



Neutral citation number: [2023] UKFTT 01000 (GRC)

Case Reference: EA-2023-0193P

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

**Heard in GRC Remote Hearing Rooms, Leicester**

Heard on: 30 October 2023

**Decision given on: 28 November 2023**

**Before**

**TRIBUNAL JUDGE A. MARKS CBE  
TRIBUNAL MEMBER K. GRIMLEY-EVANS  
TRIBUNAL MEMBER N. MATTHEWS**

**Between**

**MARGARET FARRAGHER**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

The Appellant: represented by Seamus McGranaghan, O'Reilly Stewart Solicitors

The Respondent: Eric Metcalfe of Counsel

**Decision:** The appeal is **dismissed**.

## REASONS

### ***Introduction***

1. This is an appeal against the Information Commissioner's decision notice IC-184506-C5B2 dated 7 March 2023.
2. The Appellant (Ms Farragher) had requested from the Northern Ireland Council for the Curriculum, Examinations and Assessment (CCEA) correspondence between named individuals as well as minutes and notes about CCEA staffing and other operational matters.
3. CCEA provided some information but other information was withheld under sections 36, 40(1), 40(2) and 41 of the Freedom of Information Act 2000 (FOIA).
4. The Commissioner decided that CCEA correctly applied section 36 FOIA and that the public interest lay in maintaining the exemption. The Commissioner also found that the CCEA was entitled to withhold personal data under section 40 FOIA; and that, on the balance of probabilities, CCEA does not hold any further information. However, CCEA breached section 10(1) FOIA by failing to reply promptly to the request.
5. The parties agree to the Tribunal making its decision based on all the papers in the case rather than requiring an oral hearing. The Tribunal is satisfied, in accordance with Rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) (the GRC Rules), that it could properly determine the issues in this case without a hearing.

### ***The request for information, internal review and response***

6. On 11 March 2022, Ms Farragher emailed CCEA to ask for information as follows:

*“(2) In addition I am requesting a Freedom of Information request on all items concerning CCEA staffing and other operational matters from 21 April 2021, including:*

- a. All correspondence from the Chair to the recruitment agency and Council members involved in the recruitment of Temporary Director of Curriculum and Assessment, plus the CCEA staff, on the appointment process for the Temporary Director of Curriculum and Assessment, from advertisement to appointment.*
- b. Minutes of closed Council meetings including verbatim notes concerning staff at director level and below; staffing structures; and any other operational matters.*
- c. Internal email correspondence between the Chair and CCEA staff, and external email correspondence between the Chair and DE, the Chair and ETI, or any other external parties, on CCEA operational activity, such as CCEA projects, staffing structures or other staffing matters at director level and below.”*

7. CCEA responded on 25 March 2022 that responding to the request would exceed the fees limit under section 12 FOIA. However, CCEA advised Ms Farragher that she could restrict her request.
8. On 4 April 2022, Ms Farragher sent a revised request as follows:

- *All correspondence from the Chair to the recruitment agency and Council members involved in the recruitment of Temporary Director of Curriculum and Assessment, plus the CCEA staff, on the appointment process for the Temporary Director of Curriculum and Assessment, from advertisement to appointment.*
- *Internal correspondence between the Chair and [redacted personal data] from 1 November 2021 to 1 April 2022 on any operational activity and or staffing matters.*
- *Internal correspondence between the Chair and [redacted personal data] from 1 August 2021 to 29 January 2022 on CCEA projects or contracts with CCEA.*
- *External correspondence between the Chair and [redacted personal data] ETI [Education and Training Inspectorate] from his start date to 1 April 2022 on any matters concerning CCEA.*
- *External correspondence between the Chair and [redacted personal data] DE [Department of Education] from 1 January to 1 April 2022 on any matters concerning CCEA.*
- *Minutes of closed Council meetings including verbatim notes concerning staff at director level and below; staffing structures; and any other operational matters.*

9. On 26 April 2022, CCEA emailed Ms Farragher to say that it required an additional 20 working days to consider where the public interest lay in respect of exemptions under FOIA section 36 (prejudice to effective conduct of public affairs) and section 41 (information provided in confidence). The former exemption was withdrawn until CCEA's further response several months later.

10. On 26 May 2022, CCEA provided some information, parts of which were redacted under FOIA section 40(1) (Ms Farragher's personal information) and section 40(2) FOIA (third party personal information). CCEA also cited section 41 FOIA (information provided in confidence). CCEA explained that at that stage it could not be completely certain that **all** information falling within the scope of the request had been located because one potentially relevant laptop had not been located.

11. On 15 June 2022, Ms Farragher requested an internal review because she did not accept that all the information to which she was entitled had been provided.

12. On 29 June 2022, Ms Farragher again wrote to CCEA emphasising this point.

13. On the same date, CCEA replied that the internal review would take an additional 20 working days because it was '*voluminous and complex*'.

14. On 5 July 2022, CCEA asked Ms Farragher if she could '*narrow your statement to help expedite the review*'.

15. On 10 July 2022, Ms Farragher responded asking for 10 sets of verbatim meetings, correspondence between named individuals and again asking if all information to which she was entitled had been provided.

16. On 28 July 2022, CCEA notified Ms Farragher that the outcome of its internal review was to maintain its position but that some outstanding information was still to be provided.

17. On 16 November 2022, CCEA provided Ms Farragher with minutes dated 29 April 2021, 27 May 2021, 26 August 2021 and 25 November 2021. However, other information was withheld under section 36 FOIA (prejudice to the effective conduct of public affairs).

### ***Complaint to the Commissioner***

18. On 3 August 2022, Ms Farragher complained to the Commissioner about the Council's handling of her request.

### ***The Decision Notice***

19. On 7 March 2023, the Commissioner issued Decision Notice IC-184506-C5B2 (the DN) which in summary concluded that:

- (a) the Commissioner was satisfied on the balance of probabilities that no further information within the scope of the request was held other than that withheld under FOIA exemptions;
- (b) some of the requested information identifies and relates to Ms Farragher directly and was correctly withheld under the absolute exemption in section 40(1) FOIA. However, CCEA provided this information to Ms Farragher as if her request in this respect were a subject access request under the Data Protection Act 2018 (DPA);
- (c) CCEA legitimately redacted information is the personal data (in particular the names and contact details) of identifiable individuals – primarily CCEA officers and third parties – who had a reasonable expectation that their personal data would remain confidential: Ms Farragher's legitimate interest in disclosure was insufficient to outweigh the rights and freedoms of those individuals whose details had been redacted;
- (d) the exemptions in section 36 were engaged on the basis of the reasonable opinion of the appropriate qualified person (QP) and, applying the public interest test, withholding the information outweighed disclosure of it: in particular, disclosure of the withheld information would result in a loss of candour and this would not be in the public interest when discussing any important recruitment process of a senior figure which was and remained 'live' at the time of the request;
- (e) in the circumstances, the Commissioner did not need to consider whether any of the withheld information was also exempt under section 41 FOIA (information obtained in confidence);
- (f) however, CCEA had breached section 10 FOIA by providing information outside the 20 working day timescale; and
- (g) the Commissioner required no further steps in this case.

### ***Appeal to the Tribunal***

20. On 3 April 2023, Ms Farragher sent a Notice of Appeal to the Tribunal challenging the DN.

21. In summary, she said that:

- (a) CCEA had not provided any evidence or justification for withholding the information;
- (b) CCEA's claim that it would not be in the public interest to disclose the information was weak and unsubstantiated;

- (c) there is evidence to the contrary, demonstrating that disclosure of the information would be in the public interest, which will be presented to an industrial tribunal hearing at the end of October 2023;
- (d) the Commissioner found CCEA guilty of deliberately delaying i.e. trying to withhold other information, which was eventually provided after numerous requests;
- (e) these delays and deliberate attempts to withhold relevant information come at the expense of her time and wellbeing; and
- (f) the longer the information is withheld, the greater the negative impact on her life and that of her family.

## ***The Law***

### ***Section 1(1) FOIA: general right of access to information held by public authorities***

22. Public authorities' duty to disclose information is set out in section 1(1) FOIA:

*'Any person making a request to a public authority is entitled –*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if this is the case, to have that information communicated to him.'*

### ***Section 36 FOIA: Prejudice to effective conduct of public affairs***

23. The exemptions in section 36 apply to information held by a government department or any other public authority if, *'in the reasonable opinion of a qualified person, disclosure of the information'* under FOIA:

*'(2)...*

*(b) would, or would be likely to, inhibit—*

*...*

*(ii) the free and frank exchange of views for the purposes of deliberation, or*

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'*

*...*

*(5) In subsections (2) and (3) "qualified person"—*

*(o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n) means...*

*...*

*(iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown...'*

24. In the *Commissioner v Malnick and ACBA (GIA/447/2017)*, the Upper Tribunal held that ‘reasonable’ in section 36(2) FOIA ‘means substantively reasonable and not procedurally reasonable...’ (at para. 56).

### **Section 40(1) FOIA: Personal information**

25. Section 40(1) FOIA states that:

*‘Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.’*

26. Section 3(2) DPA defines personal data as:

*‘...any information relating to an identified or identifiable living individual...’*

27. The exemption under section 40(1) FOIA is ‘absolute’ under section 2(3)(f)(i) FOIA. This means that there is no requirement to consider the public interest in disclosing the information against the public interest in withholding it.

### **Section 40(2) FOIA -third party personal data**

28. Section 40(2) FOIA provides an absolute exemption for information that is the personal data of an individual **other** than the requester where the disclosure of that personal data would be in breach of any of the data protection principles.

29. Data protection principle (a) states that:

*‘Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject’.*

30. Under section 3(4)(d) DPA, the ‘processing’ of personal data includes ‘disclosure by transmission, dissemination or otherwise making available’.

31. In the case of a FOIA request, personal data is processed if it is disclosed in response to the request. This means that information comprising personal data can only be disclosed under FOIA if to do so would be lawful, fair and transparent. In considering whether this test is met, it is necessary to consider whether there is a legitimate interest in disclosing the information, whether the disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal data it is.

32. While pursuit of information under FOIA is a legitimate interest and disclosure of the requested information is necessary to meet that legitimate interest, it is necessary also to consider (whether or not the individuals are named in the request) whether the individuals in question are acting in their professional rather than personal capacity in which case there is less expectation of privacy. On the other hand, third party individuals – even when acting in a professional capacity – have a reasonable expectation that their personal data will remain confidential.

### **Section 41 FOIA: Information provided in confidence**

33. Section 41 FOIA provides that information is exempt from disclosure if:

*‘(1)...*

*(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or another person....'*

34. An actionable breach of confidence arises where the information concerned has the necessary quality of confidence, has been imparted in circumstances importing an obligation of confidence, and where the unauthorised use of that information is to the detriment of the person imparting it: see *Coco v A N Clark (Engineers) Ltd [1969] RPC 41.*

### ***The role of the Tribunal***

35. The powers of the Tribunal in determining appeals against the Commissioner's decisions for the purposes of FOIA are as follows:

#### ***s.57 Appeal against notices...***

*'(a) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice...*

#### ***s.58 Determination of appeals***

*(1) If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.'*

### ***Evidence***

36. Before the hearing, the parties had submitted written evidence. This comprised an Open Bundle of 401 pages (including an Index). The panel also had access to a Closed Bundle.

### ***Submissions***

#### ***Submissions on behalf of the Commissioner dated 19 June 2023***

37. In summary, the Commissioner invites the Tribunal to dismiss the appeal for the following reasons:

(a) Ms Farragher's grounds of appeal raise the balance of the public interest but as the exemptions in sections 40(1) and (2) are absolute, the Commissioner assumes Ms Farragher does not challenge the Commissioner's findings in relation to those exemptions.

- (b) Ms Farragher’s grounds of appeal do not identify any error of law in the DN.
- (c) At most, Ms Farragher challenges the Commissioner’s finding that the exemption under section 36 (prejudice to conduct of public affairs) is not only engaged but that the balance of the public interest weighs in favour of maintaining that exemption.
- (d) The Commissioner denies that he wrongly weighed the public interest: on the contrary, during the investigation of Ms Farragher’s complaint, CCEA made detailed submissions about the extent of prejudice that would be caused were the withheld information to be disclosed.
- (e) These submissions were ultimately supported by the opinion of Ms Leah Scott, the acting Interim Chief Executive of CCEA (the appropriate QP) on 16 November 2022.
- (f) In all the circumstances, there was ample material before the Commissioner upon which to reach his conclusion about the balance of the public interest, nor was his conclusion unreasonable or otherwise unlawful.
- (g) It is not correct, as claimed by Ms Farragher in her grounds of appeal, that the Commissioner *‘found CCEA guilty of deliberately delaying’* disclosure. In this case there were unprecedented procedural difficulties in CCEA’s handling of Ms Farragher’s FOIA request because, until her resignation took effect on 2 September 2022, she herself was the QP for CCEA for the purposes of section 36(5)(o)(iii) FOIA.
- (h) On the facts of this case, Ms Farragher – being both the requester and the QP– would have been incapable of giving a *‘reasonable opinion’* as required by FOIA about disclosure of information to herself: it would be contrary to principle for an appellant to act as judge in their own cause in discharging the function of a QP under section 36 FOIA.
- (i) Hence, although the Commissioner found CCEA in breach of section 10 FOIA for failing to provide information within the required 20 working day deadline, that had no bearing on the Commissioner’s conclusion that the withheld information was nevertheless exempt under section 36 FOIA by reference to the opinion of the subsequent Interim Chief Executive who was by then the QP.

### ***Submissions by Ms Farragher***

38. The panel was not provided with any submissions by Ms Farragher in response to the Commissioner’s submissions above.

### ***Discussion***

#### ***Possible unfairness of information being withheld from Ms Farragher***

39. The panel first considered the possible unfairness of withholding certain information from Ms Farragher.

40. CCEA provided some information to Ms Farragher in response to her request and withheld other information (some by means of redactions to the information which was provided). For the purposes of these proceedings, the Tribunal permitted such information to continue to be withheld from Ms Farragher and the public pursuant to GRC Rule 14. For the purposes of the hearing of this case, however, the panel was provided with a Closed Bundle. This contains the unredacted pages which had been provided to Ms Farragher in redacted form and other information which had been withheld from her under the exemptions set out in the DN.



41. The panel takes account of the Tribunal's Practice Note on Closed Material. This explains that, where disclosure of the disputed information would defeat the object of the exercise, the law permits the Tribunal to deviate from the normal rule about all material seen by the Tribunal being available to all parties. However, such deviation is permissible only so far as is necessary to ensure that the purpose of the proceedings is not defeated.

42. The panel accepts that there is inevitably *some* prejudice in material being withheld from a party requesting it, but considers that this prejudice is mitigated by:

- (a) the Tribunal's expertise, and exercise of an investigatory rather than adversarial function;
- (b) the Commissioner being an independent, expert regulator who does not take sides. On the contrary, the Commissioner's role is to point out the strengths and weaknesses of both parties' cases in assessing the correct application of the law and regulations; and
- (c) informing parties excluded from 'closed' information as much as possible with maximum possible candour in the written reasoned decision.

43. The panel considers that in this case, as the request itself names various individuals, the response was almost bound to engage the absolute exemptions in section 40 FOIA relating to personal data of both Ms Farragher herself and other individuals. The request was also about recruitment of senior executives at CCEA as well as other staffing matters which one would expect to be extremely sensitive. Nevertheless, considerable information was in fact disclosed to Ms Farragher.

44. Having considered all these matters, the panel is satisfied that the withholding of the requested information by means of redaction or pursuant to the FOIA exemptions claimed by CCEA and upheld by the Commissioner was and remains necessary to ensure the purpose of the proceedings is not defeated. Moreover, the prejudice to Ms Farragher's case – mitigated as described above – is justified in the interests of justice overall.

### ***The facts***

45. The panel went on to consider the relevant facts of this case. The panel's findings of fact are set out below. None is disputed:

- (a) CCEA is a non-departmental public body of the Department of Education (Northern Ireland), a department of the Northern Ireland Executive, a devolved body.
- (b) Amongst other things, CCEA is responsible for reviewing and advising on the school curriculum in Northern Ireland and administering exams and assessments.
- (c) From 21 April 2021 until 2 September 2022, Ms Farragher was CCEA's Interim Chief Executive.
- (d) Thereafter, Leah Scott became CCEA's acting Interim Chief Executive
- (e) It is in the public domain that the QP for CCEA for the purposes of section 36 FOIA is the organisation's Chief Executive. Hence when Ms Scott succeeded Ms Farragher as CCEA's QP, Ms Scott became acting Interim Chief Executive.
- (f) Since making her revised request dated 4 April 2022, CCEA has provided to Ms Farragher much of the correspondence (albeit with names and other personal data of some individuals redacted) she asked for as well as minutes of several closed meetings.
- (g) Ms Farragher has since pursued claims against CCEA to the Industrial Tribunal.

***Error of law or wrongful exercise of discretion?***

***Error of law?***

57. Having made the above findings of fact, the remaining issues for the panel in this case are (a) whether the Commissioner made any error of law in the DN and (b) whether the Commissioner wrongly exercised his discretion.

58. No error of law is claimed by Ms Farragher nor has the panel identified any.

59. For completeness, however, the panel considered whether the Commissioner was mistaken in finding that:

(a) on the balance of probabilities, that CCEA did not hold any information within the scope of the request other than that either provided or withheld under the claimed exemptions of FOIA; and/or

(b) the exemptions in sections 40(1) and (2) were legitimately claimed by CCEA in respect of individuals' names and other personal data; and/or

(c) the exemptions in section 36(2)(b)(ii) and 36(2)(c) were engaged.

60. As regards Ms Farragher's claim that CCEA held further information, the panel notes that:

(a) The issue is not whether CCEA *should* have held the information but whether it did in fact (on the balance of probabilities) hold it at the time of the request.

(b) The Commissioner was entitled to accept at face value the response of a public authority where there was no evidence of an attempt to mislead the Commissioner, or of a motive to withhold information actually in its possession (*Councillor Jeremy Clyne v IC and London Borough of Lambeth EA/2011/0190*).

(c) This Tribunal said in the case of *Bromley and others v. Information Commissioner EA/2006/0072* (which is not binding on the panel but persuasive) that:

*“There can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records. This is particularly the case with a large national organisation like the Environment Agency, whose records are inevitably spread across a number of departments in different locations. We think that [the balance of probabilities] requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.”*

(d) During the Commissioner's investigation, CCEA was asked a series of questions concerning what information it held and the extent of the searches carried out to locate that information, including the search terms used for searches of electronic data.

- (e) The Commissioner described in paras. 18-23 DN, CCEA's account of the requests for information which it had made of certain individuals identified in the request (including one staff member who had since left the organisation); the searches it had carried out itself; and its records management policy including retention, deletion, destruction, preservation and the holding of business-related information on private or locally held devices or email addresses.
- (f) The Commissioner also accepted the Council's statements that its review was '*voluminous and complex*' and that it had been '*hampered by the disruption caused by the COVID-19 Pandemic and the lack of a functioning Northern Ireland Executive in recent times*'.
- (g) The Commissioner noted the opinion of the QP that '*the reasons for any missing minutes could include that they have been erased following approval of the formal note of the Council closed meeting or they have not been developed by the Council Secretary.*'
- (h) The Commissioner considered that the searches for information which CCEA conducted – and subsequent clarifications and further searches – were adequate and that all the information to which Ms Farragher was entitled was provided to her.
- (i) The Commissioner concluded that while understanding that Ms Farragher '*is not convinced that [she] has been provided with all the information falling within the scope of the request*', on the balance of probabilities, he accepted that no further information was held, other than what had been withheld under an exemption.

61. Having reviewed all the matters mentioned above, and noting that Ms Farragher has not identified with any specificity any information she considers to be missing, the panel considers that the Commissioner:

- (a) made no error of law in the DN; and
- (b) exercised his discretion appropriately in the enquiries he made of CCEA and other aspects of his investigation to identify information within the scope of the request held by CCEA at the time of the request.

62. As regards the section 40 FOIA exemptions, given Ms Farragher was provided with her own personal data as if she had made a subject access request; she has not challenged the redaction of others' personal data from information supplied to her; and that the section 40 exemptions in this case are absolute, the panel concludes that the DN contained no error of law in that respect.

63. As for the exemptions in section 36(2)(b)(ii) and 36(2)(c), the panel notes:

- (a) the DN's explanation at paragraphs 48-60 for finding that the exemptions were engaged because the QP gave an opinion (albeit belatedly) which for reasons the Commissioner set out in the DN he considered to be a '*reasonable*' opinion.
- (b) in particular, the Commissioner noted the QP's assessment that the timing of the request was important '*in light of the current recruitment process*' and that inhibition/prejudice '*would be likely to occur*' though this judgment was '*timebound*' and the position could change'.
- (c) Ms Farragher has not disputed the Commissioner's findings in this respect.

64. In light of the above, the panel does not consider that the Commissioner made any error of law in concluding that the exemptions in section 36(2)(b)(ii) and 36(2)(c) are engaged.

### ***Wrongful exercise of discretion in balancing the public interest?***

65. The panel notes that – as set out in the DN (paragraphs 61 and 62), the Commissioner considered that the public interests in favour of disclosing the information are:

- (a) improvement in ‘*transparency, accountability and decision-making*’; and
- (b) Ms Farragher has stated her belief that the requested information has been deliberately withheld by the CCEA and that its release would be in the public interest. However, given the panel’s conclusions at paragraphs 61 to 64 above, the panel gives little weight to this factor.

66. Public interest factors in favour of maintaining the exemptions are set out in the DN (at paragraphs 63 and 64). These are, in summary:

- (a) CCEA’s view (supported by the QP’s opinion) that Council members might be inhibited from engaging candidly in discussions about a ‘*live*’ recruitment process for the role of Chief Executive should minutes and verbatim notes of discussions at closed meeting be disclosed.
- (b) Council members need a ‘*safe space*’ to develop ideas and discuss options – and thus the ability (in the QP’s opinion) to ‘*express themselves openly and honestly and to explore all the options in relation to such an important decision*’.
- (c) Disclosure of the minutes or notes to the world ‘*would have a direct impact on the ability to manage the current recruitment process*’ as applicants could gain some insight and therefore benefit in relation to the recruitment procedure.

67. Balancing the public interest, the Commissioner agreed that a loss of candour would not be in the public interest when discussing an important recruitment process especially where, as in this case, it was ‘*live*’. While the information may be of interest to the wider public as well as Ms Farragher herself, he concluded that disclosing the discussions between Council members regarding the recruitment of a senior figure would undermine the process.

68. The panel adds that, in its view:

- (a) recruitment discussions relating to senior appointments, especially while the process is ongoing and particularly to the extent it relates to specific candidates even if they are not named, must be capable of being held by public authorities in private in order to maintain the efficacy and integrity of the recruitment process;
- (b) were the process and discussions about individual candidates to be known to the world, especially while a senior recruitment process was still active, this would likely discourage not only some candidates from applying but also deter would-be panellists from becoming involved in the process;
- (c) while the disclosure of the requested information in this case may be interesting to the public, genuine public interest in disclosure of that information is, in the panel’s judgment, both weak as well as vaguely articulated and unsubstantiated; and
- (d) while the adverse impact on Ms Farragher and her family of delays in providing some information and withholding other information is noted and regrettable, these factors do not add weight to the **public interest** in disclosing the information.

69. Overall, having seen the redacted information, the panel is not persuaded that the public interest in its disclosure to Ms Farragher - much less the world at large – is sufficient to outweigh the public interest in maintaining the exemptions.

70. Thus having carefully considered the public interest test for itself, the panel is not satisfied that the Commissioner should have exercised his discretion differently. On the contrary, we agree with the Commissioner's view that in this case, on balance the public interest favours maintaining the exemptions in sections 36(2)(b)(ii) and 36(2)(c) (prejudice to effective conduct of public affairs) rather than disclosing further information in response to the request.

71. Finally, the panel agrees with the Commissioner's conclusion that:

- (a) in view of his assessment that section 36 applies, there is no need to consider the exemption in section 41 (information provided in confidence);
- (b) CCEA breached section 10 FOIA by providing information outside the 20 working day timeframe; and
- (c) no further steps are required.

### ***Conclusions***

72. For the reasons set out above, the panel finds that the Commissioner's DN was neither wrong in law nor did he wrongly exercise his discretion. Accordingly, the DN is confirmed.

73. The appeal is dismissed.

Signed:

Date: 27th November 2023



Alexandra Marks CBE  
(sitting as a First-tier Tribunal Judge)