



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS50795457**

Appeal Reference: EA/2019/0135

Considered on the papers

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

ANNE CHAFER & JEAN NELSON

Between

IAN CLIFFORD FITZSIMMONS

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

1. The Appellant in these proceedings made a four part request for information from Hampshire Constabulary. The first three parts, for a blank copy of the terms of employment in Hampshire Constabulary, for the total number of overtime hours worked in each year from 2015-2017 and for the expenses claims of the Chief Constable for the same period, were met. The fourth part, for the expenses claims of a named Chief Inspector for the same period, was

refused, relying on s40(2) FOIA which provides that personal information should not be disclosed if it is the data of an individual other than the requester and one of the conditions in section 40 (3A) (3B) or (4A) applies. These are (so far as is relevant):-

“(3A)The first condition is that the disclosure of the information to a member of the public otherwise than under this Act –

(a)would contravene any of the data protection principles, or

.....

(3B)The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

.....”

2. The Appellant complained to the Respondent (the IC) who investigated. In her decision notice she emphasised that since information about the officer’s expenses was information about a living person this information was personal data which should only be processed (in this case disclosed under FOIA) in accordance with Article 5(1)(a) of the General Data Protection Regulation and therefore *“lawfully, fairly and in a transparent manner in relation to the data subject”*. Processing is lawful only if one of the bases for processing set out in Article 6 applies. The IC identified 6(1)(f) as the most applicable *(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*
3. In applying this to the request she applied a three-part test:-
 - (a) whether a legitimate interest was being pursued by the request,
 - (b) whether disclosure was necessary to meet the legitimate interest, and
 - (c) balancing the legitimate interest with the rights of the data subject.
4. She accepted that it was legitimate to wish to scrutinise the expenses of senior police officers and in the interests of transparency the expenses of police in Chief Officer posts (Chief Constable, Deputy Chief Constable and Assistant Chief Constable) are routinely published. A Chief Inspector is below this grade so such an individual’s expenses are not routinely published, and this officer did not consent to publication of the expenses.
5. The IC did not consider that there was the same legitimate interest in disclosing the expenses of less senior officers and stated:-

“Officers are entitled to make expenses claims in the course of their employment, in accordance with their contractual terms. If an officer is suspected of behaving in a way which breaches the terms of their contract of employment, this is something which may

be reported to the force and it should be permitted to investigate the allegation as necessary. The Commissioner does not consider that there is, as a matter of course, a legitimate interest in individual members of the public conducting their own investigations in this regard."

6. She concluded that there was not a legitimate interest in disclosure and accordingly the information should not be disclosed under FOIA.
7. In his appeal the Appellant argued that the Chief Inspector was a senior officer to whom the Chief Constable had delegated functions. He was therefore sufficiently senior for the information to be disclosed. There was no justification for the exclusion of the Chief Inspector from disclosure. He stated:- *I have a democratic right to scrutinize the operations, and activities of public authorities and the police. As a Council Tax payer I have every right to scrutinize the operations, budget, performance, and veracity of Hampshire Constabulary, and its staff.*
8. In resisting the appeal the IC noted that a wide range of interests may be legitimate and in turn they may be compelling interests and trivial interests. Trivial interests could be more easily overridden in balancing the interest in disclosure against the interest of the data subject on not having personal information disclosed.
9. She addressed the three part test further and with respect to the second part of the test - the necessity of disclosure - she argued that the test *"involves the consideration of alternative measures, and a measure would not be necessary if the legitimate aim could be achieved by something less.* In essence she concluded that if there was concern about an individual officer it should be reported to the relevant police authorities which could investigate appropriately using the normal confidential police procedures such as a complaint to the Constabulary's Professional Standards Branch which did not unnecessarily reveal personal information about an officer to the public. The Appellant's legitimate interest in what expenses could be claimed in various circumstances and how claims were monitored, could be met by disclosure of the relevant policies and procedures without disclosing personal information.
10. With respect to the third part of the test (the balance of interests) she noted that there was no presumption in favour of the release of personal data. She argued that the Chief Inspector had a reasonable expectation that expenses would not be disclosed to the world at large, any concerns the Appellant had could be addressed through other means, furthermore disclosure of expenses would not reveal whether or not they were properly payable.

Consideration

11. While the Appellant has expressed himself forcibly on a number of issues and there has been exploration by the parties of a number of side issues the issue for this tribunal is whether the Chief Inspector's expenses claims for three

years, the officer's personal data, are properly disclosable under FOIA or are they protected from disclosure to the whole world by s40(2).

12. In this case the Appellant asserts that he has the right to the information and the Chief Inspector is sufficiently senior that the information should be disclosed. The standard arrangements for routine disclosure of the expenses of senior police officers applies to chief officers, individuals who are part of the National Police Chiefs Council. Below them in the hierarchy are Chief Superintendents and Superintendents who are represented by the Police Superintendents Association and whose expenses are not routinely published, and below them Chief Inspectors who are represented (like all other police officers) by the Police Federation again expenses are not routinely published. The officer whose expenses are sought is therefore on the sixth rung of the police hierarchy, with five grades above and three (Inspectors, Sergeants and Constables) below.
13. These arrangements mean that this individual's expenses are not routinely disclosed and he has a reasonable expectation that the expenses, along with the expenses of staff in two grades above and three grades below will not be disclosed. The IC properly argues that if there are concerns of an individual nature they may be addressed by the formal procedures of the police force and that transparency of the system can be addressed by disclosure of the relevant procedures. The tribunal is satisfied that the IC appropriately addressed the criteria and her decision is correct in law.
14. In his notice of appeal the Appellant made allegations of bias and corruption against the ICO. The IC is an independent regulator who takes different positions with respect to the actions of various public bodies in accordance with her view of the merits of the cases which she investigates. There is simply no basis for the intemperate accusations which the Appellant has made.
15. The appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: 8 August 2019

Promulgation date: 13 August 2019