



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

EA/2010/0007

ON APPEAL FROM:

**Information Commissioner's Decision Notice: FS50259598
Dated: 17 December 2009**

Appellant: JOHN GREENWOOD

Respondent: THE INFORMATION COMMISSIONER

Additional Party: BOLTON METROPOLITAN BOROUGH COUNCIL

On the papers

Date of hearing: 5 August 2010

Date of Decision: 14 September 2010

Before

**Annabel Pilling (Judge)
Suzanne Cosgrave
and
Roger Creedon**

Representation:

For the Appellant: John Greenwood
For the Respondent: Mark Thorogood
For the Additional Party: Carl Wiper

Subject matter:

FOIA Absolute exemptions – Personal data s.40

Cases:

Johnson v Medical Defence Union [2006] EWHC 321 (Ch)
Blake v Information Commissioner and Wiltshire County Council EA/2009/0026
Common Services Agency v Scottish Information Commissioner [2008] UKHL 47

Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP (EA/2006/0015 and 0016)

Corporate Officer of the House of Commons v Information Commissioner (EA/2006/0074)

Corporate Officer of the House of Commons v Information Commissioner, Brooke and others (EA/2007/0060) and [2008] EWHC 1084 (Admin)

Roberts v Information Commissioner and Department for Business Innovation and Skills (EA/2009/0035)

DECISION OF THE FIRST -TIER TRIBUNAL

The Appeal is refused and the Decision Notice dated 17 December 2009 is upheld.

The Council was entitled to withhold the names of the individuals referred to as F, G and H as the exemption in section 40(2) of the Freedom of Information Act 2000, by virtue of the provisions on section 40(3)(a)(i), is engaged; disclosure would breach the first data protection principle.

Signed:

Dated this 14 September 2010

Annabel Pilling
Tribunal Judge

Reasons for Decision

Introduction

1. This is an Appeal by Mr. John Greenwood against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 17 December 2009. The Decision Notice relates to a request for information made by Mr. Greenwood to the Bolton Metropolitan Borough Council (the 'Council') under the Freedom of Information Act 2000 (the 'FOIA') for information relating to employees' attendance on courses run by the 'Common Purpose' organisation. Common Purpose UK is a subsidiary of The Common Purpose Charitable Trust and runs leadership development courses.

The request for information

2. By e-mail dated 9 April 2009 Mr. Greenwood made the following request for information to the Council:

(1) Please supply information on how much the council has spent on training referred to as 'Common Purpose'

(2) Please supply all the invoices associated with payments for 'Common Purpose' expenditure

(3) Please supply the names of all people who have received any training for 'Common Purpose'

3. On 27 May 2009 the Council provided the information requested in parts (1) and (2), redacting purchase order numbers, cost codes and bank account details. It refused to disclose the names of Council officers attending Common Purpose events on the basis of the exemption in section 40(2) of FOIA arguing they constitute personal data and to disclose them would not constitute fair processing under the Data Protection Act (the 'DPA').
4. Mr. Greenwood was dissatisfied with the response in relation to part (3) of his Request and requested an internal review on 29 May 2009.

5. On 17 July 2009 the Council notified Mr Greenwood of the result of the internal review. It provided more detailed reasons as to why it considered that disclosure of the names of the officers who had attended Common Purpose training courses would breach the first data protection principle and upheld the initial decision that the information requested is exempt through the provisions of section 40(2) and 40(3)(a)(i) of FOIA.

The complaint to the Information Commissioner

6. Mr. Greenwood contacted the Commissioner on 17 July 2009 to complain about the way his request had been handled. He specifically asked the Commissioner to consider a number of specific points, including:
 - a) That the requested information is about the individual's public role.
 - b) That the individuals were senior Council officers attending expensive meetings so their role fell under the umbrella of public scrutiny. He particularly challenged the Council's definition of "senior officers" as being confined to "Chief Officers".
 - c) That there would be no unwarranted damage or distress to the individuals.
7. He also made comments about the significance of Council employees attending Common Purpose courses, suggesting that, "[d]ecisions concerning policy and expenditure affecting councils are made at meetings of Common Purpose that bypass the democratic, executive and scrutiny functions of the council", and that "Common Purpose coaches its members on how to avoid answering Freedom of Information requests and how to break the Data Protection Act with unlawful disclosures."
8. The Information Commissioner then investigated the substantive complaint, receiving additional information from both Mr. Greenwood and the Council.
9. He issued a Decision Notice on 17 December 2009.

10. The Commissioner found that eight employees of the Council had attended a Common Purpose course. They were identified in the Decision Notice as A to H. The identity of A was disclosed by the Council during the Commissioner's investigation; the Council did not have an invoice for this individual attending a Common Purpose course as funding had come from elsewhere. The Council disclosed his name on the basis that he was a Director of the Council; it was the stated general position of the Council to release the names of Chief Officers and Directors but not the names of officers below that level unless by exception.
11. The Commissioner found that the disputed information (the names of the employees) was the personal information of B to H, within the meaning of section 1(1) DPA.
12. In respect of B, C, D and E, the Commissioner found that disclosure would not contravene the first data protection principle for the reasons given in paragraphs 39-72 of the Decision Notice¹. He ordered the Council to disclose the names of those individuals; the Council does not appeal against that decision.
13. In respect of F, G and H, the Commissioner found that disclosure would contravene the first data protection principle for the reasons given in paragraphs 73-83 of the Decision Notice.
14. In particular, for F, G and H the Commissioner concluded that the individuals each had a reasonable expectation that their personal data would not be disclosed and that, while each held fairly senior roles, they were not senior enough for there to be a definite expectation that the information would be disclosed. He had received a strong indication from each that they would wish their names not be disclosed. In light of the information already in the public domain he was satisfied that their expectations that the information would not be disclosed were reasonable and that was a very important factor when considering fairness in this case. He was satisfied that the release of

¹ Of note, B and C consented to the disclosure of their names. D and E did not consent but did not strongly object and indicated that they would respect the Commissioner's decision.

the information could potentially cause unnecessary and unjustified damage and distress to the individuals.

15. The Commissioner did not consider that there were factors favouring disclosure to the extent that it would outweigh the individuals' privacy interest in this case.
16. As the Commissioner found that disclosure would be unfair and therefore in breach of the first data protection principle, he did not address any other aspects of the data protection principles, such as lawfulness and whether disclosure would satisfy any of the conditions in Schedule 2 or (if applicable) Schedule 3 to the DPA. The Commissioner therefore concluded that the Council was correct in applying section 40(2) of FOIA (by virtue of section 40(3)(a)(i)) in relation to F, G and H and dismissed the complaint.
17. Although not relevant to this Appeal, the Commissioner also found that the Council had committed procedural breaches of sections 10(1) and 17(1) of FOIA by failing to process the request for information and issue a refusal notice within twenty working days.

The Appeal to the Tribunal

18. Mr. Greenwood appealed to the Tribunal on 2 January 2010.
19. The issue raised in the grounds of appeal is whether the disputed information (the names of F, G and H) is exempt from disclosure under the provisions of section 40(2) and 40(3)(a)(i) of FOIA.
20. The Tribunal joined the Council as an Additional Party.
21. The Appeal has been determined without a hearing on the basis of written submissions and an agreed bundle of documents.
22. In addition, the Tribunal was provided with three witness statements from F, G and H. The Tribunal were given the full names and job titles of the individuals but these details had been redacted from the copies of the statements made

available to Mr. Greenwood, as to disclose them to him would defeat the purpose of this Appeal.

23. Although we may not refer to every document in this Decision, we have considered all the material placed before us. We have considered in detail the written submissions from the parties although we do not begin to rehearse every argument in this Decision.

The Powers of the Tribunal

24. The Tribunal's powers in relation to appeals under section 57 of the FOIA are set out in section 58 of the FOIA, 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.

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

25. The starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal also receives and hears evidence, which is not limited to the material that was before the Commissioner. The Tribunal, having considered the evidence (and it is not bound by strict rules of evidence), may make different findings of fact from the Commissioner and consider the Decision Notice is not in accordance with the law because of those different facts. Nevertheless, if the facts are not in dispute, the Tribunal must consider

whether FOIA has been applied correctly. If the facts are decided differently by the Tribunal, or the Tribunal comes to a different conclusion based on the same facts, that will involve a finding that the Decision Notice was not in accordance with the law.

26. The question of whether the exemption in section 40(2) of FOIA is engaged, is a question of law based upon the analysis of the facts. This is not a case where the Commissioner was required to exercise his discretion.

The Legal Framework

27. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

28. The section 1(1)(b) duty of the public authority to provide the information requested will not apply where the information is exempt by virtue of any provision of Part II of FOIA. The exemptions provided for under Part II fall into two classes: absolute exemptions and qualified exemptions. Where the information is subject to a qualified exemption, it will only be exempt from disclosure if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (section 2(2)(b)). Section 40(2)(a) of FOIA is an absolute exemption. Information that falls within this section is therefore exempt from disclosure regardless of the public interest considerations.

29. The issue for determination in this Appeal is whether the disputed information is exempt under the provisions of section 40(2) and 40(3)(a) of FOIA.

30. The relevant parts of section 40 of FOIA provides:

(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or second condition below is satisfied.

(3) The first condition is –

(a) In a case where the information falls within any of the paragraphs (a) to (d) of the definition of ‘data’ in section 1 (1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress)

31. Section 1(1) of the DPA defines “personal data”:

“..data which relates to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”

32. There is no dispute that the disputed information, held by the Council as the data controller, constitutes “personal data” and does not fall within subsection 1 (personal data of the Requestor).

33. Under section 40(2), personal data of third parties is exempt if disclosure would breach any of the data protection principles set out in Part I of Schedule 1 of the DPA (as interpreted in accordance with Part II of Schedule 1), or section 10 of the DPA (right to prevent processing likely to cause damage or distress).

34. The data protection principles regulate the way in which a “data controller” (in this instance, the Council) must “process” personal data. The word “process” is defined in section 1(1) of the DPA and includes:

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

35. The first data protection principle provides:

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.*

36. The conditions in Schedule 2 are:

- (1) The data subject has given his consent to the processing.*
- (2) The processing is necessary –*
 - (a) for the performance of a contract to which the data subject is a party, or*
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.*
- (3) The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.*
- (4) The processing is necessary in order to protect the vital interests of the data subject.*
- (5) The processing is necessary –*
 - (a) for the administration of justice,*
 - (b) for the exercise of any functions conferred on any person by or under any enactment,*
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or*

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

(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 expectations of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

Submissions and analysis

37. There is an inherent tension between the objective of freedom of information and the objective of protecting personal data. It has been observed that section 40(2) of FOIA is a “complex provision”². There is no presumption that openness and transparency of the activities of public authorities should take priority over personal privacy. In the words of Lord Hope of Craighead in *Common Services Agency v Scottish Information Commissioner*³ (referring to the equivalent provisions in the Freedom of Information (Scotland) Act 2002 (the ‘FOISA’):

“In my opinion there is no presumption in favour of the release of personal data under the general obligation that FOISA lays down. The references which that Act makes to provisions of DPA 1998 must be understood in the light of the legislative purposes of that Act, which was to implement Council Directive 95/46/EC. The guiding principle is the protection of the fundamental rights and freedoms of persons, and in particular their right to privacy with respect to the processing of personal data....”

² *Blake v Information Commissioner and Wiltshire County Council* EA/2009/0026

³ [2008] UKHL 47

38. Although, in his Decision Notice and submission before us the Commissioner approached the question of whether section 40(2) of FOIA is engaged by considering first whether the processing is fair before commencing a consideration of whether a condition in Schedule 2 (or, if applicable, Schedule 3) is met, in reaching our decision we considered first whether a condition is met before considering whether the processing is fair and lawful⁴, taking that into account “in particular”. This is in line with the Awareness Guidance notes issued by the Commissioner⁵ which, in the detailed Guidance, advises that:

“In the context of the FOIA, we recommend that you consider whether disclosure satisfies one of the specific conditions [in Schedule 2, or 3 as appropriate] first, before moving on to the general consideration of fairness and lawfulness.”

39. In *Corporate Officer of the House of Commons v Information Commissioner, Brooke and others*⁶ (EA/2007/0060) and [2008] EWHC 1084 (Admin), the Panel gave useful guidance on applying paragraph 6 of Schedule 2⁷. This was upheld on appeal by the High Court and can be summarised as the following three part test:

- (1) There must be a legitimate public interest in disclosure;
- (2) The disclosure must be necessary to meet that public interest; and
- (3) The disclosure must not cause unwarranted harm to the interests of the individual.

40. In deciding whether disclosure satisfies one of the conditions in Schedule 2, that is, condition 6, we must therefore consider the balance between competing interests, a test that is similar to the balance that applies under the public interest test for qualified exemptions under FOIA. (The legitimate interests of the public are a relevant consideration in both the consideration of

⁴ Following *Common Services Agency v Scottish Information Commissioner*, paragraph 30.

⁵ Awareness Guidance on “The exemption for personal information” (Version 3 11 November 2008)

⁶ (EA/2007/0060) and [2008] EWHC 1084 (Admin)

⁷ At paragraphs 60 and 61.

whether the processing is fair and also whether condition 6 of Schedule 2 is met.)

41. We adopt what was said in *Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP*⁸ and approved in *Corporate Officer of the House of Commons v Information Commissioner*⁹, that this test requires a consideration of the balance between (i) the legitimate interests of those to whom the data would be disclosed (which in this context are members of the public) and (ii) prejudice to the rights, freedoms and legitimate interests of the data subject (which in this case is F, G and H). However because the processing must be “necessary”, for the legitimate interests of members of the public to apply we find that only where (i) outweighs (ii) should the personal data be disclosed.

Public interest in disclosure

42. Mr Greenwood submits that the names must be disclosed in the interests of openness, transparency, accountability and financial probity to demonstrate ‘beyond doubt’ that all is legal, lawful and above board, especially when authorising expenditure from the public purse.

43. The Council accepts that there is a legitimate public interest in:

- (i) information which shows whether objectives of transparency, accountability and value for money are being met, as well as public scrutiny of the use of public funds and probity;
- (ii) information about the Council’s use of Common Purpose given that there has been some discussion in the media and on the internet about the organisation.

44. Throughout his submissions to the Tribunal, Mr Greenwood has raised speculations about dishonesty or other impropriety amongst Common

⁸ (EA/2006/0015 and 0016)

⁹ (EA/2006/0074)

Purpose graduates, such as insider dealing or failure to adhere to the civil servants Code of Conduct. It is for the Charities Commission to investigate or undertake regulation of charities and any allegations of improper or inappropriate behaviours on the part of Common Purpose should be directed to the regulator; this Tribunal has no jurisdiction over such matters. Mr Greenwood refers to Common Purpose as a “*secret organisation*”, “*imposing secrecy under Chatham House rules*”. We do not accept his submissions on this; there is no evidence that Common Purpose is a secret organisation in the way Mr Greenwood suggests. In fact, the evidence appears to us to show an organisation very much in the public arena with a strong marketing and publicity presence. There is certainly no evidence that this is an organisation that denies its existence. We are also satisfied that the “Chatham House rule”¹⁰ refers to a well recognised practice under which comments made, for example, during a professional training course, could be used but would not be directly attributed to any individual.

45. Mr Greenwood goes so far as to suggest that “*if the principle of non-disclosure is accepted, it would have the effect of creating an illusion of legitimacy of what would amount to being a charter for corruption.*” If there was any evidence of this, then this could amount to a legitimate public interest in disclosure of the names. However, there is no evidence before us that the Council or the individuals referred to as F, G and H have acted with any impropriety.

Is disclosure necessary

46. The Council submits that while there is a public interest in knowing that the Council has made a proper use of public funds in engaging with Common Purpose and has achieved value for money, the public interest is met by providing information about the cost and the nature of the courses, the number of times they were used, the dates of the courses and the numbers of

¹⁰ “When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” Source; The Royal Institute of International Affairs, Chatham House.

people trained. All this information has been disclosed. The Council also points out that the public interest could be met by providing information on how the courses benefit the Council and the people of Bolton although this information was not requested. It submits that there is no clear evidence that disclosure of the name of each participant is necessary to meet the legitimate interests of the public.

47. We accept that the information relates to the individuals' public not private lives; these courses were undertaken as part of professional development, to improve effectiveness at work. We also accept that by attending a leadership course this would infer a certain degree of seniority. The witness statements of F, G and H each contain the individual's current job title; these imply a certain level of seniority. One witness sets out details of their role within the Council but the other two remain silent save to state how long they have each worked for the Council which does not assist in assessing seniority. From the evidence we have been provided with, we are satisfied that each of the individuals concerned had an outward facing role and can properly be regarded as senior.

48. We agree with the Commissioner that a distinction can be drawn between the information which senior staff should expect to have disclosed about them compared to what information junior staff should expect to have disclosed about them. The rationale for this distinction is that the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds and have a higher public profile.

49. The Commissioner drew our attention to the following quote from a differently constituted Panel of this Tribunal in *Roberts v Information Commissioner and Department for Business Innovation and Skills*¹¹, at paragraph 32:

"We consider the legitimate interest [in disclosure] ... must be assessed by reference to its potential value to the public as a whole ...

¹¹ (EA/2009/0035)

in order to overcome the statutory restriction on disclosure it must be such as to give rise to a pressing social need for the data in question to be made available ...”

50. In the course of dealing with the internal review of Mr Greenwood’s request for information, the Council established that the invoices did not give an entirely accurate indication of who had attended Common Purposes courses. One individual had attended a course but the Council believed his fees to have been paid by the Improvement and Development Agency and therefore the Council did not have an invoice in respect of that individual. The individual’s name was disclosed to Mr Greenwood. The Council also established that Common Purpose had invoiced the Council in respect of an individual who had been unable to attend a course. That fee was refunded by Common Purpose. This error came to light as a result of the enquiries conducted by the Council and not as a result of the information being made available to public scrutiny.

51. We consider that the public interests identified are met by the disclosure, for example, of the total cost to the Council of employees undertaking Common Purpose courses, that there was proper authorisation for this, the relevant dates of the courses, the numbers who attended each one. It could also be met by the indication of the level of seniority or the relevant pay grade of the employees who are not so senior as to be identified by name or job title.

52. We do not consider that the release of the names of F, G and H is necessary to meet the public interests identified in this case. It would be impossible to identify a benefit to the public by release of a name or job title alone, further information would be needed.

Would disclosure cause unwarranted harm

53. In considering whether disclosure would cause unwarranted harm to the interests of the individuals, we had particular regard to the witness statements of F, G and H. F, G and H had also served notice in writing under section 10

of the DPA that processing of their personal data by disclosing the disputed information would be likely to cause damage or distress.

54. Where such notice has been given, then, to the extent that disclosure of information captured by a request under FOIA would contravene section 10 DPA, that information will be exempt information under section 40(3)(b)(ii) FOIA. Such a disclosure will only contravene section 10 DPA if the notice is justified or justified to any extent. The exemption is still not absolute; the public authority must weigh the public interest in upholding the exemption against the public interest in disclosure.
55. Mr Greenwood submits that these section 10 DPA statements were obtained very late in the process of dealing with his request for information and should therefore be disregarded.
56. As we indicated above, the starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal regularly also receives and hears evidence which is not limited to the material that was before the Commissioner. Although Mr Greenwood submits that there is significance behind the fact that the section 10 DPA statements were not signed until February 2010, there is a very clear indication that these individuals strongly objected to their personal data being disclosed prior to that. In particular, the Council informed the Commissioner on 22 October 2009 that three of the individuals who had attended Common Purpose courses expressed very strongly that they did not want their names disclosed. We do not accept Mr Greenwood's submission that the section 10 statements should be disregarded and we have taken their contents into account, along with the detailed witness statements that were served on us but had not been provided to the Commissioner before he issued his Decision Notice, in reaching our decision.
57. Mr Greenwood also submits that the witnesses have been coached to refuse to consent to disclosure of their names. We have been provided with a statement from Mr Greenwood setting out the content of a conversation with

an unnamed journalist who suggests a motive for refusing to disclose the names of individuals. It is a matter for us what weight, if any, we give to this hearsay evidence and in this case we consider it is of no relevance.

58. The witnesses agree with Mr Greenwood as part of the Terms and Conditions of attending a Common Purpose course, it was stated that names, titles, employer organisation and course attended could be used in promotional material, these would only occur once an individual had provided written confirmation. They would therefore not expect their personal details to be provided without prior notice and agreement. Mr Greenwood submits that as each had consented to their details possibly being disclosed by Common Purpose, that consent could not be withdrawn subsequently. He also speculates that an individual who appears named on a Participants list provided to him directly by Common Purpose is one of the three whose names have been withheld in this case. We accept the evidence given by the witnesses that they had not given their explicit consent to their names being disclosed by Common Purpose and therefore that does not now prevent them from raising the objections contained in their witness statements to the Tribunal.

59. F, G and H each expressed strongly their desire for their names not to be disclosed. Quotes from their statements include expressions of fear that disclosure:

- *“would cause significant and unnecessary mental stress and would impact the quality of my life both personally and professionally”,*
- *“personal safety and professional reputation could be seriously compromised by releasing my personal details”,*
- *“I feel my personal safety would be threatened and also my right to anonymity.”*

60. They each refer to comments made on publicly accessible websites which are of an “anti-Common Purpose” nature. Some specific examples were given which we accept are disturbing and frightening. There is no evidence that anyone named on these websites, or those other individuals identified by the Council as having attended Common Purpose courses, have ever been the target of any harassment, whether to the extreme extent suggested by some of the website postings or to any lesser extent. However, F, G and H do have strong concerns and we consider that we must give weight to their views; we cannot ignore their perceived concerns regarding their personal safety and security. We note that Mr Greenwood lives in the vicinity of where F, G and H work. These are legitimate concerns even if there is no evidence of harm or harassment to others named; the potential harm is hard to assess.

61. F, G and H have objected to their names being disclosed for reasons that can be categorised as general, because of the published comments about Common Purpose graduates generally, but also specifically regarding Mr Greenwood himself. Although requests made under FOIA are said to be “motive and applicant blind”, and while there is nothing to link Mr Greenwood directly to any of the comments made on websites about Common Purpose, it is clear from the information in the Bundle and the witness statements that Mr Greenwood appears to share their anti Common Purpose sentiment. The witnesses fear that if released their details would be posted on various anti Common Purpose websites exposing them to the risk of harassment. We consider that the concerns of the witnesses have greater weight in light of Mr Greenwood’s views on Common Purpose and his statement that the names of Council officers who attend their courses should be a matter of public knowledge.

62. Mr Greenwood submits that other public authorities have not been so reticent in disclosing names of Common Purpose graduates, for example Rotherham Council and the BBC. It is of course a matter for each public authority when dealing with a request for information under FOIA to decide firstly whether an exemption from the duty to make information available upon request is engaged and, if so, whether they intend to rely on it or not. We do not

consider that we should give any weight to the argument that an exemption can not apply because another public authority has taken what appears to be a contrary position. In particular, we are not in a position to know what factors were taken into consideration when deciding to disclose names of individuals about whose role and seniority we know nothing.

63. We are satisfied that F, G and H each held a reasonable expectation that their personal data would not be disclosed and that to disclose their names would cause them unwarranted harm or distress.

64. For the reasons given above, we do not consider that processing is necessary for the purposes of the legitimate interests of members of the public that outweigh the prejudice to the rights, freedoms and legitimate interests of F, G and H. We do not find that condition 6 of Schedule 2 is met.¹² Disclosure would not be fair and lawful and therefore, disclosure would breach the first data protection principle and the exemption in section 40(2) of FOIA is engaged. We have not gone on to consider whether disclosure would additionally contravene section 10 of DPA.

Conclusion and remedy

65. For the reasons given above we find that disclosure of the names of F, G and H would breach the first data protection principle. The exemption in section 40(2) of FOIA is engaged and the Council was entitled to refuse to disclose the names to Mr Greenwood.

66. Our decision is unanimous.

67. An appeal against this decision may be submitted to the Upper Tribunal. A person seeking permission to appeal must make a written application to the Tribunal for permission to appeal within 28 days of the receipt of this decision. Such an application must identify the error or errors of law in the decision and

¹² No other condition is applicable in this case.

state the result the party is seeking. Relevant forms and guidance for making an application can be found on the Tribunal's website at www.informationtribunal.gov.uk.

Signed:

Annabel Pilling

Tribunal Judge

Date 14 September 2010