



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0209
Appellant: Winston Kabia
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. In 2012 Mr Kabia was sentenced to a long term of imprisonment. On 10 September 2012 he wrote to the Metropolitan Police making a request under the Freedom of Information Act (FOIA). He named a person who had given evidence at his trial. He wanted to know whether she worked at a particular unit of the Metropolitan Police before January 2010. He also wanted to know whether any disciplinary action was taken against her.
2. Metropolitan Police refused to confirm or deny whether they held the information.
3. This is because the information requested was the personal data of the witness. Rights under FOIA do not trump an individual's right to privacy under the Data Protection Act (DPA).
4. Public authorities in these cases often refuse "to confirm or deny" whether information is held. Their power, indeed duty, to do so derives from Section 40(5) FOIA. This type of request can cause difficulty for a public authority. The very statement that information is held might reveal something about the data subject and thus contravene a data protection principle. It is for this reason that they are given the option of refusing to "confirm or deny".
5. Mr Kabia complained to the Information Commissioner (ICO) who issued a decision notice confirming the decision of the Metropolitan Police. Mr Kabia has appealed to the Tribunal. The ICO has applied for the appeal to be struck out on the ground that it has no reasonable prospect of success.

Appellant: Winston Kabia**Date of decision: 7 March 2014**

6. In practice, in order for disclosure of personal data to be lawful, Mr Kabia would need to show some legitimate interest which necessitated disclosure under FOIA. Although the Tribunal frequently sees requests such as this in respect of police officers, it must be a rare case in which disclosure under FOIA will be necessary. This is because the Criminal Courts have their own rules permitting disclosure for the purpose of the criminal proceedings only. This will usually mean that disclosure to the whole world under FOIA is not necessary.
7. I have checked the purpose of his request with Mr Kabia. In the papers he makes allegations of corruption against the witness and says he is pursuing an appeal to the Court of Appeal as well as complaining to the Legal Ombudsman about the behaviour of his defence team at trial. In response to my enquiry, he claimed that the witness had given false evidence at his trial and that he had received differing accounts of the witness's employment from different public authorities. Mr Kabia asked me, before taking a decision on the ICO application, to look at any confidential information.
8. Accordingly, I have looked at the submissions made to the ICO by the Metropolitan Police.
9. (I gave a direction that I would receive the disputed information, if any, without disclosing it to Mr Kabia. Mr Kabia has therefore received an edited version of those submissions. The submissions have been correctly edited apart from one trivial point referring to Mr Kabia's right to make a complaint under the Police Reform Act 2002. This is not material because Mr Kabia has already, in the correspondence, been referred to that right.)
10. Having considered all the material before me, I have reached the conclusion that the written submissions of the ICO are unanswerable. No Tribunal could conclude that the material demonstrates a legitimate interest justifying disclosure of personal data under FOIA. It seems to me that it would be unfair on the ICO, and to the Metropolitan Police who would otherwise join the proceedings, to allow the case to continue and I therefore strike it out now on the ground that it has no reasonable prospect of success.

NJ Warren**Chamber President****Dated 7 March 2014**