



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

**EA/2015/0145**

**Decision Notice Ref: FS50573234**

**RUPERT MACKAY**

**Appellant**

**And**

**THE INFORMATION COMMISSIONER**

**Respondent**

**Hearing**

Held on 5 November 2015 at Fox Court on the papers  
Before Mike Jones, Paul Taylor and Judge Taylor.

**Decision**

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

**Decision promulgated** 9th November 2015

## Reasons

1. On 15 July 2014, the Appellant's wife requested from the Chief Constable of Cheshire Constabulary ("Cheshire Constabulary"), in relation to a fixed penalty notice for speeding that she had received:

*"I would be grateful if you could provide details of the device used to record my speed, [Named Officer's] certificate of competency to use the said equipment and the calibration record for same at your earliest convenience."*

2. On 15 August 2014, Cheshire Constabulary refused to provide providing the officer's certificate of competency to use the device ("the Certificate"), citing s. 40(2) of the Freedom of Information Act 2000 ('FOIA') as exempting it from being required to do so.
3. Matters progressed with a complaint to the Information Commissioner (the 'Commissioner'). The Commissioner's Decision Notice (Ref: FS50573234) found that the requested information had been correctly withheld.
4. The Appellant has appealed this decision, stating:

- a. *"This is a nonsense, I have the name of the officer as it was on the Traffic Offence Report. His name is [name redacted by Tribunal] which makes a mockery of the commissioners decision and months of work to try and release the document requested. The reason why they don't want anyone to see the competency or training certificate is undoubtedly because it isn't valid or up to date, as was the case for me in 2000 which would prove an enormous embarrassment for the Force! Their and your argument about fighting the FPN is also ridiculous as I would have been unable to access the appropriate documents in an reasonable time frame in which to prepare my case which I have asked you to try and release wasting hours of mine and the Courts time."*

### **The Task of the Tribunal**

5. Our task is to consider whether the decision made by the Commissioner is in accordance with the law or whether any discretion he 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 consider afresh the Appellant's complaint.
6. We have received a bundle of documents including submissions from the Commissioner. The Appellant has not made formal submissions beyond those in the Notice of Appeal, however, we have reviewed all of the material in the bundle.

### **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 because it is 'exempt information'.

8. Exempt information includes information that is (1) personal data (s40(2) FOIA) So far as is relevant to this appeal, section 40(2) FOIA provides:

*“40(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*

*(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 “*

- (3) 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...”*

s 40 FOIA  
(Emphasis Added.)

9. Since the Appellant is not seeking the information of which he is the data subject, s40(1)FOIA is not relevant here, but s40(2) FOIA is. The first data protection principle has been identified as of relevance in this appeal. 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, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

(Emphasis Added.)

(See para. 1 of Part 1 of Sched. 1 of of the Data Protection Act 1998 ('DPA').)

10. The condition referred to in the first data protection principle in paragraph 9 above (at paragraph (1)(a)) that has been identified as of relevance in this appeal provides:

*“6 (1) 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.”*

para. 6 of Sched. 2 of DPA  
(Emphasis Added.)

11. For the exemption to be relevant, the requested information must be 'personal data'. This 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

Where ‘data’ is defined as,

“*data*” means information which—

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, ...

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; or

(e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d).

*(Emphasis Added.)*

12. The Appellant’s arguments have been summarised in the Commissioner’s response of 5 August 2015. These include that he already knows the identity of the relevant officer.
13. The Commissioner’s arguments are set out in the Decision Notice and his response, which we do not repeat here.

### **Our Finding**

14. We accept and adopt the Commissioner’s arguments in their entirety such that it is not necessary to repeat them here.
15. We would note in particular that our remit is limited to considering whether the information should be disclosed under FOIA, or whether instead the requested information should not be provided because the Act exempts the authority from doing so. In this case, in order for the requested information to be exempt it must constitute ‘personal data’. (See *above*.) If it is personal data, then it must not be disclosed provided the other conditions set out in the Commissioner’s response are met. (See *paragraphs 4 to 9 of their response*.)
16. For the purposes of the relevant legislation, personal data is not limited to a person’s name. It may include an individual’s certificate of competency, which has a quality of being private, displaying ‘biographical’ details and training record.
17. It is sometimes possible to anonymise a document, such that it would not be possible to identify a living individual from the document and other available

information.<sup>1</sup> If it were possible to anonymise it such that it would not be 'personal data', then the exemption set out in s40(2) FOIA would not apply.

18. However, in this case, the Appellant already knows the identity of the officer, such that even if the officer's name were blanked out from the certificate, the officer would still have been identified. Therefore, the requested information (whether provided with or without the name) is clearly the officer's personal data.

19. Additionally, we note for the Appellant's benefit, that if a disclosure is made under FOIA, it is considered to be a disclosure made to the world at large and not just to the Appellant. This *may* (depending on the facts) distinguish it from material made available through some other means. In this case, we consider that the officer's certificate is very clearly his personal data, and that he would reasonably expect for it not to be released to the world at large in the absence of strong legitimate interests in the public at large having access to the material. We think that any such interests in disclosure as have been shown here are substantially outweighed by the officer's reasonable expectation and legitimate interest in his right to privacy. (*See paragraph 10 above*).

20. Our decision is unanimous.

Judge Taylor

6 November 2015

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<sup>1</sup> 'Other available information' is simplified, but the precise definition is set out in the underlined part of paragraph 10 above.