

FOIA s.12 – Cost of compliance and appropriate limit

FOIA s.40(2) – Absolute exemption: personal data

FOIA s.16 – Duty to advise and assist

Mr Tony Harcup v IC & Yorkshire Forward

EA/2007/0058

5th February 2008

Cases:

Durant v Financial Services Authority [2003] EWCA Civ 1746

The Corporate Officer of the House of Commons v IC and Norman Baker MP [2007] UKIT EA_2006_0015

Brown v IC and The National Archives, [2007] UKIT EA_2006_0088

Facts

The Appellant requested information from Yorkshire Forward (YF) regarding the amount spent and the lists of guests and the organisations that they were from for each ‘corporate hospitality’ and ‘event’ it put on. YF provided all the data they had relating to the ‘events’, including financial information, except for the names of the delegates at the events as they stated that this would contravene s.40(2) FOIA. They did not provide a response with regard to ‘corporate hospitality’. The Appellant was dissatisfied and an internal review was conducted. In response to the review, YF stated that the cost of providing any more information requested would exceed the limit of £450, and therefore they were not obliged to respond further under s.12 of FOIA.

The IC found that YF had correctly applied the exemption for personal data in s.40(2) when it declined to provide the names of individuals, but held that this exemption had been incorrectly applied in relation to the names of the organisations involved; and required YF to disclose the names of the organisations represented by attendees at corporate events hosted by YF.

Findings

Was the information ‘personal data’?

The Tribunal considered the Appellant’s argument that the information was not personal data following the decision in the case of *Durant* that data is only ‘personal’ if it is information that affects his privacy, whether in his personal or family life, business or professional capacity. The Tribunal also considered the Respondents’ argument that the names of the attendees were personal data: they were biographical, since they identified where the person was at the time of the event; the focus of the information was the attendee themselves; and attendee information was “obviously about” the particular individuals who attended. The Tribunal observed that the inclusion of business life does not mean that every reference to business life is

necessarily biographically significant, or has the data subject as its focus. They held that applying the factors in *Durant*, where the information in question is the name of a business, the focus of the information is on the business, not the individual proprietor; the name of the business is not personal data. They also observed that attendance at a YF seminar or corporate hospitality event had no personal connotations, bearing in mind the two factors of biographical significance and focus identified in *Durant*. They noted that such events are of short duration and routine business occurrences; they are not generally biographically significant; the events are attended by numbers of attendees, who may each be given a list of fellow attendees, together with the names of the organisations they represent. The events provide networking opportunities. Those attending them expect to make contacts and to be contacted. The press may be invited, and invited to take photographs for publication. In such circumstances, it is hard to see how privacy can be further compromised if names are released.

The Tribunal held that releasing the names of those attending YF events in the period in question did not involve the release of personal data, which was still the case even when the names of the organisations represented by those attending are also released. Given the format in which the names of the organisations were released, an undifferentiated list running to over 70 pages, it would be impossible to correlate individual names to organizations. Therefore they disagreed with the IC's finding that s.40(2) was properly applied. However, they did note that although the names of the individual attendees, nor the organisations they represent, constitute personal data; they would if released in the format requested by the Appellant.

Applying s.40(2)

Because of the above finding, this issue became irrelevant, however, the Tribunal addressed it nonetheless in the event that their finding was incorrect.

The Respondents argued that it would not be fair to disclose the names of attendees, given the assurance provided to them by YF that their personal information would not be released, thus countervailing the Data Protection Principles. However, the Tribunal held that Delegates could have had no real expectation of confidentiality for their names or organisations, as opposed to the significant personal details of addresses or telephone numbers, which were not provided, or requested. Therefore fairness may not prevent the release of the data.

The Tribunal addressed whether the release of data was necessary to enable the Appellant to pursue his legitimate interests. They accepted the general benefits that followed from increased transparency and openness, but were not persuaded that it was necessary for those benefits to accrue for the names of attendees to be published. They held that publishing the names of the organisations represented met the Appellant's legitimate needs; but were not persuaded that it was necessary to go further. Therefore, the Appellant failed this first hurdle and it was not necessary to go on to conduct the balancing exercise.

The Tribunal were also satisfied that the request would exceed the cost limit under s.12

Conclusion

The Tribunal allowed the appeal and substituted the Decision Notice.

Observations

With regard to the cost limit, although a formal finding was not made, the Tribunal observed that YF's response to the Appellant's request was deficient under s.16 as it only responded to the request regarding 'events', ignoring the request regarding 'corporate hospitality'. They stated that an authority which arbitrarily provides some information in answer to an extensive request and then refuses to provide more under cover of s.12 is likely to act in breach of its duty to provide advice and assistance to those requesting information in s.16. Such an approach effectively prevents the requester making an informed choice, in the knowledge of the likely constraints, as to what information they wish to request.