



# Tribunals Service

Information Tribunal

Appeal Number: EA/2006/0022

FS50086598

## Freedom of Information Act 2000 (FOIA)

Heard on the papers

Date: 12<sup>th</sup> December 2006

Decision Promulgated

3rd January 2007

**BEFORE**

**INFORMATION TRIBUNAL CHAIRMAN**

**John Angel**

**And**

**LAY MEMBERS**

**Malcolm Clarke and Jenni Thompson**

**Between**

**EDWIN ALCOCK**

**Appellant**

**And**

**INFORMATION COMMISSIONER**

**Respondent**

**And**

**CHIEF CONSTABLE OF STAFFORDSHIRE POLICE**

**Additional Party**

**Decision**

**The Tribunal upholds the decision notice dated 6<sup>th</sup> April 2006 and dismisses the appeal.**

## **Reasons for Decision**

### **The request for information**

1. On 17<sup>th</sup> January 2005 the Appellant (Mr. Alcock) made a request to the Chief Constable of Staffordshire Police (Staffordshire Police) under section 1 of the Act, for the following information.

*(a) Evidence to show why Staffordshire Police have taken no action to recover public funds wasted by your malicious informant.*

*(b) Evidence to show why Staffordshire Police refused to release the name of a malicious informant.*

*(c) Evidence to show why Staffordshire Police are protecting a known malicious informant.*

*(d) Evidence to show why Staffordshire Police are knowingly breaching the Data Protection Act where a malicious intent has been proven beyond a reasonable doubt.*

2. On 27<sup>th</sup> January 2005 Staffordshire Police replied that they were not obliged to comply with the request by virtue of section 14 of the Act, on the ground that it was a vexatious or repeated request. Staffordshire Police asserted that the points raised had already been dealt with in the Courts; that points (a), (b) and (c) were based on unsubstantiated allegations; and that point (d) had already been considered at Mr. Alcock's request by the Information Commissioner (Commissioner) in 2000 under data protection laws.

### **Background to the request**

3. Staffordshire Police received information about Mr Alcock from an informant. The informant made various allegations against Mr Alcock which were recorded in an information log dated 25<sup>th</sup> June 1999. Subsequently a written statement dated 1<sup>st</sup> November 1999 was taken from the informant, which modified these allegations and it is not clear whether the Staffordshire Police recorded the information incorrectly or that the informant changed his allegations. Either way the allegations were very serious and included an allegation that a bailiff who had tried to serve some papers on Mr Alcock had been threatened by him with a brick and been chased off Mr Alcock's premises, that he had threatened to blow someone up and had threatened a judge in court. This information has been provided to Mr Alcock in a redacted format so that the identity of the informant was not disclosed.
  
4. Mr Alcock at the time worked for the Health & Safety Executive (HSE) in Derbyshire where he was employed among other things as an explosive expert. Staffordshire Police passed this information on to Derbyshire Police who notified the HSE. This resulted in Mr Alcock being suspended from work, suffering health problems and eventually losing his job, his home, explosives licence and other unfortunate results which have had very significant negative effects for him.
  
5. The Tribunal should make the point that evidence has been provided to us that would indicate that there was some basis of truth to some of the allegations and that they were not entirely foundless. However Staffordshire Police seem to have taken no further action in relation to the allegations, except for sharing the information with the Derbyshire Police.
  
6. Mr Alcock has been extremely angry at what he seems to consider are unsubstantiated allegations which he considers has devastated his life.
  
7. He has taken various actions against Staffordshire Police to try to correct what he regards as a wrong done to him, and as we see it, this appeal, is part of that process.

8. The Tribunal understands why Mr Alcock is so angry and appreciates his predicament.

#### The complaint to the Information Commissioner

9. On 7<sup>th</sup> March 2005 Mr. Alcock complained to the Commissioner as to the way in which his request for information had been dealt with by Staffordshire Police. Mr. Alcock alleged that the informant had acted maliciously, and that from third party documents in his possession it was possible to identify the malicious informant as being a member of the staff of a particular firm of solicitors. Mr. Alcock set out the terms of the information that he had requested from Staffordshire Police on 17<sup>th</sup> January 2005, and complained of their refusal to provide that information.
10. On 8<sup>th</sup> April 2005 the Commissioner wrote to Mr. Alcock, requiring him to exhaust the internal review procedure of Staffordshire Police before the Commissioner would consider his complaint further.
11. On 15<sup>th</sup> April 2005 Mr. Alcock wrote to Staffordshire Police seeking a review of their previous decision.
12. On 16<sup>th</sup> May 2005 Staffordshire Police wrote to Mr. Alcock giving the outcome of the review. The letter stated that the review had been carried out by an appeals panel consisting of a member of the Staffordshire Police Authority and two Staffordshire Police Superintendents. The previous decision that the request was vexatious or repeated, and therefore fell within section 14 of the Act, was upheld. The letter stated that in reaching this decision the appeal panel took account of the previous applications that Mr. Alcock had made to the courts and to the then Data Protection Registrar (the predecessor of the Commissioner) to compel Staffordshire police to reveal the identity of the person that Mr. Alcock claimed was a malicious informant. The members of the panel also considered that any information that had the potential to disclose the identity of the informant would be exempt from

disclosure under sections 30, 31, 38, 40 and 41 of the Act. The panel noted that Mr. Alcock had been provided, in response to a previous subject access request under the data protection legislation, with a copy of the information log which recorded the matters reported by the informant (save for details of the informant's identity).

13. In the course of the Commissioner's investigation of Mr. Alcock's complaint, a letter dated 7<sup>th</sup> November 2005 from the Commissioner's office to the Staffordshire Police stated that the Commissioner was likely to conclude that section 14 of the Act had been incorrectly applied, and that Mr. Alcock's request was neither vexatious nor a repeated request within the meaning of that section.
  
14. On 17<sup>th</sup> November 2005 Staffordshire Police wrote to Mr. Alcock to the effect that following consideration of correspondence from the Commissioner's office, Staffordshire Police no longer considered that the request fell within section 14 of the Act. The letter stated that Mr. Alcock had clarified his request and that he wished to obtain information that would identify the person he referred to as a "malicious informant". The letter went on to explain that Staffordshire Police considered that such information would be exempt from disclosure under sections 30, 31, 38, 40 and 41 of the Act.
  
15. The Commissioner's decision notice dated 6<sup>th</sup> April 2006 addressed three issues.

- (1) Whether Mr. Alcock's request was vexatious within section 14 of FOIA;
  
- (2) Whether the requested information was held by Staffordshire Police; and
  
- (3) Whether the identity of the informant who gave the Police information about Mr. Alcock was exempt from disclosure.

16. The Commissioner's finding on the first issue was in Mr. Alcock's favour, and is not challenged by any party to this appeal.
  
17. In relation to the second issue, the Commissioner considered that if the request was read literally then no information was held falling within the scope of the request: the Police did not consider that there was any evidence of malicious intent on the part of their informant and so there was no information about any investigation or attempt to recover public funds, and the Commissioner had previously assessed the data processing carried out by the Staffordshire Police and had concluded that there was no breach of the Data Protection Act 1984 or 1998 ("DPA 1984" and "DPA 1998"). On a literal reading of the request, therefore, the Commissioner was satisfied with the assurances from the Staffordshire Police that they did not hold the information requested.
  
18. However, the Commissioner approached his investigation on the basis that in substance this was a request by Mr. Alcock for the identity of the informant. This approach to the request is not challenged by any party in this appeal. The Commissioner referred to the decision of the Tribunal in *Barber v Information Commissioner* as supporting this approach to the request.
  
19. As to the third issue, the Commissioner considered that this information was exempt from disclosure on the basis of two exceptions: one is the absolute exemption in section 40(2) of the Act, and the second is the qualified exemption in section 30(2)(b) of the Act.

Questions for the Tribunal.

20. The issues in this appeal are therefore whether the Commissioner was right to find;
  - a. that the exemptions in paragraph 19 above applied preventing the disclosure of the identity of the informant; and
  - b. there was no information about any investigation or attempt to recover public funds.

21. Mr Alcock has raised a number of other issues during the course of this appeal. The question whether Staffordshire Police have breached DPA 1984 or DPA 1998, in the manner in which they have processed Mr. Alcock's personal data, is not a question for determination in this appeal. Nor is it for this Tribunal to determine whether Staffordshire Police made a sufficient investigation into the reliability of the information provided to them about Mr. Alcock, or whether the Police acted unlawfully in the use that they made with that information, or in sharing it with any other person. There may be other routes available to Mr. Alcock if he wishes to pursue these issues.

### The exemptions applied

22. The Tribunal's general powers in relation to appeals are set out in section 58 of FOIA. They are in wide terms. Section 58 provides as follows.

*(1) 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.*

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

23. In relation to the exemptions claimed by Staffordshire Police and considered by the Commissioner in his decision notice of 6<sup>th</sup> April 2006, the Tribunal makes the following findings.

**Section 40(2) FOIA**

24. This is an absolute exemption. It applies where the information sought is personal data of which the person making the request is not the data subject, and where disclosure would contravene any of the data protection principles.
25. Information which could identify the informant is clearly personal data in relation to that individual, and no party has suggested otherwise in this appeal.
26. Disclosure of that information would amount to *processing* of that personal data within the meaning of DPA 1998. Processing is defined in section 1 of DPA as follows:

*"processing", in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data*

The definition goes on to specify four operations which would amount to processing, including:

*disclosure of the information or data by transmission, dissemination or otherwise making available.*

27. The processing of personal data must comply with eight data protection principles. The first principle states that

*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; and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

28. The Commissioner considered that there would be a breach of the first data protection principle if the information were disclosed, for two reasons:



- (i) disclosure would be unfair because it would be contrary to the reasonable expectations of the confidential informant; and
- (ii) there was no basis for disclosure of the information under Schedule 2 to the DPA 1998.

29. As far as the first point is concerned, the first data protection principle requires processing to be fair. There are specific requirements as to fairness in Schedule 1 Part II paragraph 2 to DPA 1998, but the test of fairness is a general one and is not confined to a consideration of whether those requirements have been met. See *Johnson v Medical Defence Union (No 2)* 2006 EWHC 321 (Ch) at paragraphs 113-114. In the present case The Tribunal has been provided with evidence that the informant has specifically requested that his/her identity be kept confidential. There is no evidence that the Staffordshire Police has ever suggested to the informant that they might disclose his/her identity at some point in the future. In the evidence before us the informant has expressly asked that his/her identity not be disclosed and has expressed a belief that Mr. Alcock would take reprisals against his/her family if his/her identity were to be revealed to Mr Alcock. The Tribunal does not need to consider whether Mr. Alcock would *in fact* be likely to take any reprisals; it is however relevant, in assessing fairness to the informant, that the informant *believes* that there is a risk of reprisals. In these circumstances the Tribunal finds that it would be unfair, and hence a breach of the first principle, for his identity to be disclosed.

30. We then have to consider whether the disclosure of the informant's identity would be based upon any of the conditions set out in Schedule 2 to DPA 1998. Mr. Alcock has not identified any of the conditions in Schedule 2 that might potentially be relevant.

31. The only possible condition, in our view, that Mr. Alcock might seek to rely on is paragraph 6(1) of Schedule 2, whereby processing is lawful if:

*[t]he 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.*

32. Even on the assumption that Mr. Alcock is pursuing a legitimate interest in seeking disclosure of this information, we find that the disclosure is unwarranted by reason of prejudice to the legitimate interests of the data subject, who has specifically asked for his/her identity to be kept confidential.
33. Therefore we find that this exemption does apply and on this basis the identity of the informant should not be disclosed. As a result there is no need for us to consider the other exemption but in case we are wrong on this point we consider the exemption under section 30(2)(b) FOIA below.

**Section 30(2)(b) FOIA**

34. This exemption relates to information held for any of the purposes in section 30(2) and in relation to this appeal information is exempt if “it relates to the obtaining of the information from a confidential source.”
35. The exemption is clearly engaged here, as the information sought by Mr. Alcock was obtained from a confidential source. The information provided by the confidential source if correct would have disclosed the possible commission of various criminal offences by Mr. Alcock, and these would be matters that it would be for the Staffordshire Police to investigate. The exemption is class-based, so there is no need for prejudice to be shown in order for the exemption to be engaged.
36. This is however a qualified exemption requiring consideration of the balance of public interest. This Tribunal has previously held that it should carry out a review on the merits of the balance between the public interest in maintaining an exemption and the public interest in disclosure: the Tribunal may substitute its own view for that of the Commissioner or the public authority on the question whether the public interest in maintaining the exemption outweighs

the public interest in disclosure as we have already found in other cases - see e.g. *Hemsley v Information Commissioner* at paragraph 18 of the decision.

37. We find that there are the following competing public interests which are set out below.

**Public interest in favour of disclosure**

38. Disclosure could potentially assist Mr. Alcock or any other member of the public in understanding the decisions taken by the Staffordshire Police and in holding the Staffordshire Police accountable for their actions and for their use of public funds. Disclosure might also assist Mr. Alcock or a member of the public in putting right any injustice done to Mr. Alcock. These considerations were identified by the Staffordshire Police in reviewing their initial refusal to disclose the information sought in their letter dated 17<sup>th</sup> November 2005. They were also recognised by the Commissioner in his decision notice of 6<sup>th</sup> April 2006 at paragraph 4.16.

39. However, in assessing the public interest in favour of disclosure it is relevant that Mr. Alcock already knows a substantial amount about what the informant said: the Staffordshire Police information log has already been disclosed to Mr. Alcock. He also has information about the basis of the informant's belief: the witness statement provided by the informant in previous proceedings has been disclosed to Mr Alcock in redacted form. If Mr. Alcock wishes to pursue (in another forum, not this Tribunal) the question whether the Staffordshire Police made proper enquiries in order to test the accuracy of what the informant told them, then he can do so on the basis of the information already provided to him. He can pursue that issue without knowing the name of the informant.

40. It is also relevant to an assessment of the public interest in disclosure that the Staffordshire Police followed a structured system in assessing the validity of information supplied to them. Staffordshire Police provided details of how they assessed the information using a process similar to the "SPIN" system disclosed to the Tribunal and the parties. If the Police did not have a

structured system for carrying out this kind of assessment then that would be a further factor pointing in favour of there being a public interest in the disclosure of the identity of informants, so as to deter Staffordshire Police from trusting unreliable sources. The Tribunal finds that the SPIN system is a proper means for such an assessment and therefore this possible public interest goes away.

41. Mr. Alcock says he wishes to use this information in other legal proceedings. This could be a possible public interest if it was to disclose a cause of action legitimately open to him. However he could seek an order for disclosure of this information in the context of any future legal proceedings that he chooses to pursue. Therefore we find that, on the particular facts of this case, there is not a public interest in disclosing the information so as to assist in the proper functioning of the legal system.

#### **Public interest in favour of maintaining the exemption**

42. The disclosure by Staffordshire Police of information provided to them on a confidential basis would be likely to deter others from providing information to them. This would be likely seriously to hinder police efforts in the prevention and detection of crime. Self-evidently, the interest in the prevention and detection of crime is an important one. The potential harm to the flow of information to Staffordshire Police is explained in more detail in the letter of 17<sup>th</sup> November 2005, and was recognised by the Commissioner at paragraph 4.14 of the decision notice of 6<sup>th</sup> April 2006.

#### **Tribunal's finding on public interest**

43. The Tribunal finds, having taken into account all the above interests, that the public interest in maintaining the exemption in this case outweighs the public interest in disclosure. .

#### The existence of the information requested

44. The Tribunal accepts the evidence of Staffordshire Police and the Commissioner's subsequent investigation that as the Staffordshire Police did

not consider the informant was malicious then no investigation was undertaken which would have resulted in the information requested being held. Therefore we find that Staffordshire Police did not hold such information.

### Conclusion

45. This is a most unfortunate case, the background circumstances of which have caused great hardship to Mr Alcock. He has attempted to pursue his grievance through this Tribunal, but we cannot help him for the reasons given above. We uphold the decision notice dated 6<sup>th</sup> April 2006 and dismiss the appeal.

Signed: John Angel

Chairman

Date: 3rd January 2007