



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

Case No. EA/2010/0199

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50252171
Dated: 15 December 2010**

Appellant: William Thackeray

Respondent: The Information Commissioner

On the papers

Date of decision: 18 May 2012

**Before
CHRIS RYAN
(Judge)
and
MICHAEL JONES
RICHARD FOX**

Subject matter: Personal Data s.40

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

1. We start by putting this Appeal into context. In the Tribunal's decision in case EA/2011/0082 and 0083, promulgated on the same date as this decision, we identified a number of requests and chains of request sent by the Appellant, Mr Thackeray, to the Common Council of the City of London ("the Authority"). This appeal arises from the first part of the chain or requests identified there as the "Mandatory Rate Relief Chain" of requests. As is stated there, most of the information requested was disclosed. This was done under the obligation, imposed on a public authority under section 1 of the Freedom of Information Act 2000 ("FOIA"), to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA. This appeal relates to some elements of information that were withheld at that stage.
2. Mr Thackeray complained to the Information Commissioner about the withholding of that information and, following an investigation, the Information Commissioner issued a Decision Notice on 15 December 2010 in which he decided that, except for part of one document, the Authority had been justified in refusing disclosure.
3. Mr Thackeray has appealed against part of the Decision Notice. He has argued that the Information Commissioner was in error when he decided that certain names that had been redacted from disclosed documents, as well as certain photographic images, had been correctly withheld because they were covered by the exemption in FOIA section 40 (personal data of a third party).
4. The appeal was stayed for a considerable period, pending resolution of a procedural issue affecting this appeal and others instigated by Mr Thackeray. By agreement between the parties the appeal was then determined on the papers, without a hearing, which we considered was an appropriate procedure to adopt. We were able to inspect the withheld information and have therefore reached our decision on the basis of a careful review of it.

The relevant law

5. FOIA section 40 provides that information is exempted from the obligation of disclosure if it constitutes the personal data of an individual (other than the person requesting it) and disclosure would

contravene any of the data protection principles. Those principles are set out in Part 1 of Schedule 1 to the Data Protection Act 1998. The only one having application to the facts of this Appeal is the first data protection principle. It reads:

“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 ...”

Schedule 2 then sets out a number of conditions, but only one is relevant to the facts of this case. It is found in paragraph 6(1) and reads:

“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 interests of the data subject.”

The term “processing” has a wide meaning (DPA section 1(1)) and includes its disclosure.

6. It follows that, even if an element of personal data handling falls within one of the Schedule 2 conditions, it may still fail to satisfy the general test of fair and lawful processing. We therefore have to decide, in respect of each element of the withheld information,:
 - i. whether disclosure at the time of Mr Thackeray’s information request would have been necessary for a relevant legitimate purpose; without resulting in
 - ii. an unwarranted interference with the rights and freedoms or legitimate interests of each relevant individual; and, even if those tests are satisfied
 - iii. whether it would nevertheless have been unfair and unlawful.
7. A broad concept of protecting, from unfair or unjustified disclosure, the individuals whose personal data has been requested is a thread that runs through each of those issues, including the determination of what is “necessary” for the purpose of the first question.

The application of the law

8. The information falls into three categories and we will deal with each in turn.
9. Category A:
 - a. This category covers 4 letters, each from an arm of government (not in every case the UK Government) and relating to an aspect of the operations of the Church of Scientology (“CoR”). Three are addressed to an individual within the CoR. The fourth is addressed to an organisation representing the CoR but mentions a member of the CoR in the text. The earliest letter is dated 1979 and the latest 2001. None of them relate directly to the application made by CoR to the Authority for business rate

relief although copies were lodged with the Authority in support of its application.

- b. We have inspected an unredacted copy of each letter and have concluded that there is either no legitimate public interest in supplementing the information already in the public domain with the individual's names, or that the public interest in receiving that information is very slight. The content of the letters has some relevance to the public's consideration of the nature of the operations of the CoR, but not the identity of the particular individuals who are named. Disclosure would constitute an interference in the rights and freedoms or legitimate interests of the individuals who would thereby be identified publicly. And the degree of interference, when considered against such public interest in disclosure as may exist, would be unwarranted in our view.
- c. We therefore conclude that the information in this category would fall within the exemption and that the Information Commissioner was correct to conclude that the Authority had been entitled to refuse to disclose it.

10. Category B:

- a. The application for rate relief appears to have been accompanied by a number of photographs demonstrating various activities undertaken by the CoR. Some of them included images of individuals. Although Mr Thackeray challenged their status as personal data, the images clearly fall within the meaning of that term. More significantly Mr Thackeray asserted a strong public interest in the disclosure because of the individuals' apparent association with an organisation which he considers to be guilty of various wrongs.
- b. The exact status of each individual whose image appears is not clear in every case, but it is clear that some of them are "volunteer ministers" of CoR. Mr Thackeray's argument is clearly stronger in those circumstances, because of the individual's role within the CoR, than in the case of others who may just happen to have been caught by the camera at a particular event. However, we are not convinced that the interest that exists in the CoR (and, more particularly, its claim to business rate relief) creates any significant legitimate interest in identifying individuals depicted in the particular circumstances in which these photographs were taken, even in the case of volunteer ministers. We were provided no information as to the expectation of the individuals when allowing their photographs to be taken but we are not satisfied that they consented, or would have consented, to the disclosure requested.
- c. In these circumstances we do not consider that disclosure would comply with the data protection principles. We therefore conclude that the information falls within the exemption and that the Information Commissioner was correct to conclude that the Authority had been entitled to refuse to disclose it.

11. Category C:

- a. The materials in Category B also included news items naming individuals, including volunteer ministers, by reference to particular activities they had undertaken. We consider that the same principles apply to the name of an individual as would apply to his or her image and accordingly reach the same conclusion as under Category B.

Conclusion

12. In light of our findings in respect of each category of information we have concluded that the Authority was entitled to refuse disclosure in respect of each item of withheld information and that the appeal should therefore be dismissed.
13. Our decision is unanimous.

Chris Ryan
Tribunal Judge
18 May 2012