



Appeal number: EA/2016/ 0236

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

**CHRIS DAVIES**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL: JUDGE ALISON MCKENNA  
Ms MARION SAUNDERS  
Mr JOHN RANDALL**

**Determined on the papers, the Tribunal sitting in Chambers on 8 February 2017**

## DECISION

1. The appeal is dismissed.

## REASONS

### *Background to Appeal*

2. The Appellant made a request to the University of South Wales (“the University”) on 25 March 2016 for information about a complaint which it was thought had been made by a named individual about another named individual relating to an allegation of plagiarism.
3. The University responded on 13 April 2016, stating that it could neither confirm nor deny whether it held the requested information, in reliance upon s. 40 (5) (b) (i) of the Freedom of Information Act 2000 (“FOIA”).
4. The Respondent issued Decision Notice FS50630380 on 7 September 2016, upholding the University’s decision. The Decision Notice found that if the information was held, it would constitute personal data and that confirming or denying whether the requested information was held would itself reveal that personal data. It also found that to confirm or deny whether the requested information was held would contravene the first data protection principle because disclosing an allegation of plagiarism would cause distress to the data subject if it was confirmed or denied to have been made and the data subject would have a reasonable expectation of privacy in relation to such data.
5. The Decision Notice carried out a balancing exercise between the rights and freedoms of a data subject in these circumstances as against the legitimate public interest in a confirmation or denial of whether the requested information was held. It concluded that the public interest in the particular circumstances of this case favoured maintaining a data subject’s right to privacy.

### *Appeal to the Tribunal*

6. The Appellant’s Notice of Appeal dated 3 October 2016 submitted that there was a legitimate public interest in the subject matter of the request in order to maintain trust in the integrity of the University and in view of the significant public funding it receives. It is also stated that the information is relevant to the Appellant’s on-going dispute with the University.
7. The Respondent’s Response dated 3 November 2016 maintained the analysis as set out in the Decision Notice.
8. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal

considered an agreed open bundle of evidence comprising 67 pages, including submissions made by both parties, for which we were grateful. We also had before us a closed bundle, consisting of one page. This was the University's decision in relation to the Appellant's request.

#### *The Law*

9. S. 40 (5) (b) (i) FOIA provides that if a public authority receives a request for information which, if it were held, would be the personal data of a third party it may refuse to confirm or deny whether it holds the information requested where to do so would breach one of the data protection principles.

10. The data protection principles are set out in a schedule to the Data Protection Act 1998 ("DPA"). The first principle is that personal data should only be processed (in this context, disclosed) where it is fair and lawful to do so.

11. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

*"If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."*

12. We note that the burden of proof in satisfying the Tribunal that the Commissioner's decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

#### *Conclusion*

13. The Appellant's grounds of appeal do not appear to dispute that the information requested would, if held, constitute personal data within the meaning of the DPA. We are satisfied that this is the case, as the request relates to a living person who is identifiable from it. We agree with the Respondent that for the University to confirm or deny whether the requested information was held would itself involve processing personal data.

14. The Appellant's grounds of appeal suggest that the legitimate public interest favours disclosure of personal data in order to maintain public confidence in the

integrity of the University and in view of its receipt of public funding and in order to assist with a private dispute. We have considered these factors and recognise that they are important. However, we have concluded that the public interest factors referred to by the Appellant do not outweigh the expectation of and right to privacy of the data subjects in the particular circumstances of this case, where the possible existence of a complaint about plagiarism in an academic setting has the potential to cause significant distress and damage. We do not therefore consider that it would be fair and in accordance with the first data protection principle for the University to process the personal data requested, if it is held. We consider that it was correct for the University to rely on s. 40 (5) (b) (i) to neither confirm nor deny whether it holds the requested information. We find no error of law in the Decision Notice.

15. For all the above reasons, the appeal is dismissed.

**ALISON MCKENNA**

**DATE: 15 February 2017**

**PRINCIPAL JUDGE**

**Date Promulgated: 16 February 2017**