



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

EA/2015/0177

ADAM KAAAN

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Hearing

Held on 24 November 2015 on the papers¹
Before Marion Saunders and Judge Taylor.

Decision

The appeal is unanimously dismissed. There are no further steps to be taken by the Public Authority.

Date of promulgation

27th November 2015

¹ Please see paragraphs 17 to 18 below.

Reasons

1. On 26 November 2014, the Appellant requested from the academy sponsor E-ACT the following under the Freedom of Information Act 2000('FOIA'):

*"1. What is the salary of [redacted name] in 2010/2011, 2011/2012, 2012/2013, 2013/2014
2. What is the qualification of [redacted name]
3. How much expense has been claimed by [redacted name] on 2010/2011, 2011/2012, 2012/2013, 2013/2014
4. What has the role of [redacted name] been in 2010/2011, 2011/2012, 2012/2013, 2013/2014 at the academy
5. (a) Which class has [redacted name] taught in 2010/2011, 2011/2012, 2012/2013, 2013/2014 and (b) if they are GCSE classes please state the results".*

(Emphasis added)

2. The individual whose name is redacted above ('the teacher') is a teacher at the Oldham Academy North which is an academy sponsored by E-ACT.
3. The GCSE results for classes taught by the teacher, (requested in question 5(b) above), are the subject matter of this appeal, being the only information that has not been provided to the Appellant. E-ACT refused this request, claiming s.40(2) FOIA (for personal data) applied such that it was exempted from providing the information. The Appellant progressed the matter, leading to an investigation by the Information Commissioner (the 'Commissioner')
4. The Commissioner decided that the requested data was clearly the teacher's personal data and that the first data protection principle precluded disclosure since disclosure would not be 'fair' for the purposes of the relevant legislation.
5. The Appellant has appealed this decision.

The Task of the Tribunal

6. The Tribunal's remit is governed by section 58 FOIA. Our task is to consider whether the decision made by the Commissioner is in accordance with the law or whether any discretion it exercised should have been exercised differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner. The Tribunal is independent of the Commissioner, and considers afresh the Appellant's complaint.

The Law

7. Under s.1(1) of FOIA, a person making an information request to a public authority is entitled to be informed in writing whether the public authority holds the requested information and to have it communicated to him, unless it is exempt from disclosure under the Act. For these purposes, a public authority is exempt from providing information requested under FOIA where it is 'exempt information'. Exempt information includes information that is personal data where its disclosure would contravene any of the data protection principles.
8. 'Personal data' is defined under Section 1(1) DPA as:-

“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,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

9. So far as is relevant to this appeal, section 40(2) FOIA provides:

“40(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or the second condition below is satisfied”

Emphasis added

10. The first condition is -

“(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene -

(i) any of the data protection principles...”

Emphasis added

11. The first data protection principle has been identified in this appeal as of relevance. This provides that:

“1. 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...”

(See para. 1 of Schedule 1 of the Data Protection Act 1998 (‘DPA’).

Emphasis added

12. We received a Decision Notice, the Appellant’s grounds of appeal, and the Commissioner’s response. We have reviewed all this, even if not specifically referred to below.

13. The Appellant’s arguments are very brief. He asserts that:

a. Results are not private, since they are already published by the Department of Education. No individual teacher can be identified from the Appellant’s request.

b. The Appellant could request E-ACT to release the English results of GCSE years from 2010-2015, which the Appellant could then cross-reference with the information provided under question 5(a) of the request to identify the class result of the individual teacher concerned.

- c. The information is of public interest, in that the public should be able to know the results of taxpayer-funded classes, and parents should be able to have "*the performance data*" of teachers that are teaching their children.
- d. The NHS releases surgeons' performance data: schools should do the same for their teachers. If damage and distress is not a valid reason in relation to surgeons, neither should it be in relation to teachers.

14. The Commissioner's arguments are set out in his response of 14 September 2015 and we do not repeat them here.

Our Findings

15. We accept and adopt the Commissioner's reasoning as set out in his response of 14 September 2015. We accept that the requested information is personal data. Although the Appellant asserts no teacher can be identified from the request, the Appellant already knows the teacher's identity and paragraph 8 above shows that information will constitute personal data where it relates to a living individual who can be identified from the data and other information a person has. We accept that disclosure of the information would be unfair and serves no valuable purpose or pressing social need.

16. Our decision is unanimous.

OTHER MATTERS

17. One of the two panel members due to hear this appeal on 23 November 2015 was unable to. Paragraph 15(6) of Schedule 4 of the *Tribunal Courts and Enforcement Act 2007* provides that:

"Where ... a matter is to be decided by two or more members of a tribunal, the matter may, if the parties to the case agree, be decided in the absence of one or more (but not all) of the members chosen to decide the matter."

18. The hearing was adjourned whilst the parties' position was sought. The parties have now confirmed they were content for the appeal to be heard by the available panel member and judge, subsequent to which the decision in the form set out above was reached.

Judge Taylor

27 November 2015