



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

Appeal No: EA/2013/0164

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50481062
Dated: 22 July 2013**

Appellant: Leonard Johnson

Respondent: The Information Commissioner

Heard on the papers: Field House

Date of Hearing: 17 December 2013

**Before
Christopher Hughes
Judge
and
Alison Lowton and Paul Taylor
Tribunal Members**

Date of Decision: 17 January 2014

Subject matter:

Freedom of Information Act 2000

Data Protection Act 1998

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 22 July 2013 and dismisses the appeal.

Judge Hughes

[Signed on original]

REASONS FOR DECISION

Introduction

1. On 20 September 2012 Mr Johnson wrote to North Yorkshire County Council:-

“Could you please forward to me under the Freedom of Information Act 2000 a copy of the report of the Investigation officer [named] report in which he found that there had not been a failure to comply with the code of conduct by the subject member ie., [name]”

2. The Council responded on 15 October 2012 providing certain information but claimed that the report was exempt under section 40(2) (personal information) and 41(1) (information provided in confidence) of FOIA. It maintained this position on review and Mr Johnson complained to the Commissioner who, on 22 July 2013, upheld the Council’s position.

The factual background

3. On 15 July 2010 a member of the public made a complaint against a councillor that the councillor had failed to comply with the code of conduct then applying to councillors. That code had arisen as a result of Lord Nolan’s report into Conduct in Public Life which had been implemented with respect to members of local authorities by putting in place a statutory code of conduct for councillors and mechanisms for the investigation and determination of complaints that councillors had breached the code.
4. In accordance with these arrangements the complaint against the councillor was investigated by an officer on behalf of the Council’s Monitoring Officer and reported to the Complaint Determination Sub-Committee of the Council’s Standards Committee which agreed the conclusions of the report that the councillor only became aware of their appointment as a company secretary a significant time after the event and the councillor registered the interest promptly when aware of it. The councillor had not been involved in any transactions between the company and the Council. There had been no failure to comply with the Code.
5. On 20 September 2012 Mr Johnson sought disclosure of the report:-

“Could you please forward to me, under the Freedom of Information Act 2000 a copy of the Investigation Officer [name redacted]’s report in which he found that there had not been a failure to comply with the code of conduct by the subject member....”

6. The Council replied on 15 October 2012. It refused to disclose the report relying on s40(2) (personal information) and 41(1) (information provided in confidence) of FOIA, and it supplied Mr Johnson with a summary of the Investigating Officer’s conclusions which explained why he reached them.

7. Mr Johnson was dissatisfied and complained to the ICO. The ICO investigated and concluded that the information sought was third party personal data:-

“The Commissioner considers that it is appropriate to consider the report in its entirety as comprising the personal data of the councillor, who can be identified from that information. Furthermore, the information also includes the personal data of other third parties who were involved in the investigation and who can also be identified.”

“The Commissioner does not accept that the information could be made suitably anonymous through redaction. It is already known that the report relates to a particular individual and much about the circumstances is also known, which risk identification of others”

8. From the Commissioner’s investigation it was clear that evidence submitted to the investigation was given with an expectation of confidentiality and this was consistent with normal practice that:-

“a strong expectation of confidence generally arises in relation to information relating to disciplinary matters or issues of conduct concerning an individual because of the inherent sensitivity of that information.”

9. The Commissioner also noted that the statutory framework for local government had resulted in the sub-Committee treating the report as exempt information which was not published by the Council and this would have given further assurance to individuals that information would be treated as confidential. The council submitted that the disclosure would cause distress.

10. The Commissioner considered Mr Johnson’s concerns about the actions of the councillor and the company (which was now in liquidation). Mr Johnson was dissatisfied with the handling of the allegation and felt that there should be more

transparency. He had argued that the legal department of the council had been guilty of maladministration in allowing a late registration of an interest and not referring the issue of a “forged” signature to Companies House. The Commissioner concluded that while Mr Johnson considered the investigation was unsatisfactory, the evidence showed that a proper investigation had been carried out and the conclusions made available. There were no reasons for revisiting the issue through disclosure of information which would be disproportionate. The councillor had co-operated fully and had a reasonable expectation that, having been cleared of wrong-doing, s/he could move on. The disclosure would be unfair and a breach of the first data protection principle. The Commissioner upheld the council’s reliance on the exemption from disclosure contained in s40(2).

Mr Johnson’s arguments

11. Mr Johnson remained dissatisfied and appealed to the Tribunal. He recounted the history and concluded that there had been a breach of the Code of Conduct. He further argued that the issue of a “forged” signature which had not been reported to Companies House by the councillor or the council meant that they were not fulfilling their duty to uphold the law. He intended to correspond with the Chief Executive of the Council about the Standards Committee decision, and the actions of the legal department. He stated:- *“there is a possibility that there is a case of malpractice in regard to the legal department of the council”* He stated that he wished to see the evidence before the committee: *“that the said councillor had not in fact signed a form containing what was purported to be their signature because I will correspond and bring the attention of the stated case of forgery to the attention of the Registrar of Companies.”*

The questions for the Tribunal

12. The issue for the Tribunal is whether the Commissioner was correct in law to conclude that the first data protection principle – that data should be processed fairly and lawfully, meant that the information requested by Mr Johnson was exempt information and could not be disclosed because to do so would be unfair.

Analysis

13. Mr Johnson has not argued that the information in the report is not personal information. It clearly is. Nor (wisely in the Tribunal's view) has he argued that the question of personal data can be addressed by redaction. The thrust of his argument is that there was misconduct by the councillor with respect to non-registration of an interest. However this is ill-conceived. An impartial process required by statute comprising an independent investigation of the allegation against the councillor and its consideration by a committee containing members independent of the council exonerated the councillor. The record of the meeting, the Decision Notice, sets out, in brief form, why this is so. That process is a sufficient public assurance of propriety and satisfies the need for public accountability. The report sets out the detailed background leading to the conclusion, but the reasoning of the conclusion is sufficient to meet any proper public concern. The information provided to the investigation was provided through a confidential process carried out under statutory authority where the participants had every expectation that, in the absence of a finding of breach, the information should remain confidential. That entirely proper process and the legitimate expectation which it generated should be respected.
14. He has further argued that there was misconduct by the council's legal department in allowing late registration. The difficulty with this position is this – council officers had a duty to register the interest even if it was declared late. There was no misconduct.
15. It should further be noted that the two specific courses of action Mr Johnson has indicated he wishes to pursue if he were to receive the information are fully open to him at the moment and are unaffected by any decision of this Tribunal. He has set out the concerns he wishes to pursue with the Council, he is in a position so to do should he wish. The Chief Executive will be in a position to consider the matter with the full information; should he so wish. Similarly should Mr Johnson wish to raise the issue with the Registrar of Companies he has the information that he needs; if the Registrar needs further information for any inquiry that is considered necessary, then that information may be sought by the Registrar. In short the benefits which Mr Johnson sees as flowing from the disclosure are illusory. Disclosure is not therefore necessary

for the purposes of Mr Johnson's legitimate interests, which he, or any other member of the public, is able to pursue unhindered.

16. As noted in para.13, we also find that the disputed information has the necessary quality of confidence. For the same reasons set out above there is no overriding public interest to justify breaching this common law duty. Consequently disclosure would also be unlawful and thus a further breach of the First Principle.

Conclusion

17. The Tribunal was therefore satisfied that the Commissioner correctly identified the serious unfairness to the councillor which would flow from disclosure of personal data and properly upheld the Council's reliance on s40(2) in its refusal to disclose the information requested.

18. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 17 January 2014