



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

Appeal Reference: EA/2020/0264

**Considered on the papers
On 1 March 2021**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

DAN PALMER-DUNK & EMMA YATES

Between

ROBERT JOHN ABBOTT

Appellant

and

INFORMATION COMMISSIONER

First Respondent

DECISION AND REASONS

Background

1. From the information before the tribunal an extended civil restraint order was made against Mr Abbott on 10 February 2014. In making the order the presiding judge explained the non-availability of other judges and continued:-

“and therefore in discussion with the presiding judge in relation to civil matters the Honourable Mr Justice Singh, I was appointed [by] the President of the Queen’s Bench Division for the purposes of this case as a Section 9 Deputy Judge of the Queen’s Bench Division of the High Court, I am already a Section 9 Family Division [] High Court Judge”

2. It appears that the order has been renewed over the years, and also that Mr Abbott has entered into correspondence with the Ministry of Justice including making applications under FOIA. On 13 October 2019 he made a request for information:-

"You have stated that a document from HHJ [judge's name redacted] personal file was examined by yourselves; From this information you say that he was temporarily appointed a Deputy High Court Judge of the Queen's Bench Division (at the time the defendant's application for an extended civil restraint order was made).

I ask that you forward a copy of this to myself

Under Open Justice rules it is quite appropriate to do this.

You have stated you hold information on this document and have examined it."

3. The communication contained other material and a further request for information in response to which the MOJ provided some information in a letter of 3 December 2019. However, with respect to the request set out above the MOJ replied:-

"MOJ holds the requested information. However, it is exempt from disclosure under s40(2) of the FOIA because it contains personal data of the judge"

4. Mr Abbott requested an internal review

"4 I ask that you say if the letter is from the person or body claimed by [Judge's name redacted] to have made the appointment

If so, who was that person or body. This information cannot be construed as personal data.

I further ask that you supply the document with any personal data redacted.

If this document appears to be not from the person or body said to have made it, please state this clearly and unequivocally"

5. The MOJ explained the function of the internal review as being to examine how the original request was handled and determine whether the original response was correct. MOJ maintained its position and explained:

"The document in question was examined by a member of the Judicial Office, they are the organisational party which handles this data, the judicial office handles the personal information of judges as one of their functions. After requesting the information from the judicial office, they had deemed that the requested document not to be disclosable under section 40(2) of the FOIA as it contains personal data of the judge."

6. Mr Abbott complained to the Information Commissioner who defined the scope of her investigation as *"I am therefore considering the MoJ's response to question 1 of your initial request (and question 4 of your additional questions in your request for an internal review) and the MoJ's explanation that it is withholding the*

requested information under section 40(2). I will also be considering the length of time taken by the MoJ to deal with your request"

7. The ICO wrote to MOJ on 14 April 2020 asking (inter alia) for a copy of the withheld information. The MOJ replied on 18 May explaining staff were working from home due to the pandemic and the letter was a physical object kept in a specific location. Since staff were working from home, they could not access it. The ICO conducted her investigation, and this tribunal has considered the appeal, without physically examining the letter.
8. The ICO concluded that since information both relates to, and identifies, the Judge, and is held on his personal file. This information therefore falls within the definition of personal data in section 3(2) of the DPA. She then considered whether processing would comply with the requirement that:- *"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"*.
9. The only identifiable lawful basis for the processing was Article 6(1)(f) of the General Data Protection Regulations:- *"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,..."*.
10. In considering Mr Abbott's legitimate interest she considered his argument that he wanted to know the truth of the content of the document. She considered that this was *"pursuing a purely private concern, unrelated to any broader public interest. The complainant has not put forward any arguments in support of a wider public interest in disclosure of the requested letter. Nor has the Commissioner seen any evidence of a wider public interest in its disclosure"*. She noted that appointment letters contained personal information (DN paragraph 48-49) and disclosure was to the world at large. The MOJ had confirmed that *"The document is a private letter addressed to the judge which contains the judge's address and is about the judge being appointed a Deputy High Court Judge ..."*. She noted that the Judge would have no expectation that his appointment letter would be disclosed to the world at large and concluded that Mr Abbott's legitimate interest was insufficient to outweigh the data subject's rights and freedoms and upheld the MOJ reliance on s40(2).
11. In his appeal Mr Abbott poured scorn on the claim that the letter was inaccessible due to the pandemic. He claimed that any such appointment which had been made would have been in breach of S9(1) of the Superior Courts Act 1981. His ground of appeal was that the existence of the letter had stopped police investigating argued that *"should it be the case that it does not exist (as seems likely from the response of the [Judicial Appointments Committee] and the convoluted reason given for its unavailability) then a serious offence of perverting the course of justice has been committed"* He further claimed *"Whether the*

document exists or not, there has been a criminal act". He supplied a copy of a letter from the JAC which he asserted demonstrated this criminal offence.

12. In resisting the appeal, the ICO was satisfied that she was entitled to accept the assurance of the MoJ that the letter existed and the reason that it was not currently available. She relied on and developed the reasoning in the Decision Notice and quoted from a JAC policy permitting temporary appointments of Deputy High Court Judges.
13. In his submissions Mr Abbott claimed that MoJ was in breach of its duty and that he had been prevented from bringing a claim and a criminal investigation had been prevented because of the "claimed existence" of the letter. He argued that the appointment had been unlawful.

Consideration

14. The circumstances of this tribunal are unusual. One effect of the pandemic has been to relocate the place of work for millions of workers from offices to their own homes, often sharing space and equipment with home-schooled children. Tribunal members similarly no longer sit in court buildings but conduct hearings from their homes. The tribunal is satisfied in all the circumstances of this case that the interests of justice are served by considering this appeal on the available evidence rather than delaying the resolution for an indefinite and prolonged period.
15. A document was sought, the MoJ confirmed that it existed but by the time of the ICO investigation it could not access it due to the new working arrangements necessary for public health. The tribunal accepts this evidence and is satisfied that the letter exists and that a letter of this type would after it had been generated only exist as a hard copy. Mr Abbott has requested a specific document, a letter addressed to a judge giving him a temporary judicial appointment. In addition to his address the letter will have been dated. It therefore contains biographical information; indeed, it is precisely the biographical information of name, author and date of letter which, from Mr Abbott's arguments, he wishes to have, the meaningful information within the letter is personal data, redaction would render the letter meaningless.
16. The simple question for the tribunal is therefore whether the interest claimed by Mr Abbott outweighs the rights of the data subject. The interest claimed by Mr Abbott is as the ICO correctly characterises it, a personal interest. He claims that the appointment of the judge was criminal, however he has not produced evidence in support of that proposition and the MoJ has confirmed that a temporary appointment was made and there is evidence of a JAC policy authorising such appointments. Little weight can be given to this interest, the generic weight of a public interest in the openness of the judicial appointment process gains very little from the disclosure of one small step in one

appointment. On the other side of this balance the rights and interests of the data subject clearly outweigh that interest. Furthermore, it would be unfair in the light of the reasonable expectations of the data subject that a personal letter to him confirming his appointment, should be released.

17. The appeal is without merit and is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: 9 March 2021