



Neutral Citation Number: [2026] UKUT 269 (AAC)
Appeal No. UA-2026-000247-GIA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Mark Armstrong

Applicant

- v -

THE INFORMATION COMMISSIONER

Respondent

Before: Upper Tribunal Judge Stout

Hearing date(s): 14 July 2026

Mode of hearing: By video

Representation:

Applicant: In person

Respondent: No appearance or representation

On appeal from:

Tribunal Case No: EA/2025/0149

Neutral citation number: [2025] UKFTT 01531 (GRC)

Judge/Panel: Judge Anthony Snelson, Ms Jo Murphy and Dr Aimee Gasston

Tribunal Venue: Decided without a hearing

Decision Date: 30 October 2025

SUMMARY OF DECISION

INFORMATION RIGHTS: PRACTICE AND PROCEDURE (93.10)

The Information Commissioner (IC) acted procedurally unfairly in failing to give the applicant an opportunity to comment on the public authority's reliance on a new exemption in the course of the IC's investigation of the applicant's complaint under section 50 of the Freedom of Information Act 2000 (**FOIA**). However, the First-tier Tribunal had not arguably erred in holding that it did not have jurisdiction to uphold an appeal because of that procedural error. There was no arguable breach of Article 6 of the European Convention on Human Rights and Fundamental Freedoms in those circumstances because the First-tier Tribunal itself was the independent and impartial tribunal with full jurisdiction to determine whether the applicant's civil right to information under section 1 of FOIA had been infringed.

Nor had the First-tier Tribunal arguably erred in its application of the public interest test in section 2(2)(b) of FOIA.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

Permission to appeal to the Upper Tribunal is refused.

REASONS FOR DECISION

Introduction

1. The applicant (**Mr Armstrong**) seeks permission to appeal against the First-tier Tribunal's decision dismissing his appeal against a Decision Notice (**DN**) issued by the Information Commissioner (**IC**) under section 50 of the Freedom of Information Act 2000 (**FOIA**). The IC had determined that Cleveland Police Force (**the Force**) was entitled to refuse the request he had made under section 1 of FOIA for the email addresses of the Chief Constable and three other very senior officers.
2. The Upper Tribunal does not normally publish permission decisions (see [the Practice Statement of 3 April 2025](#)), but I have directed that this decision be published because the issue raised by Mr Armstrong concerning procedural unfairness in the IC's decision-making process is potentially of wider significance.

Background

Mr Armstrong's information request and Cleveland Police's response

3. Mr Armstrong describes himself in his written submissions for this hearing as "a victim of historical child abuse at Kirkclevington Detention Centre and as the representative of over 850 survivors". He has, on his own account, made a large number of requests for information under section 1 of FOIA about Operation Magnolia, an investigation into that abuse launched by the Force in 2014, but which has to date not resulted in any charges being brought against alleged offenders.
4. The subject of these proceedings is a request that Mr Armstrong made to the Force on 4 July 2024 for the email addresses of the Chief Constable and three other very senior officers.
5. In response to his request, the Force provided him with a generic link for contacting any member of staff and, later, the collar or warrant numbers for the Chief Constable and three other senior officers, but the force refused to disclose the email addresses. In a letter to Mr Armstrong of 4 September

2024, the Force relied on section 40(2) of FOIA to withhold the email addresses.

6. Mr Armstrong complained to the IC on 5 September 2024. The IC contacted the Force. In response to the complaint, the Force relied for the first time on the exemption in section 31 of FOIA (law enforcement). As the First-tier Tribunal in this case noted, the IC did not inform Mr Armstrong of the Force's response or otherwise give Mr Armstrong an opportunity to make representations about the Force's reliance on section 31. The IC simply issued a DN dated 10 March 2025 upholding the Force's decision.
7. By notice of appeal dated 11 March 2025, Mr Armstrong appealed to the First-tier Tribunal against the IC's DN.

The First-tier Tribunal's decision

8. The First-tier Tribunal dismissed the appeal. It held that the Force was entitled to rely on section 31 and that the public interest balance under section 2(2)(b) of FOIA favoured maintenance of the exemption. The First-tier Tribunal gave reasons for its conclusion as follows:

12. We have reached the clear conclusion that the Force was entitled to rely on s31 and that the public interest balance strongly favours maintenance of the exemption. Disclosure of the email addresses requested would obviously run counter to the public interest in prejudicing the orderly and efficient conduct of police business, as different constitutions of the First-tier Tribunal have held on a number of previous occasions (see for example *Lotz v IC and DWP* EA/2018/0108 (6 November 2018) and *O'Hanlon v IC and Cabinet Office* EA/2024/0227 (28 November 2024)). Disclosure under FOIA is to the whole world and publishing email addresses of senior officers would inevitably expose them to increased levels of correspondence and distract them from their core law enforcement obligations.

13. We entirely agree with Mr Armstrong that there is a strong public interest in police forces being accountable and accessible to the public they serve, but it does not follow that there is a public interest in individual email addresses of senior officers being publicly available. There are numerous mechanisms and processes through which citizens may seek to hold police forces to account and/or raise complaints if they feel that they have let them down. These range from internal complaints procedures to the formal powers of the Independent Office for Police Conduct. Democratic oversight is also provided through the system of Police and Crime Commissioners.

14. Mr Armstrong's complaint about the Commissioner's failure to confront him with the s31 point is entirely valid, but provides no ground for overturning the DN. We have no jurisdiction to allow the appeal simply to mark our disapproval of the procedure which he

followed, in circumstances where we are satisfied that the substance of his decision was correct.

9. The First-tier Tribunal added two final paragraphs to its decision. The first (at [16]) emphasised that the First-tier Tribunal understood the underlying grievances about Operation Magnolia. The second (at [17]) concerned the procedural failure in the IC's decision-making and was as follows:

17. The Commissioner's election to decide the complaint on a ground which Mr Armstrong had had no chance to consider was a most regrettable departure from what any right-thinking person would regard as an elementary principle of fair dealing, namely that both sides of any argument should be heard and considered. We hope that it was an isolated misjudgement. Repeating it would serve only to undermine trust in, and respect for, his important public function of investigating freedom of information disputes impartially and equitably.

The appeal to the Upper Tribunal

10. Mr Armstrong seeks permission to appeal to the Upper Tribunal against the First-tier Tribunal's decision. Permission to appeal was refused by the First-tier Tribunal and then by Upper Tribunal Judge Wikeley on the papers. Mr Armstrong renewed his application for permission to this oral hearing. He relies on two grounds:

Ground 1: The First-tier Tribunal erred in law by finding that its de novo jurisdiction under section 58 FOIA cured the underlying procedural unfairness at the Commissioner stage, thereby failing to secure the Applicant's right to a fair hearing under Article 6(1) ECHR.

Ground 2: The First-tier Tribunal erred in law in its application of the public interest balancing test under section 31 FOIA, giving insufficient weight to the powerful public interest in transparency concerning child abuse investigations.

11. I take them in turn below.
12. As was explained by Judge Wikeley when refusing permission on the papers, the Upper Tribunal's jurisdiction under sections 11 and 12 of the Tribunals Courts and Enforcement Act 2007 (**TCEA 2007**) is limited to considering whether there is any error of law in the decision of the First-tier Tribunal. The Upper Tribunal therefore normally only grants permission to appeal if it is arguable with a realistic prospect of success that there is a material error of law in the decision of the First-tier Tribunal. As Judge Wikeley also explained at [9]:

The case law on the standard of appellate review exercisable in an error of law jurisdiction demonstrates that any challenge which turns on a specialist tribunal's treatment of the facts needs to be

approached with a degree of circumspection. Three interlocking themes or principles are evident in this jurisprudence. The first is that appropriate recognition must be accorded to the first instance tribunal as the primary fact-finder. The second is that due note should be taken of the expertise of a specialist tribunal. The third is that the tribunal's reasons for its fact-finding need to be at least adequate, but not necessarily optimal.

Ground (1): Procedural unfairness in the decision of the IC

13. Mr Armstrong argues that it was unfair, and in breach of his rights under Article 6 of the European Convention on Human Rights and Fundamental Freedoms (**the ECHR**) for the IC to reach a decision on his complaint without giving him an opportunity to comment on the Force's response to the complaint. As the Force had changed the exemption on which it was relying, Mr Armstrong had no opportunity to make submissions to the IC as to why the Force should not be allowed to rely on section 31 of FOIA.
14. I agree with the First-tier Tribunal that the IC's failure to give Mr Armstrong an opportunity to comment on the Force's reliance on section 31 was procedurally unfair. I also agree with the First-tier Tribunal that repetition of this procedural error "would serve only to undermine trust in, and respect for, [the IC's] important public function of investigating freedom of information disputes impartially and equitably". If Mr Armstrong is correct in his submission that the IC has recently repeated the same procedural error in his investigation into another of the appellant's complaints (in Decision Notice IC-425848-C8F6), that would be a matter of concern. In addition to the unfairness to the individual concerned, procedural failures such as this may result in appeals to the First-tier Tribunal that would not have been pursued, or would have been unnecessary, if the IC had conducted a fair investigation.
15. However, I agree with both the First-tier Tribunal and Judge Wikeley that the IC's procedural error does not provide a basis on which the First-tier Tribunal could uphold Mr Armstrong's appeal.
16. It is well established that the First-tier Tribunal has no jurisdiction to uphold an appeal on the basis of this sort of procedural error by the IC, and no power to remit a case to the IC for a fresh decision. The Tribunal's jurisdiction is only to 'stand in the IC's shoes' and reconsider the complaint *de novo*. This is what was decided in *Information Commissioner v Bell* [2014] UKUT 106 (AAC), one of the cases to which the First-tier Tribunal referred. These points are explained by Upper Tribunal Judge Jacobs at [22] and [27] as follows:

22. What is the nature of the appeal? The tribunal undertakes a complete reconsideration of the issues before the Commissioner. It is not limited to the evidence or submissions considered by the Commissioner. Nor is it bound by his findings of fact or the way he has exercised a discretion. In the convenient phrase that is often used to describe the role of the First-tier Tribunal, it stands in the shoes of the decision-maker.

...

27. It follows that I accept Mr Hopkins' argument that the Commissioner did not have power in this case to serve a further notice under section 50. He is correct for a number of reasons. First, as he argued, the Commissioner had exhausted his powers to act under section 50, once he had served his decision notice on Mr Bell. Second, there is no power in the legislative structure for the Commissioner to revisit a notice. Third, it is not possible to have two notices on the same complaint but in different terms, for obvious reasons. Fourth, it was inconsistent with the nature of an appeal to the First-tier Tribunal for that tribunal to remit the case to the Commissioner for reconsideration (as the tribunal's decision appeared to do) or to refer the case to the Commissioner as part of an interlocutory stage in the tribunal's decision-making (as the refusal of permission envisaged). Leaving aside the constitutional issue of the separation of powers, once an appeal is made, the legal responsibility for decision-making was the tribunal's. It had no power to abdicate that duty or to seek to share it in the way that the tribunal may have envisaged.

17. This analysis was confirmed by the Upper Tribunal in *IC v Malnick and ACOBA* [2018] UKUT 72 (AAC); [2018] AACR 29. In particular, at [45], the Upper Tribunal quoted from [14] of *Guardian Newspapers Ltd and Heather Brooke v Information Commissioner and British Broadcasting Corporation* (EA/2006/0011 and EA/2006/0013):

...(1) The Tribunal's task is not a judicial review of the Commissioner's decision on the principles that would be followed by the Administrative Court in carrying out a judicial review of a decision by a public authority (contrast the jurisdiction relating to national security certificates under s 60(3), which is expressly on a judicial review basis). The statutory jurisdiction under s 58 is substantially wider.

(2) The Tribunal does not start with a blank sheet. The starting point is the Commissioner's notice. But analogy with the Court of Appeal is not apt. The Court of Appeal only hears fresh evidence in special circumstances. By contrast, subject to limited exceptions, the Tribunal is required to receive relevant evidence, documents and information from the parties to the appeal, and the material is not limited to that which was available to the Commissioner.

(3) In considering whether the Commissioner's notice is in accordance with the law, the Tribunal must consider whether (in the present context) the provisions of FOIA have been correctly applied. The Tribunal is not bound by the Commissioner's views or findings but will arrive at its own view. In doing so it will give such weight to the Commissioner's views and findings as it thinks fit in the particular circumstances.

(4) In some cases the correct application of the provisions of the Act will depend upon the findings of fact. Where facts are in dispute, the

Tribunal may review any finding of fact by the Commissioner. The Tribunal will reach its conclusions on the factual issues upon the whole of the material which is properly before it on the appeal.

18. There is no arguable breach of Mr Armstrong's rights under Article 6 in these circumstances, because Article 6 does not entitle him to a fair hearing before the IC. It entitles him, "in the determination of his civil rights" to a "fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". If there is a "civil right" in this context, it is the statutory right to information granted by section 1 of FOIA. Mr Armstrong had his fair and public hearing in respect of that right before the First-tier Tribunal. The First-tier Tribunal had full jurisdiction to consider afresh whether the Force had complied with FOIA.
19. That this is how Article 6 works is clear from the case of *Albert and Le Compte v Belgium* (1983) 5 EHRR 533 to which Mr Armstrong has referred. In that case the European Court of Human Rights identified that the "civil right" at issue was the doctors' right to continue to exercise their medical profession: see [28]. The European Court went on to note that the first-tier decision-makers in those cases were the doctors' professional associations (analogous to the General Medical Council in the United Kingdom). The Court held that if those associations did not comply with the requirements of Article 6, there would be no breach of Article 6 if they were "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6" ([29]). "Full jurisdiction" in this context means "full jurisdiction" over the determination of the "civil right", not over the actions of the professional associations.
20. The case of *Ramsahai v The Netherlands* (2007) 46 EHRR 43 does not assist because in that case the European Court of Human Rights found Article 6 not to be applicable: see [360]. Mr Armstrong has referred to [383] of *Ramsahai* in support of his argument, but this appears to be an erroneous reference because the Court's judgment in that case ends at [379] and the words quoted by Mr Armstrong in section D3 of his written submissions for this hearing do not appear in the Court's judgment.
21. In any event, Mr Armstrong has misunderstood how 'the curative principle' works in respect of procedural defects. What 'cures' a procedural error by a first-tier decision-maker such as this is the fact that a fair procedure is followed by the second-tier decision-maker. A second-tier tribunal of full jurisdiction is not normally required to remit a matter to the first-tier decision-maker in order to enable the first-tier decision-maker to 'cure itself'. That is normally only necessary if the second-tier decision-maker did not have full jurisdiction and was instead limited to considering (for example) whether the first-tier decision-maker had made an error of law.
22. For all these reasons, ground 1 is not arguable and I refuse permission to appeal.

Ground 2: application of the public interest test

23. Mr Armstrong argues that there is an obviously strong public interest in disclosure in this case because of the state's duty to carry out an effective investigation into child abuse and the public interest in the state being held to account if that does not happen. He has referred to newspaper articles reflecting the ongoing interest of the press and public in Operation Magnolia. He argues that there is a strong public interest in senior officers being held accountable for systemic failings in relation to the investigation. He refers to multiple other cases in which (he says) the Force has failed to comply with its obligations under FOIA and what he describes as the Force's "systemic resistance to transparency". Mr Armstrong explained at this hearing that he seeks those email addresses because he wishes personally to question, challenge and hold to account those senior officers regarding the Operation Magnolia investigation to date. He argues that the First-tier Tribunal failed to give adequate weight to the value and serious purpose of the request.
24. I am not in a position to assess whether what Mr Armstrong says about Operation Magnolia and the performance of the Force and its senior officers is true. Nor have I looked at the DNs in other cases involving the Force to which Mr Armstrong has referred in order to see whether there is substance in his submission about systemic failings. My summary of his arguments above should not therefore be taken as endorsement of his submissions or confirmation of their truth. However, for the purposes of determining this permission application, I proceed on the basis that everything Mr Armstrong says about these matters is correct.
25. Even proceeding on that basis, however, there is no arguable error of law in the First-tier Tribunal's decision. The request for information in this case was not a request for any information about Operation Magnolia itself, it was a request for the email addresses of the Chief Constable and three other senior officers. The First-tier Tribunal was required to consider only the public interests for and against disclosure of that particular information. This the First-tier Tribunal did.
26. There is no arguable error in its assessment of the balance of public interests in this case, which (contrary to Mr Armstrong's submission) explicitly recognised in [13] the "strong public interest in police forces being accountable and accessible to the public they serve". However, as the First-tier Tribunal explained at [13] (set out in full above) "it does not follow that there is a public interest in individual email addresses of senior officers being publicly available" and "There are numerous mechanisms and processes through which citizens may seek to hold police forces to account and/or raise complaints...".
27. It was also open to the First-tier Tribunal to decide that there was a strong public interest in not disclosing the email addresses of senior officers because ([12]), in short, "Disclosure under FOIA is to the whole world and publishing email addresses of senior officers would inevitably expose them

to increased levels of correspondence and distract them from their core law enforcement obligations”.

28. The assessment of the balance of those public interests was a matter for the First-tier Tribunal. In this case, it was plainly open to the First-tier Tribunal to conclude that “the public interest balance strongly favours maintenance of the exemption”.

Conclusion

29. I am therefore satisfied that there is no arguable material error of law in the decision of the First-tier Tribunal and I refuse permission to appeal.

Holly Stout
Judge of the Upper Tribunal

(Approved for issue on 15 July 2026)