



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0264

ON APPEAL FROM:

The Information Commissioner's Notice under Section 43(1)(b)

Dated: 11 October 2017

Considered on the papers on: 20 March 2018 and 20 June 2018

Before

JUDGE ROBERT GOOD

TRIBUNAL MEMBER(S) MRS ANNE CHAFER AND MR DAVE SIVERS

Between

UNITED KINGDOM INDEPENDENCE PARTY (UKIP)

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Subject Matter:

Date Protection Act 1998 (DPA)

Section 43(1)(b) (Information Notice)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

Factual Background

1. The Information Commissioner held a briefing session, attended by the United Kingdom Independence Party (UKIP), concerning guidance on political campaigning. Following that briefing session the Commissioner started a formal investigation into the use of data analytics for political purposes and sought the co-operation of all major political parties in answering questions designed to establish whether their use of data was compliant with current data protection legislation.
2. The letter, dated 7 August 2017 (pages 1-3) asked 11 questions.
3. The answers to these questions were provided by UKIP by email on 18 September 2017 and are at pages 7-8.
4. On 11 October 2017 the Information Commissioner issued an Information Notice under S43(1)(b) Data Protection Act 1998 because in her opinion more detailed and definitive responses were needed. In addition clarification was needed to resolve discrepancies between UKIP's responses and information obtained from the Electoral Commission.
5. The information required to be provided under the Notice is set out at Annex 1 of the Notice (p19).
6. In response UKIP appealed this notice by letter of 1 November 2017 (p25).

7. The Tribunal first considered this appeal on 20 March 2018. This was a consideration on the papers as requested by both parties. The appeal was adjourned and Directions were issued requesting the Information Commissioner to consider issuing a revised Notice clarifying points which were not clear to the Tribunal.
8. The responses have been to the effect that this course of action is not open to the Commissioner and the Tribunal has to either allow or dismiss the appeal.
9. The Tribunal reconvened on 20 June 2018 to consider these responses.

Request, Decision Notice and Appeal,

10. The Information Commissioner request the following information by letter to UKIP dated 7 August 2017:
 - a. What types of personal data are held by your organisation, including electoral register information;
 - b. How (and where) has that data been processed and for what purpose(s);
 - c. Is that data currently being processed and, if so, for what purpose(s);
 - d. What are the sources of the personal data processed by your organisation;
 - e. What, if any, personal data has been shared with other political parties or campaign groups and for what purposes(s);
 - f. What information was, and is currently being, provided to individuals to assist them in understanding what data are being gathered about them and how, and for what purpose(s), they are being used;
 - g. For what purpose(s) has data extracted from social media platforms been used, and /or is continuing to be used, by your organisation;

- h. What data analytic, microtargeting or research services provided by third parties have been/ are currently being used for campaigning purposes by your organisation? Please describe these relationships in detail;
- i. Please provide any other information you feel may assist us in our investigation.

In addition, following review of the Electoral Commission Spending and Donation Register we request your answer to the following specific question:

What services were provided to the UK Independence Party by:

- (a) Constituency Polling Ltd;
 - (b) Vote Leave;
 - (c) Leave.EU Group Limited;
 - (d) Better for the Country; and
 - (e) Rock Services Limited?
11. In response to the answers provided by UKIP on 18 September 2018 (pages 7 and 8), the Information Commissioner issued an Information Notice on 11 October 2017 under S43(1)(b) Data Protection Act 1998. In the Notice the Commissioner states “the resulting responses require further clarification in order for the Commissioner to make a determination as to whether UKIP has complied or is complying with the Data Protection Act 1998. Specifically, more detailed and definitive responses are required to the questions already posed along with some clarification on discrepancies between UKIP’s response and information obtained from the Electoral Commission Spending and Donation Register”. (This information appears at pages 9-15).
12. At Annex 1 of the Notice is set out the information required
- a. What types of personal data are held by your organisation, including electoral register information;

- b. How (and where) has that data been processed and for what purpose(s);
- c. Is that data currently being processed and, if so, for what purpose(s);
- d. What are the sources of the personal data processed by your organisation;
- e. What, if any, personal data has been shared with other political parties or campaign groups and for what purposes(s);
- f. What information was, and is currently being, provided to individuals to assist them in understanding what data are being gathered about them and how, and for what purpose(s), they are being used;
- g. For what purpose(s) has data extracted from social media platforms been used, and /or is continuing to be used, by your organisation;
- h. What data analytic, microtargeting or research services provided by third parties have been/ are currently being used for campaigning purposes by your organisation? Please describe these relationships in detail;
- i. What services are provided by 'NationBuilder' to the UK Independence Party?
- j. Following a review of the Electoral Commission Spending and Donation Register, we are aware of the below spending and donations, In relation to each organisation, please provide detailed information in relation to the services provided to the UK Independence Party:
 - i. 'Consultancy Polling Ltd' - £186,613.13 spent during the 2015 general election;
 - ii. 'Vote Leave' - £497.56 spent during the EU referendum;
 - iii. 'Leave.EU Group Limited' - £72.00 spent during the EU referendum;
 - iv. 'Better for the Country' - £67,236 spent during the EU referendum; and,
 - v. 'Rock Services Limited' -£64,762.73 spent during the general election and £1,048,619.69 donated between October 2014 and March 2016.

13. UKIP appealed this notice by letter dated 1 November 2017. In that letter, UKIP stated that the notice was unjust, disproportionate and unnecessary because the UKIP has never suggested it would not comply and that a preferable course of action would have been for the Commissioner to write seeking clarification and specific details.
14. The Commissioner's response explains that the initial answers to the questions raised were not comprehensive, were unclear and did not tally with information published by the Electoral Commission. The Information Notice was issued for these reasons.
15. The response questions the purpose of the appeal because UKIP is stating a willingness to co-operate and provide information. If that is the position, it is the response of the Commissioner that simplest course of action is to respond to the Notice.
16. Both parties requested that the appeal be decided by consideration of the papers alone.

Conclusion

17. At the first hearing, the Tribunal was confused about apparent discrepancies between the spreadsheets in the appeal bundle and the Information Notice and the Tribunal was unclear as to the source of the spreadsheet information.
18. The source of the information is the publically available website of the Electoral Commission.

19. In the view of the Tribunal, the expressed intention of the UKIP to provide information and co-operate with the Commissioner is at odds with the information provided by UKIP. The answers are brief and, at best, appear to be incomplete and, in some respects, possibly inaccurate.
20. The grounds of appeal are that the Notice is unnecessary because UKIP is willing to provide information and co-operate. UKIP is not stating that the notice is not in accordance with the Data Protection Act only that a Notice is an unnecessary act on the part of the Commissioner.
21. Having received further submissions from both parties, the possible decisions open Tribunal are to uphold the Notice, dismiss the Notice or issue an amended Notice on its own behalf.
22. The Tribunal find that the information provided by UKIP does not provide sufficient information and does not explain the discrepancies. The Notice requiring information is in accordance with the legislation. UKIP accepts that the request, in principle, is legitimate.
23. However, in its further submission, it states that its appeal should be upheld because the notice contains deficiencies placing it outside the Statute. This is based on the Tribunal's Directions requesting further information.
24. Although the Tribunal was unclear about the information contained in the appeal on the spreadsheets (pages 9-15) and how it related to the information requested in the Notice, this has now been explained. The Commissioner has explained that the spreadsheet information comes from the Electoral Commission website and is publically available. UKIP should have records of all donations/expenditure as these have to be provided to the Electoral Commission. The relevant timeframe to be covered is also

clear to UKIP from the Notice. It is not therefore appropriate for the Tribunal to issue its own amended Notice.

25. The Notice, of itself, is clear. The Information Commissioner issued the Notice because of the failure of UKIP to adequately respond to her earlier letter requesting this information. The reasons put forward by UKIP do not provide grounds for allowing this appeal.
26. The Tribunal agrees with the response at paragraph 12 that the appeal has no merit because UKIP states that it is willing and intends to provide the information requested.
27. The Tribunal unanimously upholds the Commissioner's Notice and dismisses the appeal.

Signed

R Good
Judge of the First-tier Tribunal
Date: 20 June 2018

Promulgation date:
10 July 2018