



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

**Case No. EA/2015/0253**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FS50587581  
Dated: 13 October 2015**

**Appellant: DAVID McCANDLESS**  
**Respondent: INFORMATION COMMISSIONER**  
**On the papers: 24 MAY 2016**  
**Date of decision: 7 JULY 2016**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**DR HENRY FITZHUGH and STEVE SHAW**  
Tribunal Members

**Written Representations:**

For the Appellant: Mr D McCandless

For the Respondent: Ms Z Gannon, Counsel instructed on behalf of the Information Commissioner.

**GENERAL REGULATORY CHAMBER**

**INFORMATION RIGHTS**

**Subject matter: Freedom of Information Act 2000**

Absolute exemptions

- Personal data s.40

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 13 October 2015 and dismisses the appeal.

**REASONS FOR DECISION**

**Background**

1. Mr David McCandless (the Appellant) wanted information about a Speedwatch Coordinator and other Speedwatch related matters from Cambridgeshire Constabulary.
2. He had been provided with some of the information by Cambridge Constabulary who advised the Appellant that it did not hold some of the information he had requested and that other information was being withheld on the basis that it was personal information covered by the provisions section 40 (2) of FOIA.

**The request for information**

3. On 23 April 2015 the Appellant wrote to Cambridge Constabulary asking for:

Q 1 For the Year 2014 and the end of the first Quarter of 2015, please provide, for public analysis and accountability, a collated PDF file of [name redacted] copies of all individual claims for expenses submitted by the PSV [Police Service Volunteer] Force Speedwatch Coordinator.

Q 2 If justifiably not able to satisfy the request of 1 (above), please provide totals for the same periods for all such claims for:

- a. Mileage (Fuel)
- b. Travel & Subsistence (Journey time, meals, any accommodation charges).
- c. IT (Computer, Line rental etc.)
- d. Any Other Reasons (please classify and group if possible)

Q 3 From which lowest-level Constabulary Department's Budget were these expenses allocated/paid?

Q 4 Apart from disestablishing the post, what measures are being considered to reduce this cost to the taxpayer of this post in the even worse austere times ahead?

Q 5 With those at (4) in mind, what are the forecast expenses for the Force Speedwatch PSV the 2015/16.

Q 6 In the balance sheet of Expenses vs Income, what savings has the Constabulary made or believe it has made and in what areas by using the PSV recruited in May 14 as the Force Speedwatch Coordinator?

Q 7 Six new PSVs have just been recruited (Apr 15) as District Speedwatch Coordinators. What is the forecast cost to the Police (public) budget for these PSVs for:

- a. Training (all aspects).
- b. Expenses (headings as at Q 2).

Q 8 What savings is the Constabulary planning to make by recruiting 6 x PSVs as District Coordinators for FY 15/16 rather than by using suitable, experienced existing public volunteers (some of them leading business people) who would provide their services totally free of charge (not even asking for expenses as they have done willingly for the last six years?).

4. The Constabulary responded on 22 May 2015 providing some of the information, stating that some was not held and that some was exempt from disclosure by virtue of section 40 (2) on the basis that it was personal information.

5. Following an internal review requested by the Appellant in respect of Question 1 and Questions 4 – 8, the Constabulary wrote to the Appellant on 26 June 2015 maintaining its position.

#### The complaint to the Information Commissioner

6. The Appellant complained to the Commissioner on 29 June 2015.
7. In his decision notice dated 13 October 2015 the Commissioner held that the Constabulary had correctly applied the exemption under section 40 (2) in respect of personal data and that, on the balance of probabilities, no recorded information was held by the Constabulary in respect of Questions 4 – 8.

#### The appeal to the Tribunal

8. The Appellant appealed to the Tribunal in respect of the withholding of the information in relation to Question 1.
9. In essence, he states that:
  - (1) The Speedwatch Coordinator was a “police official” and should be subject to the same accountability and transparency as any other public official. He provided an example of apparently disclosed information relating to expenses claimed by a Police and Crime Commissioner (PCC) in Cambourne.
  - (2) All public officials, including volunteers, should be subject to FOIA requests especially where there was “just cause” or “concerned”. The Commissioner should not support police volunteers being given “immunity from public accountability”.
  - (3) The Appellant already had the individual’s home address, work address and car registration number and – as such – the disclosure of the information would not “imperil” the individual.
  - (4) Cambridgeshire Constabulary had not provided adequate proof to support its statement that there had been a campaign to discredit the individual and the Constabulary.

- (5) The disclosure was justified as the data subject was taking unnecessary journeys, the expenses were “escalating out of control” and because disclosure of the exact details of the claims would enable the Appellant to “take the matter up with the Constabulary through normal channels”.

## Evidence

10. The Tribunal adopted the guidance for the approach to be taken by courts and tribunals in respect of any closed material procedure set out immediately below.
11. In *Bank Mellat v HMT (no. 1)* [2013] UKSC 38, which was not a case about FOIA, Lord Neuberger said at paragraphs 68-74 that:
- i) If closed material is necessary, the parties should try to minimise the extent of any closed hearing.
  - ii) If there is a closed hearing, the lawyers representing the party relying on the closed material should give the excluded party as much information as possible about the closed documents relied on.
  - iii) Where open and closed judgments are given, it is highly desirable that in the open judgment the judge/Tribunal (i) identifies every conclusion in the open judgment reached in whole or in part in the light of points made or evidence referred to in the closed judgment and (ii) says that this is what they have done.
  - iv) A judge/Tribunal who has relied on closed material in a closed judgment should say in the open judgment as much as can properly be said about the closed material relied on. Any party excluded from the closed hearing should know as much as possible about the court’s reasoning, and the evidence and the arguments it has received.
12. In *Browning v Information Commissioner and Department for Business, Innovation and Skills* [2013] UKUT 0236 (AAC) the Upper Tribunal issued similar guidance about the use of closed material and hearings in FOIA cases, noting that such practices are likely to be unavoidable in resolving disputes in this context:
- i) FOIA appeals are unlike criminal or other civil proceedings. The Tribunal’s function is investigative, i.e. it is not concerned with the resolution of an adversarial civil case based on competing interests.

ii) Closed procedures may therefore be necessary, for consideration not only of the disputed material itself, but also of supporting evidence which itself attracts similar sensitivities.

iii) Parliament did not intend disproportionate satellite litigation to arise from the use of closed procedures in FOIA cases.

iv) Tribunals should take into account the Practice Note on Closed Material in Information Rights Cases (issued in May 2012). They should follow it or explain why they have decided not to do so.

v) Throughout the proceedings, the Tribunal must keep under review whether information about closed material should be provided to an excluded party.

13. There was a closed bundle in this appeal contained the disputed information.

14. It was necessary for the Tribunal to see this and consider the information i it when set against the Open material before reaching its conclusions.

15. The Tribunal has considered carefully and rigorously the material in the light of the Appellant's points and concerns already expressed in the notice of appeal and in his other representations and submissions.

16. In the light of its decision on the effect of the section 40 (2) personal data exemption, upholding the Information Commissioner's decision, it has not been necessary to do a closed, confidential Annex in respect of this decision in relation to the closed material.

### Conclusion and remedy

17. As is carefully set out in the Information Commissioner's response to the appeal, the effect of section 40 (2) is the personal data will be absolutely exempt where its disclosure would breach any of the data protection principles contained within Schedule 1 of the Data Protection Act 1998.

18. The relevant Data Protection Act principle that operates in this appeal is Principle 1 which requires 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.
19. In terms of public officials, they have a lower expectation of privacy in relation to data about their public functions than employees of private organisations.
20. However, junior employees of the public authority will have a stronger expectation of privacy because they are accountable to their employer rather than directly to the public.
21. In effect, the less senior the member of staff is then the lower is the likelihood of them having any expectation that they would be subject to public scrutiny.
22. Having looked at the information in question and in the context of the appeal generally the Tribunal is satisfied that the request relates to the expenses of one very specific individual and is personal data.
23. In terms of the Data Protection Act principles, it does not matter that the Appellant knows who this individual is because the information request – if granted – is information that would then be revealed to the public generally.
24. The Tribunal has concluded that the disclosure would be unfair and that the exemption under section 40 (2) is engaged.
25. That accords with the expectations of the data subject in question and includes the fact that the information relates to a voluntary member of the Constabulary staff who is not an executive staff member or a senior officer

and is certainly not a high profile figure such as an MP or a Crime and Police Commissioner.

26. As a junior member of staff he would have a reasonable expectation that copies of his actual expenses claims would not be put into the public domain.

27. Were this information to be placed in the public domain it would necessarily allow public access to the individual's home address, private vehicle details, the locations of garages used purchase fuel and would show a pattern of or routine for such purchases. That would enable people to harass the individual and the disclosure of the withheld information could cause the individual distress.

28. While the promotion of transparency could be assisted by the disclosure of the information, the full value and the category of the expenses had already been disclosed, diminishing the transparency issues.

29. For all these reasons the Tribunal is satisfied, on the balance of probabilities, that the section 40 (2) FOIA exemption applies to the Appellant's information request and that his appeal must fail.

30. Our decision is unanimous.

31. There is no order as to costs.

Robin Callender Smith

Judge

7 July 2016