulent claims in her emails of 9 and 10 September 2013. She has not made any other accusations of this nature.

3. Mr Kirk complained to the Information Commissioner under section 50 of FOIA about the way his request had been dealt with. In a decision notice dated 16 March 2015 the Commissioner decided that the information requested was A's personal data and that the Department should have responded by neither confirming nor denying that they had the information requested pursuant to section 40(5)(b)(i) but that in the circumstances no further action was required on the part of the Department.

4. Mr Kirk has appealed against the Commissioner's notice. As we understand his position he does not challenge the Commissioner's decision that the Department should have relied on section 40(5)(b)(i); indeed, he positively supports it. It is plainly correct, not least because we cannot see that he has any legitimate interest which would have been furthered by disclosure of the information he was seeking. We therefore uphold the decision notice and need say no more about it.
5. Apart from inviting the Tribunal to find the Department "guilty of a breach of [FOIA] as highlighted in ... the IC's own decision letter" Mr Kirk also seeks in his notice of appeal a recommendation that the Commissioner should apologise to him for factual inaccuracies and bias in the decision letter, for delay in its production and for a poor piece of work. This Tribunal's functions and powers on an appeal against a decision notice of the Commissioner are derived from sections 57 and 58 of FOIA. Its function is simply to review the decision notice to see that it is "... in accordance with the law"; it does not undertake reviews of irrelevant background facts or of the quality or speed of the Commissioner's work and it has no power to recommend that the Commissioner apologise to anyone. The balance of the appeal is accordingly misconceived.

Disposal

6. We therefore dismiss Mr Kirk's appeal which is without merit and appears to have been an entirely pointless exercise. If the Respondents wish to apply for costs under rule 10(1)(b) of the rules of procedure they must comply with rules 10(3) and (4) and apply within 14 days of being sent this decision. If an application is made in accordance with the rules Mr Kirk may respond to it in writing provided he does so by Friday 4 September 2015.
7. This decision is unanimous.

HH Judge Shanks

11 August 2015