



**Appeal number: EA/2016/ 0267**

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

**ANDI ALI**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Determined on the papers, the Tribunal sitting in Chambers on 30 March 2017**

## DECISION

1. The appeal is dismissed.

## REASONS

### *Background to Appeal*

2. The Appellant made a request to The Cabinet Office on 26 January 2016 in the following terms:

*“Under the Public Interest Disclosure Act (PIDA) 1998, a person cannot be sacked for raising concerns under the act, or suffer a detriment. As such, please provide the following information.*

*What is the position of Civil Servants who are sacked for raising concerns under the PIDA before they were 55. Are they allowed to take their pensions in full, once they reach 55, as many Civil Servants who take early retirement do, or are they banned because they are no longer Civil Service employees. If so, is this not a detriment and banned under the act. Please provide all guidance you have on this matter, from 2007, onwards.*

*Also provide figures showing the number of Civil Service whistle blowers who were sacked before they reached the age of 50, but who then were awarded their pensions in full from age 55 onwards. Please provide the number from 2007 onwards.”*

3. The Cabinet Office responded on 16 February 2016 and denied holding any relevant information.
4. The Respondent issued Decision Notice FS50627501 on 5 October 2016, making a finding that on the balance of probabilities no information within the scope of the request was held. The Respondent required no steps to be taken by the Cabinet Office.

### *Appeal to the Tribunal*

5. The Appellant’s Notice of Appeal dated 1 November 2016 relies on grounds of appeal that the Information Commissioner was wrong to reach the conclusion that she did because The Cabinet Office is responsible for over-seeing other Government Departments so “clearly holds” the information requested. The Appellant provided copies of correspondence with HMRC in support of his case.
6. The Respondent’s Response dated 8 December 2016 maintained the analysis as set out in the Decision Notice. It is submitted that the documents from HMRC do not

assist the Appellant's case in relation to whether The Cabinet Office holds information within the scope of the request.

7. 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. I considered an agreed open bundle of evidence comprising some 50 pages, including submissions made by both parties, for which I am grateful.

#### *The Law*

8. 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.”*

9. I 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*

10. The Decision Notice records at paragraphs 11 and 12 the evidence provided by the Cabinet Office to the Information Commissioner in support of its stance that the requested information is not held. The Decision Notice also records at paragraph 10 that the Appellant was unable to provide the Information Commissioner with any evidence which supported his claims.

11. I am not persuaded that the letters from HMRC assist the Appellant's case, as whatever the administrative relationship between the two Departments, they are separate “public authorities” for the purposes of schedule 1 to the Freedom of Information Act 2000.

12. I am satisfied that the Decision Notice applies the correct legal test of the balance of probabilities in assessing the evidence provided. I consider that the

Information Commissioner made a finding of fact (that the requested information was not held) which was open to her applying this test to the evidence provided.

13. I am not persuaded that the Decision Notice was wrong. For that reason, I must dismiss this appeal.

**(Signed)**  
**ALISON MCKENNA**

**DATE: 30 March 2017**

**PRINCIPAL JUDGE**

**DATE PROMULGATED: 30 MARCH 2017**