



Neutral Citation Number: [2026] UKUT 240 (AAC)
Appeal No. UA-2026-000183-GIA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

MR TAIMUR KHAN

Appellant

- v -

**(1) THE INFORMATION COMMISSIONER
(2) LEEDS CITY COUNCIL**

Respondents

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: James Coombs
First Respondent: Laura Elizabeth John (counsel)
Second Respondent: Leo Davidson (counsel)

On appeal from:

Tribunal: First-Tier Tribunal (General Regulatory Chamber)
(Information Rights)
Tribunal Case No: FT/EA/2025/0208
Neutral citation number: [2025] UKFTT 01434 (GRC)
Judge/Panel: Judge Harris, Members Chafer and Yates
Tribunal Venue: On the papers
Decision Date: 28 November 2025

SUMMARY OF DECISION

FREEDOM OF INFORMATION – PUBLIC INTEREST TEST (93.6)

With the agreement of all parties, the Upper Tribunal allowed the appeal and set aside the decision of the First-tier Tribunal on the basis that it had erred in law in its application of the exemption in section 43(2) of FOIA (prejudice to commercial interests) and the assessment of the balance of public interests under section 2(2)(b) of FOIA. The First-tier Tribunal misdirected itself in the public interest balancing

exercise by relying on factors unrelated to the commercial interests said to be prejudiced, failed to give adequate reasons by not engaging with the appellant's principal submissions and evidence, and erred in excluding material relevant to the assessment of public interest at the time of the public authority's decision on the basis that it was created after that date. The case is remitted to the First-tier Tribunal for re-hearing before a differently constituted panel.

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

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved the making of errors of law. Pursuant to section 12(2)(b)(i) of the Tribunals Courts and Enforcement Act 2007, I set aside the decision of the First-tier Tribunal and remit the matter for re-hearing before a fresh Tribunal. The new Tribunal must not include any judge or panel member previously involved in deciding this case.

REASONS FOR DECISION

1. This case concerns the appellant's request of 7 November 2024 to the second respondent (**the Council**) under section 1 of the Freedom of Information Act 2000 (**FOIA**) for:

"the full and final report from PwC for the work they carried out for SEND [Special Educational Needs and Disability] improvement."

2. The First-tier Tribunal in this case upheld the first respondent Information Commissioner's decision that the exemption in section 43(2) of FOIA (prejudice to commercial interests) was engaged and that the balance of public interests under section 2(2)(b) of FOIA favoured maintaining the exemption.
3. I granted permission to appeal in a notice sent to the parties on 9 March 2026. Both respondents have submitted responses to the appeal, and the appellant has replied to their responses. Both respondents agree that the First-tier Tribunal in this case made a number of material errors of law in its decision and that its decision must therefore be set aside. They submit that this appeal should be decided on the papers without a hearing and that the case should be remitted to the First-tier Tribunal for a fresh decision. The appellant, however, asks for an oral hearing and invites the Upper Tribunal to re-make the appeal.
4. I have considered carefully whether to accede to the appellant's requests. However, I do not consider that it would be appropriate for me to re-make the First-tier Tribunal's decision in this case because:
 - a. it will not produce a quicker outcome for the appellant because the First-tier Tribunal is generally able to list hearings at least as quickly, and often more quickly, than the Upper Tribunal;

- b. the case requires a complete re-hearing including consideration of evidence;
 - c. this type of case must in the First-tier Tribunal be considered by a full panel (see paragraph 3(b) of the June 2023 *Practice Direction: Panel composition in the First-tier Tribunal, General Regulatory Chamber*) and it is not appropriate for me to deprive the parties of their right to a full panel determination by re-making the decision in the Upper Tribunal;
 - d. if a decision is re-made in the Upper Tribunal, the right of appeal against that decision lies to the Court of Appeal so that re-making in the Upper Tribunal deprives the parties of their right to appeal to the Upper Tribunal. That is a significant loss because:
 - i. it is subject to a simple permission test and not also to the “second appeals” test that applies to an appeal to the Court of Appeal (see section 13(6) of the TCEA 2007 and article 2 of *The Appeals from the Upper Tribunal to the Court of Appeal Order 2008* (SI 2008/2834));
 - ii. appeals to the Upper Tribunal are subject to the same rules on costs as appeals to the First-tier Tribunal, whereas in principle on appeal to the Court of Appeal, costs “follow the event” so that the unsuccessful party pays the winner’s costs.
5. Because I am satisfied that it is not appropriate for me to re-make the decision in this case, I also consider that it is not appropriate for me to hold an oral hearing in the Upper Tribunal. Given the large measure of agreement between the parties, such a hearing would serve no useful purpose and would only delay the resolution of this matter.
6. I have therefore determined this matter on the papers, as I am permitted to do by rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Paragraph references are to the decision of the First-tier Tribunal save where otherwise indicated.
7. Having considered the parties’ submissions, I am satisfied that the First-tier Tribunal erred in law in the ways identified in grounds of appeal 1, 3, 4 and 5. Specifically:
- a. *Ground 1* - When identifying the public interest factors that favour withholding disputed information, for the purposes of applying the public interest test, the focus should be on the factors that engage the relevant exemption: *Hogan v IC* EA/2005/0026. In this case, the Tribunal erred by concluding (at [24]-[30]) that section 43(2) of FOIA was engaged by reason of the impact that disclosure would have on the commercial interests of PwC (only), but then focusing on the impact that disclosure would have on the Council’s service delivery when assessing the public interest balance: see [27]-[29] and [34]. This was not simply an issue of weight, but a misdirection as to the factors that may be taken into account when applying the public interest test.
 - b. *Grounds 3 and 5* - The First-tier Tribunal erred in law by failing to give adequate reasons for its decision and/or in failing to take into account

relevant factors and evidence. Although a tribunal's reasons do not need to deal with all the evidence in a case, or all the arguments of a party, they do need to deal with the main issues and evidence in dispute and enable the parties to see why they have won or lost: see *Practice Direction from the Senior President of Tribunals: Reasons for decisions* (June 2024). In this case, the First-tier Tribunal failed to address the eleven reasons given by the appellant (now set out at [65] of the grounds of appeal) as to why the public interest favours disclosure, and failed to make any mention of the appellant's witness statements in circumstances where those statements contain significant evidence. Those failures in this case mean that I am not satisfied that the First-tier Tribunal had regard to the relevant factors and evidence, and its reasons are not adequate to explain why the appellant lost, given the arguments that he raised.

- c. *Ground 4* - The appellant argues that at [32] the First-tier Tribunal erred in concluding that it could not take into account in the public interest balancing exercise evidence that post-dated the Council's response to the request. I agree that the First-tier Tribunal erred in law in this respect. It is permissible to have regard to facts and matters that did not exist at the date on which a request was refused, insofar as they throw light on the grounds given for refusal: *R (Evans) v Attorney General* [2015] UKSC 21 at [73]. The Upper Tribunal's judgment in *Montague v IC and Department of International Trade* [2022] UKUT 104 (AAC) did not depart from that. Evidence that an elected councillor had demanded disclosure of the PwC report, and that 700 local parents had signed a petition calling for its release, was in my judgement capable of constituting evidence of actual public interest in its release at the time of the request, even if that interest was not *expressed* until after the date of the Council's decision. The First-tier Tribunal erred in discounting it on the basis that it post-dated the Council's response to the request.

8. Each of these errors was a material error that may have made a difference to the outcome of the appeal.
9. Since I am allowing the appeal on those four grounds, I do not need to deal with Grounds 2 and 6. However, I make the following observations as regards those grounds:

- a. *Ground 2* – The appellant argues that the First-tier Tribunal has erred in law as regards the distinction between financial and commercial interests. I agree that what the First-tier Tribunal has said about this at [25] suggests that it misunderstood the appellant's argument in this respect, which was to the effect that the Council's commercial interests would not be affected by disclosure of the PwC report because special educational needs provision is not a commercial activity. While the Council's financial interests might be affected, its commercial interests would not. This misunderstanding has contributed to my conclusion that the First-tier Tribunal's reasons in this case were inadequate, although (like the parties), I am not satisfied that the misunderstanding of the appellant's argument in this respect had a material bearing on its

decision. At the remitted hearing, the panel will need to take care properly to understand and address this argument.

- b. *Ground 6* – The appellant argues that the First-tier Tribunal erred in placing weight on what he says were merely speculative assertions by the Council that educational psychologists would not work for the Council if the report was disclosed, or that “more parents would want to claim benefits they are legally entitled to, increasing the cost of providing those services”. I note that the latter point is not what the First-tier Tribunal actually says at [34]. The weight to be given to the various factors that are relevant to the public interest balancing exercise is a matter for the First-tier Tribunal. However, when granting permission to appeal, I considered it arguable that it was perverse for the First-tier Tribunal to give “particular weight” to matters that were speculative, especially in the context of it having given no weight to matters that were evidenced, such as the views of parents and an elected councillor. On reflection, I do not consider that the perversity threshold is met in this case, but the weaknesses in the Tribunal’s reasoning in these respects have contributed to my conclusion that the Tribunal failed to take relevant factors into account and failed to give adequate reasons for its decision.
10. For all these reasons, the appeal is allowed, the decision of the First-tier Tribunal set aside and the case remitted for full re-hearing before a fresh panel of the First-tier Tribunal. I note that, if the appellant wants an oral hearing before the First-tier Tribunal this time, he is entitled to it: see rule 32 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 24 June 2026

Re-issued 7 September 2026 to correct error in representative’s name.