



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2017/0099**

**Before**

**Judge**

**David Farrer Q.C.**

**Tribunal Members**

**Andrew Whetnall**

**and**

**Roger Creedon**

**Between**

**Edward Williams**

**Appellant**

**and**

**The Information Commissioner ("The ICO")**

**Respondent**

**Mr. Williams appeared in person.**

**The ICO did not appear but made written submissions**

## Decision and Reasons

The Tribunal finds that, at the material time, London Councils held the requested information for the purposes of s.3(2) of the Freedom of Information Act, 2000. This appeal is therefore allowed. The Tribunal substitutes for the decision of the ICO set out in her Decision Notice (“the DN”) an order that London Councils, within thirty - five days of the publication of this Decision, comply with FOIA s.1(1)(b), subject to s.2(2).

1. Motorists who receive civil penalty charges for parking and other civil traffic contraventions have a right of appeal to an Environment and Traffic Adjudicator, (“the adjudicator”) enacted, as regards Greater London, in the Road Traffic Act, 1991, as amended and Part 6 of the Traffic Management Act, 2004.
2. London Councils (“LC”) is a public authority representing the Greater London boroughs. It is subject to FOIA by virtue of Schedule 1. Pursuant to s.73 of the RTA 1991, s. 81 of the TMA 2004 and regulation 15 of the Civil Enforcement of Parking Contraventions (England) General Regulations, 2007/3483, (“the 2007 regulations”) it formed a joint committee with Transport for London, to appoint adjudicators and provide administrative support and facilities.
3. That support service is provided by London Tribunals (“LT”), formerly the Parking and Traffic Appeals Service (“PATAS”), which is, in effect, a department within LC. The joint committee is an “enforcement authority” with the functions specified in s.81 TMA 2004.
4. Adjudicators in Greater London are appointed for a fixed five - year term by the enforcement authority with the approval of the Lord Chancellor on terms decided by that authority. They are remunerated by the enforcement authority, which meets all the costs of the service (see Reg. 15 of the 2007 regulations). They may be dismissed by that authority, only with the consent of the Lord Chancellor and the Lord Chief Justice. (TMA s.81(3) and (4)).

5. Adjudicators are required to make an annual report to the enforcement authority (TMA s.81(5)(a)) on matters which it determines.
6. In summary, adjudicators are appointed to their office by the enforcement authority. Their appointment or dismissal require external judicial sanction. They are accountable to the enforcement authority for the general conduct of their office but not, of course, for the judicial decisions that they make or any justification of such decisions. Notwithstanding their employed status, at least for tax purposes, they are plainly independent of the enforcement authority, here LC. Their position is closely aligned to that of judges, who are appointed by the Ministry of Justice, pay tax and National Insurance by the PAYE system but are unquestionably independent officeholders.
7. That said, their employment status is not critical to the result of this appeal because it cannot determine the question whether the requested information held by LT is held exclusively on behalf of the adjudicators.
8. On 11<sup>th</sup>. November, 2016 Mr. Williams addressed the following request to LC – *“Please provide a list of all training manuals, guidance, advisory circulars, etc. issued to parking adjudicators sitting in London”*. There is, in our view, no material difference here between a request for a list and a request for the documents themselves, given the grounds for LC’s refusal.
9. LC replied on 18<sup>th</sup>. November, 2016 that LT was not a public authority under FOIA. That is undoubtedly true. It is not a public authority at all but part of LC, which is. It also treated the request as though it had been addressed to an adjudicator, which was not the case. It stated that the requested information was on its website but, in support of that claim, referred to information outside the scope of the request.
10. When Mr. Williams requested an internal review, LC gave a different answer, namely that LT did not hold the requested information for the purpose of FOIA

s.3(2) because it held it on behalf of the adjudicators. This is the case that LC presented to the ICO and which the ICO accepted in her DN. LC appeared to accept, at the stage of the internal review, that, if LT held the information under s.3(2), then the information was held by LC.

11. Mr. Williams complained to the ICO.

12. Responding to questions raised by the ICO in her investigation, LC, in a letter dated 20<sup>th</sup>. April, 2017, made the following points -

- (i) The adjudicators have judicial status and are not subject to FOIA.
- (ii) Information held by LT is not subject to FOIA.
- (iii) In 2011 PATAS had been listed by the Ministry of Justice for possible inclusion in a longer list of public authorities to be subject to FOIA but no such change was enacted.
- (iv) "LT is the collective name for the two tribunals and the support service provided by ("LC")"
- (v) "... the information requested is held on (the adjudicators') behalf on systems provided by LC at LT."

13. The ICO accepted the argument set out at §§10 and 12(v) above and dismissed the complaint. Her Response to the Grounds of Appeal simply confirmed that acceptance.

14. Mr. Williams' Grounds of Appeal were succinct. He argued that LC held the requested information and was a public authority for the purposes of Schedule 1. He included a quotation from a statement on LT's website that -

*"... adjudicators are exempt from the provisions of the Freedom of Information Act, 2000, as are documents created by the administrative staff of London Tribunals"* (our emphasis)

## Our Findings

15. If LC is right, the public has no right of access to any guidance, practice manual or circular provided to adjudicators to assist them in their conduct of appeals because the only public authority which holds and is involved in the creation or distribution of such documents holds them on behalf of individuals who are not public authorities. Given that the requested material is of a general character and does not involve the judicial business of the adjudicators, namely their individual decisions, and having regard to the legitimate public interest in knowing how, in general terms, adjudicators are advised and trained in the performance of their role, such an immunity from disclosure would be very odd.
  
16. We were not shown examples of the requested material, a strange omission from the ICO's evidence and, presumably, her investigation. We have, however, some general picture of the kind of material likely to be involved, derived from our own work as experienced judge and panel members, who receive guidance and assistance from a central authority, whether the court or the tribunal service. The production of such material is a part of the support function provided, in the case of adjudicators, by LT. Much of it may deal with routine issues involved in the daily running of the tribunals. Some may offer advice as to the treatment of appellants and witnesses or questions of disability and diversity. There may be instructions as to the use of judicial information technology. Some, we suppose, will be comments on relevant current legal issues. None of it will trespass on the judicial independence of the adjudicators.
  
17. The authorship of such material is irrelevant. More important is its origin, which is likely to be LT, as may be implied by the extract quoted at §13. If not the originator, LT is almost certainly the distributor to adjudicators of the requested material. LC clearly accepts that LT controls copies of such material, whether in hard copy or electronic (see §11(5)). Its case is that it does so on the adjudicators' behalf.

18. Just like judges in the court and tribunal systems, adjudicators must receive copies of the requested material individually, whether in hard copy or, more probably, electronically. Of course, they are not public authorities subject to FOIA and nobody has requested disclosure of their copies of the requested material, whether paper or computer file.
19. This request was made to LC so the judicial status of the adjudicators is quite irrelevant to the determination of this appeal. The principal issue is the purpose for which LT holds this information *"on systems provided by LC"* ( §11(v)).
20. LT is not a public authority, not subject to FOIA nor the target of the request for information. We can do no better than quote LC's answer to the ICO - *"LT is the collective name for the two tribunals and the support service provided by ("LC")"*. It is accurately described by Mr. Williams as a *"function of LC"*. LC's statement that *"information held by LT and the LT support service is not subject to the FOIA"* ignores the fact that LT is part of LC which is certainly subject to FOIA.
21. The enforcement authority for Greater London is the joint committee formed by LC jointly with TfL (Reg. 15 of the 2007 regulations). Both are Schedule 1 public authorities. Information held by the support service, LT, is held by LC and probably, though immaterial to this appeal, also by TfL. The government's decision, if there was a decision, not to include PATAS in FOIA Schedule 1 has, therefore, no bearing on this appeal. LC has evidently assumed responsibility for the provision of the support service required by the enforcement authority. The nature of any arrangement with TfL in relation to that provision is no concern of the Tribunal.
22. Since possession of the information by LT is possession by LC, the critical question is the purpose or purposes for which LT holds the requested information. If the purpose, or one of the purposes, is the performance of its delegated functions under TMA s.81, then the appeal succeeds.

23. The answer seems perfectly clear. Holding, possibly creating and distributing the requested information to adjudicators represents a significant part of its support function, just like that of the Liverpool Office of the General Regulatory Chamber of the Tribunal Service as regards judges dealing with information rights or circuit offices and other MoJ services supporting the full and part - time judiciary. It holds such information because any support service must have access to this type of information provided to adjudicators, not least so as to deal with questions and requests for copies and explanations - an example, perhaps, of information held for the purposes both of LT and of the adjudicators. Such information is held "*otherwise than on behalf of another person*", because it is held also on behalf of LT. see *University of Newcastle upon Tyne v Information Commissioner & BUAV [2011] 2 Info LR 54*.

24. If LC were right in asserting that LT held the requested information exclusively on behalf of the adjudicators, it would follow that, at any time, the adjudicators could require LT to deliver up to them all such information which it held in any form, deleting any electronic back - up copies. That corollary demonstrates that LC's proposition is unsustainable.

25. Our finding on this issue does not in any way prejudice the judicial independence of the adjudicators because it does not affect the making of individual decisions. Nobody could sensibly suggest that publication of the Judicial College Guidance on Diversity or of Sentencing Guidelines threatens the independence of judges. The request was for "a list of all training manuals, guidance, advisory circulars etc.", not for sensitive communications between one judge(adjudicator) and another or assessments of a pending appeal. A claim that the Judicial College Personal Injury Guidelines were held by the Judicial College, exclusively on behalf of judges to whom they were communicated would be met by those judges with incredulity.

26. If the preceding paragraphs have featured a degree of supposition, that is because the ICO produced no examples of the potentially responsive material which LT held.

That was unhelpful. We do not consider, however, that its absence prevents us from making a proper determination of the issues raised in this appeal.

27. For these reasons we allow this appeal. Within thirty – five days LC must either disclose this information or, if it claims that s.2(2) applies, provide a response accordingly. The information can be provided, either in the form of the specified list or by disclosure of the documents described in the request.

28. This is a majority decision. The opinion of Mr. Whetnall, the dissenting member accompanies it.

Signed

David Farrer QC,

Judge of the First-tier Tribunal

Date: 4th. February, 2018

Promulgated: 9<sup>th</sup>. March, 2018