IN THE FIRST-TIER TRIBUNAL **Case No. Appeal No. EA/2016/0011**

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM Information Commissioner's Decision Notice FS50572289

Dated 26th November 2015

BETWEEN

Mr Jonathan Corke	**Appellant**
And	
The Information Commissioner	**1st Respondent**
And	
West Yorkshire Police	**2nd Respondent**

Determined on the papers on 9TH June 2016.

Date of Decision: 27th June 2016

Date of Promulgation: 28th June 2016

BEFORE Ms Fiona Henderson (Judge)

Ms Rosalind Tatam

And

Ms Melanie Howard

Subject s40 FOIA – Personal data

S30 FOIA - Investigations and proceedings conducted by public authorities

Case Law: *South Lanarkshire Council v Scottish Information Commissioner 2013 UKSC 55*
Goldsmith International Business School v IC and Home Office [2014] UKUT 563 (AAC)

Decision: The Appeal is allowed in part

REASONS FOR DECISION

1. This is an appeal against Decision Notice FS50572289 dated 26th November 2015 in which the Commissioner concluded that West Yorkshire Police (WYP) were correct to rely upon s40 FOIA to withhold the disputed information.[1]

Background

2. William Cornick a 15 year old school boy, admitted killing one of his school teachers Mrs Ann Maguire at Corpus Christi Catholic College in Leeds on 28th April 2014. He was interviewed under caution by Police on 30th April 2014. During the course of the interview the identity of various pupils, teachers and family members of William Cornick were mentioned.

3. This was a brutal killing in a classroom in front of other pupils which garnered significant media interest at the time in light of the youth of William Cornick, the fact that Mrs Macguire was a much loved member of her community and as there had never been a murder of a teacher by a pupil in a classroom before in the UK. William Cornick pleaded guilty to Murder at Leeds Crown Court. On 3rd November 2014 he was sentenced to detention at Her Majesty's Pleasure with a minimum term of 20 years. An order was made at the hearing pursuant to s39 of the Children and Young Person's Act 1933 to protect the identity of fellow pupils referred to within the evidence of the case. The identity of William Cornick was however, disclosed and at the date of the information request he had no anonymity despite his youth at the time of the offence.

4. On 6th January 2015 the Appellant wrote to WYP asking:

"Please provide copies of the police interviews with William Cornick".

The WYP refused the request on 16th January 2016 relying upon s30(1)(a)[2] and s40(2) FOIA[3]. They upheld the refusal following an internal review dated 20th February 2015. The WYP hadn't identified that the personal data in the interview also related to other

[1] WYP had also relied upon other exemptions but in light of the Commissioner's findings under s40 FOIA he did not go onto consider these
[2] Investigations and proceedings conducted by public authorities
[3] Personal data

pupils, teachers and family members prior to internal review, however, they clarified this in upholding the existing exemptions. They also relied upon s38(1)(a) and (b) FOIA.[4]

5. The Appellant complained to the Commissioner on 20th February 2015 relying upon:

   - The exceptional nature of the case,
   - Previous examples of interviews that had been released,
   - The huge public interest,
   - The fact that had the case gone to trial the interviews "would have been read out".

   During the currency of the Commissioner's investigation the Commissioner viewed the withheld information and the Appellant drew the Commissioner's attention to *Data Protection (Processing of Sensitive Personal Data) Order 2000* as fulfilling a schedule 3 condition for disclosure of sensitive personal data, as the Appellant is a journalist.

The Appeal

6. The Appellant's appeal to the Tribunal on 14th January 2016 was accepted (out of time[5]). His grounds are that the ICO failed to consider:

   i) Whether it would be fair to release the personal data of William Cornick whilst redacting information about named pupils, teachers and family members.

   ii) William Cornick would have had no expectation that the information he gave was private in light of the terms of the Police caution.

   iii) There is a pressing need for the family and victims to understand the actions of the Police in this case (as no serious case review was to be held[6]).

   iv) The Police interviews are capable of shedding light on the offender's mindset, reasoning etc. and will inform the process of obtaining an accurate version of events.

[4] Health and safety
[5] The Appellant had sought the Maguire family's views through their Solicitors prior to submitting his appeal, he had had no response at the date of appeal but he had delayed submission of the appeal in the hope of a response.
[6] The tribunal understands that the case did not meet the statutory criteria for a serious case review, but that this did not mean that other types of review had been ruled out.

v) The ICO gave too much weight to the consequences of disclosure for William Cornick.

The Appellant accepted however, that redactions may be made to hide the names of pupils, teachers and members of William Cornick's family.

7. WYP were joined as second respondents by the Registrar on 18th February 2016. They supported the Commissioner's reasoning in his decision notice and made additional submissions relating to s30 FOIA. They indicated in their response that no further reliance is placed on s38 FOIA and the Tribunal therefore does not consider it.

8. This case was listed for a determination on the papers on 9th June 2016. The Tribunal was provided with an open bundle of 67 pages plus a closed bundle containing the disputed information which has been withheld from the Appellant pursuant to rule 14(6) GRC rules. The Tribunal has also read the Mr Justice Coulson's sentencing remarks which can be found at www.judiciary.gov.uk/judgments/r-v-william-cornick.[7]

9. All parties have consented to the case being determined upon the papers and the Tribunal is satisfied that it can properly determine the issues without a hearing pursuant to rule 32(1) GRC Rules.

S40 FOIA – Personal Data

10. S40 FOIA provides:

(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, …

[7] As referred to in paragraph 22 of the WYP response

11. Personal data is defined under s1 DPA as:

(1)"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;

12. It is not disputed between the parties that in issue is the personal data of William Cornick and additionally those mentioned in the interviews such as pupils, staff and William Cornick's family. It is not disputed that this is their personal data.

13. Additionally the Tribunal is satisfied that the withheld information contains sensitive personal data by virtue of s2 DPA because it relates to the investigation of a crime committed by William Cornick for which he has now been convicted and sentenced and it forms part of a Police interview which was part of the investigation of that offence.

14. WYP relied upon breach of the First Data Protection Principle to withhold the information. This provides as set out in Schedule 1, Part 1 paragraph 1 to the DPA, 1998, that:

"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.

15. In assessing fairness, the Commissioner considered the data subjects' reasonable expectations, the consequences of disclosure and the balance of the rights and freedoms of the data subject and the public interest. We have adopted the same approach.

16. In assessing expectation, Schedule 1, Part II paragraph 1 to the DPA, 1998 provides, that:

(1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained,

including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

Personal data relating to teachers, pupils and William Cornick's family

Expectation

17. The Tribunal deals with the personal data relating to teachers, pupils and William Cornick's family members first. The Appellant accepts in his grounds of appeal that redactions may be made to hide the names of these data subjects and that his desired outcome is "*disclosure of as much of the withheld information as possible*". WYP argue that by this concession the Appellant accepts that it would not be fair for the information to be disclosed without removal of these details. Implicit in this acceptance is that there would be significant adverse consequences for these individuals if disclosure occurred.

18. In assessing fairness, the Tribunal takes into consideration that their personal data is likely to arise either out of questions put by the Police, or the responses of William Cornick. They are not a party to the interview and have had no say in what of their personal data is used by Police in investigating the offence. They have not had the opportunity to respond to, correct or clarify anything that is said. There is no evidence before this Tribunal that any of these data subjects have consented to the disclosure of the requested information or actively put some or all of the requested information into the public domain.

19. The Tribunal makes the following general observations relating to those mentioned in Police interviews:[8]

- They have not had any choice as to which of their personal data is included in the interview or how it is used or any inferences drawn for the purposes of questioning the suspect.
- In order to provoke a response, the Police can be expected at times to play "devil's advocate", to explore a theory, or present evidence in a certain light to try to provoke a response from the interviewee that will shed light on the offence being investigated. In that respect there is no guarantee that the presentation of the personal data is a fair or accurate representation of the facts, and the data subjects have no right of reply.

[8] Which should not be interpreted as indicating the actual contents of the disputed information in this case

20. When considering the expectation of the data subject, whilst it is correct that in a contested trial it is normal for the contents of an interview to go before the jury this is in the context that it may be an agreed summary or edited version that is relied upon in Court. Advocates will have the opportunity to comment on the content and in many cases those whose personal data appears will themselves be witnesses and have a right of reply in that respect. Additionally, WYP rely upon the fact that the pupils were protected by rulings under *s39 Children and Young Person Act 1933* prohibiting their identification in those proceedings in support of their expectation.

Consequences of disclosure

21. We are satisfied that disclosure is likely to be distressing both in terms of accuracy, unwarranted inferences, speculation and unwanted scrutiny. Additionally we take into consideration the context of the information in this case, in that it is linked to a shocking and traumatic event, itself distressing for those likely to be mentioned in the interview. Although disclosure of the information in the context of the Police interviews after the sentencing can be expected to re-ignite debate and media coverage thus adding to the distress of those data subjects and undermining the chances of putting the incident behind them, we acknowledge that the date of the request was shortly after the sentencing, and that there were other future proceedings and enquiries that would also be likely to re-ignite the debate; such as the re-opening of the inquest etc.

22. In relation to the personal data relating to the pupils in particular, WYP's case as set out in their internal review is that:

> *"some of those [data subjects] were school children who will have to live with the fact that they did not raise William Cornick's comments to anyone. Disclosure of this information into the public domain would cause further distress to those children and could also lead to repercussions specifically targeted at them for not raising the alarm about what he intended to do".*

23. We note that a synopsis of the case was provided in the sentencing remarks, we are satisfied that the information provided through the questions asked can be expected to be more detailed and that the public dissection of the minutiae of the evidence is likely to add to the distress of those data subjects.

The balance of the rights and freedoms of data subjects and the public interest

24. When considering the balance between the rights and freedoms of the data subject and the legitimate interests of the public, we take into consideration that the purpose of

disclosing the information in the context of the Trial process is justified by the need to prove a case against someone who has not admitted an offence or to provide context to the level of sentencing in the case of a guilty plea. Disclosure pursuant to a FOIA request fulfils a different purpose, namely the legitimate interest in disclosure because the murder was committed in school by a 15 year old pupil. In assessing the legitimate interests in informed public debate, we have had regard to the ruling of His Honour Mr Justice Coulson in lifting anonymity from William Cornick where he stated[9]:

> *"It has to be noted that this is an exceptional case. Public interest has been huge. There are wider issues at stake, such as the safety of teachers, the possibility of American-style security measures in schools, and the dangers of 'internet loners' concocting violent fantasies on the internet."*

25. The Appellant acknowledges that the names of the majority of the teachers have not thus far been revealed publicly. He argues that it is right to expect that teachers have a duty to pass on concerns or rumours they have heard to those in a position to deal with them eg headteacher, governing body, children's services. He argues that there is a compelling and legitimate public interest in knowing how those charged with educating and safeguarding children act, in support of his contention that it would not be unfair to disclose all or some of this personal data.

26. Information provided in response to a question may be "fresh" evidence, however, we note that the personal data arising out of the questioning by the Police is not derived from the interview, in that it arises from the primary evidence in the case. Some of this it can be expected will have been referred to in the sentencing remarks and the Commissioner relies upon the large amount of information in the public domain which he argues meets the need to inform the public. The Tribunal notes that at the relevant date no decision had yet been made as to the final form of the coroner's inquest[10] and that it was not clear what if any type of safeguarding review there was to be, however, we are satisfied that it is likely that from its location in a school and its unprecedented nature that there would have been some type of additional official analysis of the circumstances

[9] As referred to by the Appellant at p 44 OB
http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2014/3623.html

[10] After the relevant date it was decided that there would be a full coroner's inquest which is not routine following a guilty plea and there is no evidence that this would inevitably have been the case.

of the incident.[11] In our judgment these types of procedures provide more safeguards for the processing of the personal data (limiting the personal data which goes into the public domain whilst providing for thorough scrutiny of the evidence in the case with a view to providing both a narrative and an analysis of what has happened in this case so that future lessons can be learned) than disclosure to the world at large under FOIA.

27. From this the Tribunal is satisfied that it would not be fair to disclose the personal data relating to teachers, pupils and family members under FOIA.

William Cornick's data

28. In light of its conclusions that it would not be fair to disclose the personal data of others pursuant to this FOIA request, the Tribunal has gone on to consider disclosure of William Cornick's personal data only insofar as it can be disentangled from the personal data of others (either by anonymization or other editing). We observe that William Cornick's personal data is likely to arise in 2 respects:

- information provided by the Police through questioning e.g. from information provided by others or from physical sources e.g. objects) and
- information provided to the Police in the interview by William Cornick himself in response to questions.

Expectation

29. We agree with the Appellant that individuals charged and convicted of crimes should expect disclosure of some information about them and their actions, particularly during the judicial process and sometimes afterwards. We are satisfied that there is a distinction between information about the interviewee (obtained by others and presented to him) and his response to that in the interview. In our judgment the primary evidence presented in the interview exists separately from the interview. At the stage of the interview evidence is unlikely to be complete, it may not end up as part of the prosecution case as it may later transpire that it is not relevant. The inferences to be drawn from it may change depending upon other evidence in the case and its presentation in questioning is not necessarily objective in that it is being used in order to try to provoke a response and obtain further evidence.

[11] It is apparent from the press reports referred to by the parties that there is now a LCSB review underway but from the Appellant's submissions that does not appear to have been confirmed until after the date of the request.

30. The Appellant relies upon the wording of the Police caution in informing the interviewee's expectation of what will happen to his personal data. In our judgment it is only material to information provided by him in the interview:

> *"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."*

However, it cannot inform the interviewee's expectation of what use will be made of the primary evidence that has been put to him, since that was obtained prior to the giving of the caution.

31. The Commissioner argues that Police interviews are of huge sensitivity, they are not routinely disclosed or published to the world at large. Whilst this is not in itself a prohibition of its disclosure they argue that it informs the data subjects reasonable expectation when the information is obtained.

32. The Appellant points to disclosure of interview transcripts of Jimmy Savile and Cyril Smith in support of his argument that there is a precedent for this. The Tribunal observes that both interviewees were deceased at the time of disclosure and as such disclosure of personal information relating to them did not need to comply with the Data Protection Principles. The Tribunal observes that the circumstances in those cases were different as there would be no trial and consequently no admission or finding of guilt and that in those cases issues were raised as to the adequacy of Police investigations.

33. Whilst it is fair to say that the caution is focused upon the responses in interview being used as evidence within the judicial proceedings, once that information has been used (and except as provided for within the rules of evidence, the Defendant has no say in which parts of the case the Prosecution choose to rely upon) it is generally in the public domain. Consequently, at the time when the information is given, we are satisfied that the interviewee has the expectation that any or all of his responses may find their way into the public domain.

Consequences

34. The Respondents argue that it is not fair to disclose information after the event, "*thereby refocusing attention on his criminality some time later".* In our judgement this is not a case where a convicted prisoner is some way along the rehabilitation pathway when this argument might have more force. The date of the request was approximately 2 months after the sentencing. At that stage it was not yet resolved what form the inquest would

take, nor whether there would be any sort of official case review. We are satisfied therefore that there would be an expectation that although sentencing had taken place, public scrutiny of the facts of the case was not concluded.

35. In our judgment the argument that it is fair to disclose personal data by way of primary evidence put to an interviewee is much weaker than the argument that it is fair to disclose the responses given by an interviewee. Both will depend upon the balance of competing rights as envisaged by the additional conditions of schedule 2 and 3. We observe that the sentencing remarks quoted directly from William Cornick's interviews with psychiatrists and that these were acknowledged to show no remorse or empathy. In light of the information relating to his views and motivations that is already in the public domain, the Tribunal is not satisfied that any response provided by the interviewee is likely to substantially alter the level of media attention already in place.

The balance of the rights and freedoms of data subjects and the public interest

36. It is not disputed that Schedule2 condition 6(1) falls to be considered on the facts of this case:

> *6 (1) – The processing is necessary for the purpose of legitimate interests pursued 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".*

37. The test to be applied in relation to Condition 6(1) of Schedule 2 to the DPA is that of *Goldsmith International Business School v IC and Home Office [2014] UKUT 563 (AAC)* where the Upper Tribunal endorsed the principles to follow which include insofar as it is material on the facts of this case:

> *"Proposition 1: Condition 6(1) of Schedule 2 requires 3 questions to be asked namely:*
>
> *i) Is the data controller or the third party or parties to whom the data are disclosed pursuing a legitimate interest or interests?*
> *ii) Is the processing involved necessary for the purposes of those interests?*
> *iii) Is the processing unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?*

Proposition 2: The test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate Interests

38. The first question is whether the person to whom the data is disclosed is pursuing a legitimate interest. We accept that there is a legitimate interest in the Maguire family having a clearer understanding of the murder and the events leading up to it. Mr Macguire's husband is quoted in news reports (referred to by the Commissioner postdating this request) as stating that due to Cornick's guilty plea the evidence was never fully reviewed and he wanted to ensure nothing could have been done to prevent her death[12]; the Tribunal does not know what if any information the Maguire family have already had provided to them, in particular in relation to the contents of the interview, in addition to that within the public domain, and notes that the request has not come from them.

39. Although disclosure is to the world at large we take into consideration that the Appellant is a journalist and that his purpose is to publish the information in order to inform debate. We are satisfied that there is a legitimate interest in the public having a better understanding of the circumstances surrounding the killing, informing debate about safeguards that could or should be in place to prevent another such tragedy and the identification of any flaws in the system (we adopt the issues identified by Mr Justice Coulson in lifting the anonymity of William Cornick).

Necessity

40. The Appellant argues that the interviews are capable of demonstrating who William Cornick made aware of his thoughts and plans, what was done about his behaviour e.g. disciplinary hearings prior to the murder outlined during criminal proceedings, his reaction to these interventions. He lists 9 areas of questions relating to the circumstances prior to the offence relating to the school which remained unanswered. He argues that without disclosure of "*William Cornick's confessions, thoughts etc. given during the interview this issue of safety in schools will not be answered*".

41. The Tribunal has already found that disclosure of personal data relating to teachers, pupils and William Cornick's family members would not be fair. The Tribunal is therefore looking at whether scrutiny of any questions relating to William Cornick which did not

[12] http://www.bbc.co.uk/news/uk-england-leeds-35404867

disclose the personal data of others and his responses in total (but again to the extent that they can be divorced from the personal data of others) would be necessary to fulfil those legitimate interests. The Tribunal observes that in regard to the 9 outstanding questions, the interview is being used as a shortcut to more detail of the prosecution case and in this sense the information is not unique to the interview but repeated there.

42. The Appellant argues that the disclosure of the questions asked will also enable the public to assess how thorough the Police interview was, and the rigour with which the case was investigated. Whilst WYP accept that it would increase public confidence showing WYP conducted the interviews effectively and were open and transparent, the Tribunal is satisfied that this is of limited value on the facts of this case. The Police interviews were very early on in the investigation and their purpose was to determine whether to charge, they do not purport to be a full presentation of the prosecution case, the public would not know what other information was available at that time in order to judge whether it ought, or ought not to have been put in interview. There is no criticism in this case of the Police investigation and no evidence of prior Police involvement.

43. The Appellant also challenges the basis upon which the Police felt able to issue a Police statement following the guilty plea stating:

> "*No person in authority could have reasonably foreseen the events of that day".*
>
> His argument runs that the public are entitled to see the evidence upon which this assessment is based in order to scrutinise whether it has been fairly arrived at in particular if this assessment replaces any more in depth and targeted review and analysis of the role of those in authority and agencies. We observe that any statement at that time would have been based upon the entirety of the evidence obtained thus far including the psychiatric assessments referred to in the sentencing reports and therefore is not dependent upon the contents of the interviews. In addressing the strength of this argument we have had regard to the contents of the disputed information and are not satisfied that disclosure is necessary to meet this aim.

44. South Lanarkshire Council v Scottish Information Commissioner 2013 UKSC 55 states at paragraph 27:

"A measure which interferes with a right protected by community law must be the least restrictive for the achievement of a legitimate aim. Indeed, in ordinary language we

would understand that a measure would not be necessary if the legitimate aim could be achieved by something less."

45. The Tribunal has had regard to the extent that the legitimate aims identified were achievable by other avenues and thus not necessary. At the relevant date it had not been confirmed what further investigation/review there would be of the case, but the Tribunal is satisfied that it is likely that some additional scrutiny could be expected. The Tribunal is satisfied that a review of all of the evidence following the conclusion of the case is more likely to meet the legitimate aim than a snapshot of some of the evidence from the start of the investigation. The Tribunal is satisfied therefore that the only information that is capable of meeting the identified legitimate interests is any information which only arises out of the interview. In our judgment to the extent that the questioning in the interview reflects the information that had been gathered at that stage for the reasons set out above there is no necessity in disclosure to meet the legitimate interests as this is likely to be incomplete, summarised, presented by way of argument and in broad outline can be expected so far as it is material to the case to have been reflected in the sentencing remarks.

46. The Tribunal is satisfied however, that necessity is met in terms of responses to questions to the extent that their disclosure:

i) Informs an understanding of to what extent (if any) there was remorse, and at what stage,

ii) Informs an understanding of the sentencing criteria,

iii) Puts the information already in the public domain into context,

iv) Corrects any misapprehension,

v) Reduces speculation.

Unwarranted

47. The Tribunal has also considered whether, disclosure of the interview responses would be unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject. We are satisfied that it would be not be.

48. WYP argue that disclosure of the responses would disengage him, appeal to his ego and provide validation for his actions. They acknowledge that he is not yet engaged with rehabilitation but postulate that this might be more likely in a number of years, if he was to review his interview in an environment where others had not already had the opportunity to analyse and comment on it. Additionally, they argue that disclosure of his views and comments within the interview could open him up to harm within prison. The name alone, as stated by Mr Justice Coulson, would not do that, but what he said is more likely to do so.

49. The Tribunal rejects these arguments. In so doing we take into consideration the quotations from interviews with psychiatrists which have already been disclosed by way of sentencing remarks and the comment and analysis that has already taken place. The impact on his future remorse is entirely speculative and in our judgment does not take into consideration the likely future scrutiny of his case through other forms of official review (e.g. inquest).

Schedule 3 conditions:

50. It is acknowledged that the responses are sensitive personal data. The Appellant relies upon condition 10 of Schedule 3 namely that:

> *The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.*

51. The Data Protection (Processing of Sensitive Personal Data) Order 2000, provides:

> *…2. For the purposes of paragraph 10 of Schedule 3 to the Act, the circumstances specified in any of the paragraphs in the Schedule to this Order are circumstances in which sensitive personal data may be processed.*
>
> The Schedule to the Order provides:-
>
> *3.-(1) The disclosure of personal data-*
>
> *(a)is in the substantial public interest;*
>
> *(b)is in connection with-*
>
> *(i)the commission by any person of any unlawful act (whether alleged or established)…*

(c)is for the special purposes as defined in section 3 of the Act; and

(d)is made with a view to the publication of those data by any person and the data controller reasonably believes that such publication would be in the public interest.

52. S3 of the DPA provides that "the special purposes" includes:

a) The purposes of journalism

It is not disputed that the Appellant is a journalist and that the reason for his information request is in order for him to publish it, we are satisfied therefore that conditions b and c are met. The tribunal repeats its arguments in relation to the necessity for disclosure to meet the legitimate interests as set out above and we are satisfied from this that this is in the substantial public interest. Indeed in their original refusal WYP acknowledge that:

"This was a high profile incident and there is a strong public interest in disclosing information relating to the investigation".

As will be apparent from our observations on redaction as set out below, the information that is disclosable is very specific in light of its need to be divorced from the personal data of others. We are not satisfied that either the Commissioner or the WYP considered this level of redaction as set out below and the public interest as applicable to this element of the withheld material. The Tribunal is satisfied both that disclosure of this information is in the substantial public interest, and that in light of their own assessment of the strong public interest, a reasonable data controller (had they considered the level of redaction envisaged by the Tribunal) would have reached the same conclusion. We are satisfied therefore that condition 10 is made out.

Redaction

53. The Tribunal makes the following general observations[13]: that it can be hard to disentangle the personal data of others in the questioning from William Cornick's personal data e.g. an observation by a fellow pupil is the fellow pupil's personal data in that it reveals what he saw, thought or did at a particular time even whilst it may also

[13] which should not be taken to indicate the contents of the withheld information but are used as generic examples of the factors in play when analysing fairness.

indicate what William Cornick said or did. Similarly, physical evidence can also be inextricably linked to another depending upon where it was found, who provided it etc.

54. We accept the Commissioner's argument that redaction of the content of the questions is difficult to anonymise. We agree in relation to the personal data of the pupils, teachers and William Cornick's family members that removing the names would not be sufficient. Those involved were a tight knit community and the data subjects are likely to be identifiable from within that community. The Tribunal reminds itself that disclosure is to the world at large and the definition of personal data includes information which can be added to the disclosed information in order to reach an identity. The school community are likely to know – who was in which class, who taught which subject, and self identification which will enable other witnesses to rule out certain passages thus narrowing the pool of those who said something else.

55. The Commissioner argues therefore that the material is not capable of redaction from the remaining withheld information without rending that information valueless. The Tribunal disagrees and is satisfied that sufficient information can be provided in anonymised form that some further information that will inform debate can be disclosed (as provided for in the closed schedule).

Investigations and proceedings conducted by public authorities.

56. The WYP also continue to rely upon s30 FOIA which provides;

> *(1)Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—*
>
> *(a)any investigation which the public authority has a duty to conduct with a view to it being ascertained—*
>
> *(i)whether a person should be charged with an offence, or*
>
> *(ii)whether a person charged with an offence is guilty of it, …*

57. This is an exemption which is subject to the public interest test as set out in s2(2)(b) of FOIA namely that:

> *(b)in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

From its nature there is no dispute that this exemption is engaged. The Tribunal now goes on to consider the public interest. It is apparent from their submissions before this Tribunal that the thrust of WYP's arguments are related to ensuring the effective prosecution of offences by protecting the identity of witnesses.

58. In their original refusal[14] WYP also argued that disclosure could "*potentially prejudice any future investigation or proceeding processes as it would show how interviews relating to serious offences are conducted"*. The Tribunal is not satisfied that this argument holds any weight. Usually interviews are read out in open court. Whilst there is scope for editing and abridging, this is a daily occurrence in the vast majority of cases, and the Tribunal is not satisfied that there was anything exceptional in the way that this case was conducted which would differentiate it.

59. WYP also relied upon the need "*to maintain the independence of the judicial process and to preserve the criminal court as being the sole forum of determining guilt".* Following a guilty plea in our judgment this is not material unless argument is in relation to setting a precedent but the public interest is fact specific. In relation to the limited disclosure that the Tribunal determines could be disclosed without breaching the DPA relating to William Cornick the Tribunal repeats its analysis relating to the balance of the legitimate and public interests as set out above and in the closed schedule and is satisfied that the public interest in disclosure outweighs the public interest in maintaining the exemption.

Conclusion

60. For the reasons set out above, the appeal is allowed in part to the extent set out in the closed schedule. The Tribunal requires the WYP to provide the information set out in the schedule within 35 days. This decision is unanimous. In all other respects the appeal is refused.

Dated this 27th day of June 2016

Fiona Henderson
Tribunal Judge

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