



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS5075887**

Appeal Reference: EA/2019/0271

**Considered at Wigan & Leigh Magistrates Court
On 31 January 2020**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

JEAN NELSON & PAUL TAYLOR

Between

PAUL WELSH

Appellant

and

INFORMATION COMMISSIONER

First Respondent

DECISION AND REASONS

1. Mr Welsh is a journalist who sought information from Newry Mourne and Down District Council:-

Under the Freedom of Information Act I request the following: A copy of all email correspondence between [name redacted a council officer] and [name redacted a member of the public] relating specifically to the 2016 Firmus Energy Newry City Triathlon & 2016 Borderman Half Distance Triathlon from January 1 2016 to October 30 2016.

2. The Council refused to supply the information requested relying on section 40(2) FOIA, which protects personal data from disclosure. Mr Welsh sought an internal review of the decision. In his request he made a series of statements about the organisation of the event and the roles of the two individuals concluding:-

"I would contend that e-mails between {names redacted} may contain information that we are seeking which, we would contend, is in the public interest – how ratepayers money was spent for an event that was NOT a Council event but received £35,000 in funding, an overspend of some £15,000, had no agreement with the organisers, no post-event report, no accountability and no transparency. Considering the above, I am appealing the Council's refusal to provide the information requested."

3. The Council maintained its position and Mr Welsh complained to Information Commissioner who investigated. She sought the comments of the Council who informed her that it would be very difficult to separate the personal data of the member of the public from that of the Council officer. The member of the public had confirmed that if the e-mail correspondence were to be disclosed then that individual's name and contact details, as well as those of other individuals copied into the correspondence should not be disclosed. The Commissioner concluded:-

16. It is known that the individual was involved in helping with the organisation of the event, however there has been media coverage of the Council's organisation of the event and, as a private individual acting in a voluntary capacity, this individual does not wish to be 'implicated' in any questions surrounding the organisation of the event and its funding, due to concerns that that such implication could tarnish the individual's reputation for community/voluntary support which has been built up over a long period of time. The prospect of such reputational damage resulting from disclosure would cause distress to the individual. The Council accepts that there is a legitimate interest in the public being aware of funding issues, especially as public funding is involved, and indeed the Council has disclosed information regarding funding in response to previous requests under the FOIA. However, the Council states that disclosure of the specific e-mails between the two individuals would not be necessary in order for that legitimate interest to be met, and so there would be no legitimate interest considerations which would outweigh the likely distress/damage caused.

17. The Commissioner, having perused the information withheld under section 40(2), accepts that the second individual would not have had a reasonable expectation of disclosure and that disclosure would be likely to cause them damage or distress, which is not outweighed by any legitimate interest. The Commissioner also accepts that it would be difficult to separate out the personal data of the first individual from that of the second, so she has treated the entirety of the information as being both individuals' personal data.

4. In his appeal Mr Welsh set out in considerable detail the information he had gathered about the event including the number of Council staff involved on the day, the costs to the Council, the lack of contracts between the Council and the organisers; the absence of controls of various sorts, his concerns as to where sponsorship and entry fees had been paid and the confirmation he had received from the Council that it was not a Council event. He felt that the non-Council organisers of the event were not transparent about the financial and other issues around the event.
5. In challenging the decision, he argued that the member of the public had a very senior public role in organising the event and dealing with suppliers and service providers. He stated, *"The individual's involvement in the event and his reputation has not been called into question as the individual has not engaged with my investigation and as such there is no suggestion or implication of impropriety on that individual's behalf."*
6. He argued that the individual had been responsible for setting up payment arrangements for sponsorship and entry fees and was a vital cog in the arrangements. From the information that Mr Welsh held it was clear that the Council had spent £35,000 for an event not sanctioned by the Council but the sponsorship and entry fees did not come to the Council. He had had released to him emails between council officers which *"reveal the organisational web behind the event"* however what was missing were e-mails between this specific council officer and the member of the public. There was a public interest in knowing this; the same arrangements had continued for several years of the event.
7. In resisting the appeal, the Commissioner emphasised that disclosing the information required a legal basis under the Data Protection Act 1998 (the request was made before the GDPR and Data Protection Act 2018 came into force). The first data protection principle requires:-

"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..."

The only such condition applicable to this case is set out in paragraph 6(1):-

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject,"

8. The Commissioner emphasised the distinction in roles between the council officer, acting in an official capacity and the member of the public, who although he played a significant role in organising the event did so as a private

person acting as a volunteer. As such the individual did not wish to be implicated in the media coverage of the Council's role in organising the event due to concern that such implication could tarnish the individual's reputation in the community. Despite what Mr Welsh had stated (paragraph 5 above) she maintained her position that reputational damage could cause distress. She therefore concluded that disclosure would be unfair to both individuals.

9. She further argued that even if fair the disclosure would not meet the requirement of condition 6 in that *"even if the Appellant could establish that disclosure of the requested information was reasonably necessary to meet the legitimate interests of the Appellant and wider public, the Commissioner would nevertheless maintain that the Appellant's arguments for disclosing this information are outweighed by the reasons to protect the rights and freedoms of the [member of the public] namely the expectation of confidentiality, the individual's lack of consent to its release and the negative consequences to the individuals of disclosure."*

Consideration

10. From the notice of appeal, it is clear that Mr Welsh has gathered a large amount of information about the organisation of this event from public sources, from contacting the organising committee and by use of another FOIA request to the Council. He has formulated an interpretation of this information which is highly critical of the Council, its senior officer and the organising committee of which the individual member of the public is a member. At the same time, he advances the claim that the individual's reputation has not been called into question; however, as the Appellant has noted in his own words *"this is because the individual has not engaged with my investigation."* It is clear therefore that a possible intention of Mr Welsh is to expose the individual to reputational harm. In any event we note that the individual has not consented to the disclosure. It seems to the tribunal that the Commissioner's conclusion that disclosure would be unfair is amply justified.
11. Furthermore, if that conclusion is incorrect, the disclosure does not meet the requirements of paragraph 6. For disclosure to occur it needs to be necessary in the pursuit of a legitimate interest and not be unwarranted in the light of the prejudice to the rights freedoms and legitimate interests of the member of the public. The legitimate interest claimed is for the public to understand the funding issues around the event. However, from the notice of appeal it is clear that large quantities of information have already been disclosed under FOIA or gathered by the newspaper; this includes copy invoices showing services purchased and the amount. That information has clearly been enough to enable Mr Welsh to come to conclusions, which he may well have communicated to the public. While further disclosure would no doubt be the occasion for a further story in the newspaper it is difficult to see what the small increment of further information could do to inform the public in any meaningful way. Nothing we have seen in the withheld information suggests

any impropriety; consequently, in our view there is no necessity for the disclosure.

12. The appeal is without merit and is dismissed.

Chris Hughes
(Judge of the First-tier Tribunal)

Date: 20 February 2020
Promulgated: 25 February 2020