



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2012/0047**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50407742  
Dated: 30 January 2012**

**Appellant: Salford City Council**

**Respondent: The Information Commissioner**

**2nd Respondent: Tiekey Accounts**

**Heard at: Tribunals Service Piccadilly Plaza Manchester**

**Date of Hearing: 16/10/2012**

**Before**

**Chris Hughes**

**Judge**

**and**

**Jean Nelson and Paul Taylor**

**Tribunal Members**

**Date of Decision: 30/10/2012**

**Attendances:**

For the Appellant: Robin Hopkins  
For the Respondent: Michael Lee  
For the 2<sup>nd</sup> Respondent: Andrew Walters

**Subject matter:**

Freedom of Information Act 2000

**Cases:**

Wise v Information Commissioner UTT GIA/1871/2011  
Graham v Information Commissioner EA/2011/0133 and 0134

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 30 January 2012

**IN THE FIRST-TIER TRIBUNAL**  
**GENERAL REGULATORY CHAMBER**  
**(INFORMATION RIGHTS)**

**Appeal No: EA/2012/0047**

**SUBSTITUTED DECISION NOTICE**

**Dated:** 30/10/2012

**Public authority:** Salford City Council

Address of Public authority: Civic centre, Chorley Road, Swinton, Salford, M27 5FJ

**Name of Complainant:** Tiekey Accounts

**The Substituted Decision**

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 30 January 2012.

**Action Required**

No action is required as a result of this decision.

Dated this 30th day of October 2012

Judge Chris Hughes

[Signed on original]

## **REASONS FOR DECISION**

### **Introduction**

1. On 29 January 2011 the complainant wrote to the Appellant Council (the Council) and requested information in the following terms:

*"Please provide me with a copy of all manuals, books of procedures, FAQs, worksheets, etc used by Salford Council for the purpose of deciding, or in any way dealing with (including by appeal) claims to Housing Benefit or Council Tax Benefit. I am not referring to the manuals produced by the DWP... as this has already been released under the FOI act, and is thus exempt under section 21. So, my request is really for internal manuals etc (including but in in no way limited to, treatment of self-employed claimants), and any external manuals that are not exempt under section 21. "*

2. The Council responded on 25 February 2011 saying that it was unable to comply with the request. It suggested that the request was broad and encompassed a large quantity of material which would need to be checked in case it contained exempt material and therefore might need to be redacted. The complainant and the Council did not come to an agreement as to a narrowing of the scope of the request and ultimately the Council rejected the request relying on s.12(1) on the grounds of the time that it would take. Following internal review the Council responded on 25 July 2011 conceding that it was unable to rely on s.12(1) in light of comments received from the complainant. However, the Council now claimed s.36(2)(c) in view of the prejudice it said would be caused to the effective conduct of public affairs.
3. The complainant referred the request to the Information Commissioner. During the course of his investigation the Council said that it now also considered the request to be vexatious and introduced s.14(1). On 30 January 2012 the Information Commissioner found that Salford City Council (the "Council") had incorrectly applied sections 14(1) (vexatious requests) and 36(2)(c) (prejudice to the effective conduct of public affairs) to the requested information. He directed the Council to disclose the requested information and the Council appealed against this determination.

The appeal to the Tribunal

4. Before this tribunal the Appellant advanced the argument that the request for information was vexatious under Section 14(1) FOIA and that compliance with it would be prejudicial to the effective conduct of public affairs and therefore the council was also exempt from disclosure under 36(2)(c).
5. The basic argument advanced by the Appellant was that parts of the requested information would be exempt under sections 31(1)(a) (disclosure would prejudice the prevention or detection of crime), 40(2) (disclosure of personal information), 41(1) and 43 (information obtained in confidence and prejudice to the commercial interests of any person). The bulk and complexity of the material meant a very considerable amount of officer time would be needed to examine material, consider whether any of these exemptions arose and if appropriate redact that material. The estimate of the amount of time which this would take was 31 days. The Council argued that the effort required rendered the request vexatious.
6. While not adopting the argument with respect to s36(2)(c) the Commissioner as First Respondent changed his position in the light of the argument and evidence put forward and concluded that the request was vexatious.
7. The Second Respondent maintained the position that the material should be disclosed as no exemption applied.

The questions for the Tribunal

8. the questions before the tribunal were three in number:-
  - (i) Did the material need to be checked in order to see whether there was a potential for inappropriate disclosure of material and if so was the time estimate of 31 days work a reasonable estimate of the time which would be needed to examine the material to ensure that exempt material was not put into the public domain
  - (ii) Given that the argument with respect to vexatiousness was made purely on the basis that complying with the request would take

excessive time and effort and not on the basis of harassment or inappropriate conduct on behalf of the requestor of the information; was the time which would be required to examine the material a sufficient burden on the Council to raise the possibility that the exemption on the ground of vexatiousness was engaged.

- (iii) If it was possible for the Council to assert that the request was vexatious where did the balance of public interest lay between the burden on the Council and public benefit from the disclosure.

### Evidence

9. The Tribunal heard evidence from Janet McGrail a senior officer of the Appellant. She explained that the material identified by the request comprised 2715 pages in 448 documents of which 414 were staff notes and 34 training manuals. This material had been prepared with a view to internal distribution only and not for publication. The material was reviewed on a fairly regular basis in the light of developments and experience. Given the way it had been prepared the possibility of publication by releasing in response to a Freedom of Information request raised a very significant number of problems.
10. The headings and titles of the various documents were not informative as to the precise contents of any document and what issues might be raised by it. Accordingly it would be necessary to examine each document with a view to determining whether any of the non-disclosure issues arose.
11. The relevant budget of the city council was approximately £150 million. There is substantial public concern as to the fraudulent obtaining of benefits. A key part of the material was concerned with setting out the Council's own procedures which were in part designed to counter perceived threats. Revealing these arrangements and the logic behind them would assist dishonest individuals. It would take an experienced individual to read the documents and identify which parts of them contain information which would be of potential value to a fraudster.
12. Much of the material in the documents was screenshots from the Council's IT systems which were provided by a commercial organisation. There was a contract with that organisation and licensing arrangements with respect to software. Some of

the material in the screenshots and the associated text might be derived from that commercial organisation's material, contain its secrets or disclose how its systems work. All raise issues of confidentiality or copyright. In order to ensure that the Council was not in breach of its confidentiality and commercial agreements with the company it would be necessary to consider in detail the license and contract. They would have to further examine the material with those details in mind then, as appropriate, discuss points with the contractor.

13. Much of the material was an examination and working through of case studies. Some of these were purely fictitious but others have been adapted from actual cases. It was not possible from an examination of the material itself to determine which ones were fictitious and which ones were not. It would be necessary to examine each case, determine whether to disclose personal details of a living individual and redact accordingly.
14. Janet McGrail had examined a representative sample of the material and produced it as exhibits to her witness statement. The Tribunal was satisfied that the sample was representative. It contained a range of material consistent with the analysis which Janet McGrail had put forward. Her explanation as to how some of that material could be of use to fraudsters was convincing. There was in addition a significant amount of material which appeared to be of proprietary origin, as well as material relating to individuals. The Tribunal was satisfied that the estimate of 5 minutes per page for the scrutiny of this material, given the complexity of the issues, was reasonable. Even if a somewhat shorter time per page were adopted the time required for consideration of the material was still very considerable. The Tribunal therefore concluded that a time estimate of 31 days work to handle this request was realistic.

#### Legal submissions and analysis

15. The Second Respondent argued that even if the amount of work in handling the request was large that could not amount to a vexatious request. The Tribunal's attention was drawn to the case of *Graham v Information Commissioner* where the Tribunal adopted the dictionary definition of vexatious as "tending to cause trouble or harassment by unjustified interference". The Tribunal noted that the "trouble" could be caused simply by "unjustified interference" without any bad intent and the core



issue was what the justification for the interference was. In *Wise v The Information Commissioner* in which the Upper Tribunal considered the meaning of vexatious, at paragraph 10 the Upper Tribunal held:-

*“Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it”*

16. The Tribunal noted that a reasonable estimate of the minimum cost of 31 days examination of the material was a sum many times the maximum fee allowed under the Fees Regulations. The expenditure which would be necessitated by the disclosure did not fall within those Regulations. However the Tribunal considered that the chargeable expenditure under those Regulations was helpful in considering whether the scale of costs might be proportionate.
17. The Second Respondent explained that part of its time was spent in helping (in essentially a pro bono way) individuals in their dealings with benefits claims administered by the Council. It argued that publishing the manuals and other material would help the public in seeing how mistaken decisions were made and helping ensure that future mistakes were prevented. This it saw as of significant benefit to the public interest.
18. The Tribunal noted that the task of the Council was to decide benefits applications in accordance with the law. The regulations setting out entitlement and the DWP guidance were public documents. Organisations like CPAG and NACAB published or provided information which was widely used in a variety of advice settings to help claimants ensure that they received their correct entitlements. Where Councils made errors they corrected them when they were drawn to their attention. If a dispute remained the Tribunals provided an authoritative interpretation of the Regulations to many thousands of claimants each year. There was likely to be very little new information of any value coming into the public domain as a result of the disclosure of the material sought. In order to ensure that it did not disclose information of value to those seeking to defraud the system, or disclose personal information, or commercially confidential material, the Council would need to divert scarce resources to the detailed examination of the material.

Conclusion and remedy

19. The Tribunal was satisfied that the Appellant Council had established that a disproportionately high cost would be incurred for any minimal public benefit flowing from the disclosure. It was therefore satisfied that the First Respondent had erred in his Decision Notice and that the Appellant Council was entitled to rely on s.14(1) and not disclose the material since the request for information was vexatious. In the light of this conclusion it was not necessary for the Tribunal to consider arguments with respect to s.36.

20. Our decision is unanimous

Judge Chris Hughes

[Signed on original]

Date: 30 October 2012