



Sir Alan Beith
Justice Select Committee
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Wednesday, 2nd November, 2011.

BURNS
My Ref: PB04611.
Your Ref:

Justice Select Committee.

Dear Sir Alan Beith and Members of the Committee,

Currently I am the Appellant in a Consolidated Appeal before a First-Tier Information Tribunal.

I represent and speak for by personal mandate, 18 disabled Lancashire Fire Service Veterans(FSVs) of whom I am one involved in a 4.5 years adversarial major pension dispute with the Lancashire Fire & Rescue Service(LFRS) and its pension contractors the Lancashire County Council(LCC).

It would be improper of me to seek to influence the deliberations of this Information Tribunal which is still at the Directions phase nor will I do so but suffice to say that at this stage historically and uniquely that Judge Hughes the Presiding Judge has ordered that a Public Oral Hearing takes place in Lancashire at a date and venue to be confirmed shortly.

The disabled FSVs regard this as a major advance in their quest for Justice and fair play providing as it will a public platform to air the facts which they have so far established of major pension maladministration by their pension managers.

Regrettably at an early point the LCC; the LFRS; and the Information Commissioner's Office(ICO) indicated that they would not be attending or be represented which is consistently disappointing on the latter's part though it now appears that the LFRS have changed their mind.

The accountable Minister Lord McNally has never replied to or acknowledged a single letter on this subject.

Central to this Consolidated Appeal was the desire of the disabled FSVs to have released to them hundreds of years of collective service comprising individual service records which ought to include their pension records but which the disabled FSVs with evidence and conviction have concluded do not exist and have not been maintained by the LFRS/LCC which is a statutory duty by the LFRS and by extension of Contract the LCC.

For 3.9 years the disabled FSVs have sought these records and other germane 'information' and their applications both under the Freedom of Information Act 2000(FOIA) and the Data Protection Act 1998 (DPA) have been repeatedly refused in 'stonewalling' by the LFRS/LCC in a complicit act using S14 FOIA and by direct unabashed refusal under the DPA to individuals.

The ICO which at best can be described a particularly arcane and capricious organisation to work with have not been for the most part helpful either and whilst agreeing that the disabled FSVs should have this critical information which will prove maladministration on an individual and corporate scale have failed to issue Enforcement Notices and/or financial Penalties.

It is the expressed view of all these disabled FSVs that the IC whilst clearly 'brownie point' collecting on heavily published major issues which enhances the public perception that this organisation is trustworthy and doing a competent job it is utterly failing to deliver to the 'man in the street' or in this case, these disabled FSVs.

An irritating and frustrating feature of the IC's involvement is that if the IC has decided that the FSVs should have this information why, when once more the LFRS/LCC thumb their noses at the IC's determinations, the IC does not use his Parliamentary powers to issue Enforcement Notices and financial Penalties against these Local Authorities? When repeatedly pressed on this point the disabled FSVs have yet to receive a logical or rational explanation from the IC for not pursuing this logical course of action.

The obvious failures of the IC in this matter are appended for information but it is clear that the previous trust and faith in the IC has been severely damaged in the eyes of the disabled FSVs and I would ask on their behalf that your Committee place this on their Agenda and look at this from three aspects;

- Is the IC delivering his mission statement to the 'man in the street'? To which in this case the disabled FSVs answer is a firm no;
- Is the IC value for money in the light of his failure to follow through in this case and no doubt many others mentioned in the press from time to time?
- Does the IC have an unpublished policy of non prosecution and if, as this appears to be so, why does he not publish this and explain his thinking publicly?

It should be noted that the Campaign for Freedom of Information is not only fully aware of all the aspects of this dispute in Lancashire but is as a matter of policy also scrutinising why it appears to them that the IC as a matter of *his unpublished policy* is failing to prosecute in appropriate cases of which this is a prime example.

Yours Sincerely,



Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter
Soviet Union



Oklahoma Medal of Honor
& Honorary Citizen





Justice Committee

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Paul P. Burns
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3 November 2011

Dear Mr Burns,

Thank you for your letter of 2 November to Sir Alan Beith MP, Chair of the Justice Committee. Sir Alan has asked me to respond.

The Committee is not able to look into specific cases and, as you note, it would not be proper to comment on a specific case currently before a Tribunal.

However, I note your letter makes more general comments about the work of the Information Commissioner, and I shall bring it to the attention of Members of the Committee.

Yours sincerely,

Tom Goldsmith
Clerk
Justice Committee

Truncated and extracted from Final Submission to Information Tribunal

14.00. Information Commissioner's Failures.

14.01. The Commissioner has failed in his duty which was to investigate and take action when the Appellant issued S10 Cease and Desist Subject Data Notices to the LFRS and the LCC and when the Appellant called upon the Commissioner on the 25th January 2008 to carry out an assessment under the Act of the unlawful methods proposed to and being used to collect the Appellant's subject data.

14.02. It is the authority's duty to confirm under Section 1(1)(a) of the Act to the Appellant whether or not the disputed information is held. It is the Commissioner's duty if a complaint about this is made, which it was, to establish whether or not the authority complied with its duty which it did not. It is the Appellant's *entitlement* to have this status communicated to him by both the authority and the Commissioner.

14.03. The Commissioner failed in his duty to obtain copies of the disputed information and their comments from the LCC and the LFRS in order that he had before him all the facts upon which to make a determination for his Decision Notice(DN). This failure is confirmed by Mr. Warren of the LFRS in his Statement of Truth Para 17 to the Tribunal in which *he states* he had never been asked to supply copies of or to comment on the disputed information.

14.04. The Commissioner failed in his duty to the Tribunal to obtain and supply this disputed information to the Tribunal for its deliberations and in defence of his DN decisions.

14.05. The Commissioner has failed the Public Interest Test-Failure #1.

The Commissioner has failed the public interest test by failing to obtain information for the Appellant which he desired to publish and in which it can be demonstrated that the democratic due process was deliberately obstructed by elected Lancashire County Councillor D. O'Toole.

14.06. The Commissioner has failed the Public Interest Test-Failure #2.

The Commissioner has failed the public interest test by failing to obtain information for the Appellant which he desired to evaluate and publish whereby it is alleged that that same County Councillor stands accused of irregularities in his expenses claims over a 9 year period at the Combined Fire Authority at a direct cost to the taxpayer.

14.07. The Commissioner has failed his duty to prove that the Request per se was vexatious not the person making the request. The Commissioner concluded in complete contradiction of his own statements that the Appellant as a person was the guilty of vexation. In the absence of any argument to the contrary the Appellant must conclude that his Request per se was *not* vexatious but that the Appellant clearly was to him and the LCC/LFRS.

14.08. The Commissioner has failed his duty under Section 14 (2).

In his DNs the Commissioner failed to examine, make a determination on, or to confirm that no *prior* Request; no *identical* Request; or no *substantially similar* Request had been made by the Appellant on these specific subjects to the LCC and LFRS nor was the LFRS or the LCC asked by him to confirm that this was so.

14.09. The Commissioner has failed in his duty which is to present the facts as objective facts not as biased, slanted, and incorrect assertions and assumptions. In

one DN section the 'Background' was incorrect in general and in particular Para 4 was simply factually wrong, slanted, and biased.

14.10. The Commissioner failed in his duty which is to deal with my Complaint on the simple basis that these Request had been refused excluding any consideration of any other past or standing Request.

14.11. The Commissioner has failed in his duty of impartiality and common fair play. In the convoluted way that only the Commissioner corporate can think and express itself the Commissioner has argued on behalf of the LFRS and the LCC that the workload occasioned by my Request would be vexatious because it would impose a "significant burden" on them. Yet the LFRS has never made such a claim in defence of its non compliance in its dealings with the Appellant.

Earlier in one DN in complete contradiction of his own statements the Commissioner reports that the LFRS did not state as its defence to its non compliance that they did suffer an intolerable work burden in supplying this information, whilst failing to consider that the LFRS and LCC responded 11 times during a 4.5 year period with 5 of these single page responses merely being required responses by law.

14.12. The Commissioner exhibits blatant bias and partiality when he puts words in the mouths of both the LCC and the LFRS neither of whom have sought to directly raise at any time until their final rejections in their correspondence with the Appellant that his actions were causing an undue burden on them.

14.13. The Commissioner has failed in his duty which is to approach *this* Complaint with a clear mind and in consistency.

Mr.White the author of one of these DNs attempted to influence any future Tribunal and subsequent Appeal by misusing a past Fol Request involving the LCC out of context during a Complaint in which he was reluctantly forced to insist that the LCC released information to the Appellant.

It was completely inconsistent and contradictory that having forced the LCC to release key documents that the Commissioner then concluded that a further information request from the Appellant, raised directly from this released information, which was half a narrative, was adjudged to be 'vexatious'.

14.14. The Commissioner has failed in his duty over the last 4.5 years to ensure that any Local Authority involved in this dispute at least attempts to fulfil a reasonable and simple Request for information or data. This was a complete abrogation of his responsibility to his mission statement... "***to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.***"

14.15. Yet again before him the Appellant had the example of a senior member of the Commissioner's legal staff arguing vigorously against these 'principles' by failing to uphold these fundamental rights of disabled Fire Service Veterans; as a consequence aiding and abetting a cover up at these Local Authorities; and implicitly by his unabashed 'enthusiasm' supporting two local authorities engaged in deliberate non compliance with the law; authorities which have knowingly failed to even pay the lip service to an *attempt* at compliance.

14.16. The Commissioner has failed in his duty by acting in ultra vires by stepping well beyond his Parliamentary remit by concluding without any medical qualifications,

or any supporting clinical evidence that the Appellant was personally psychologically “obsessive” and that he was subject to attacks of “manifest unreasonableness”.

The use of such extreme personal language without producing a shred of evidence justifying these plainly defamatory and actionable statements, step in deliberate discourtesy well beyond the calm professionalism that the Appellant has a right to expect and require in objectivity from a Commissioner when dealing with a member of the public who in keeping with other taxpayers pays him £20 million per year for the privilege.

The consequence of this deliberately offensive personal attack on the Appellant is that any merit or demerit within these DNs simply pale into insignificance and are worthless as the immature products of a so called professional.

14.17. Hysterical outbursts do not lend weight to reasoned arguments nor does it excuse the failures of the Commissioner to take enforcement action to ensure that the LFRS and the LCC complies in all respects with the relevant Acts which includes the release of information which the Commissioner by his investigation and assessment has determined must be released.

14.18. The Commissioner states that he is committed to absolute transparency stating... **“we will be open about regulatory action we take”** , and equally the Appellant assumes in his explanations for his failure to take regulatory action.

14.19. The Commissioner states further... **“The over-riding data protection imperative of the Information Commissioner’s Office (ICO) is to “take a practical down to earth approach – simplifying and making it easier for the majority of organisations who seek to handle personal information well and tougher for the minority who do not.” This ‘carrots and sticks’ approach means that we will adopt a targeted, risk-driven approach to regulatory action - not using our legal powers lightly or routinely, but taking a tough and purposeful approach on those occasions where that is necessary.**

In all these respects the Commissioner has also been capricious repeatedly refusing to explain why he has failed to exercise his own statutory powers by issuing an Enforcement Notice and/or penalties to either the LCC and/or the LFRS given that he had found that the LCC was in non compliance on two previous occasions in this matter which he reported in his Decision Notice during which he had also placed the LCC for 6 months on his own non compliance watch list, in effect probation.

He also has refuse to explain his inconsistency and capriciousness on the one hand forcing the LCC top release information and in the next breath finding the Appellant was being vexatious when being presented with a refused follow up complaint directly emanating from his own insistence of release with the LCC.

14.20. Finally the Commissioner states... **“Our aim is to ensure that personal information is properly protected. We will do so by taking purposeful regulatory action where this is at risk because: obligations are deliberately or persistently ignored; or examples need to be set; or issues need to be clarified.**

Targeted, proportionate and effective regulatory action will also contribute to the promotion of good practice and ensuring we remain an influential office.

In this matter before the Tribunal the Appellant has repeatedly demonstrated that the LCC and the LFRS have in complicity repeatedly and persistently ignored their compliance duty and that the Commissioner has repeatedly failed to follow his own policies by failing to set and make an example of them by issuing Enforcement Notices and penalties against the LFRs and the LCC.

14.21. The LCC and the LFRS have together, knowingly and blatantly acted detrimentally to the spirit and letter of their legal requirements of compliance to information legislation in a matter of both grave individual and Public concern during which the Commissioner has failed entirely in his duty to respond to the Appellant and others concerns which must have been obvious to him by his staffs' involvement over a period of 3 years and 8 months.

14.22. The Commissioner and his organisation has consistently failed in his duty in every respect. On the 8th August 2011 the Appellant made a FOIA request concerning a obvious internal policy which clearly exists within the ICO not to issue Enforcement Notices and/or financial penalties. The request was as follows...

“Indeed, I now make a formal FoI request to the Commissioner that he releases his written policy to me and the Minutes of the Meetings and associated documents at which such a neutering policy was debated, discussed, approved, and implemented.”

The Appellant has not received an acknowledgement of this request and expects to hear no more but undoubtedly this request will be included in the Commissioner's annual statistics as a successfully closed out case...

14.23. The Commissioner failed in his duty of common humanity by not recognising the nature of the disabled Complainants, on which the Appellant is one, by failing to advance their Complaints within a survivability time frame. This has led to justice being delayed and denied.

14.24. The Commissioner in his 'guidelines' on enforcement sets himself 'drivers' or 'factors' of criteria which he will apply when using sanctions and monetary penalties within his regulatory framework policy. The Appellant has conducted a simple exercise using the Commissioner's own policies(website) set against this dispute:

- Q. Did the Commissioner receive Complaints about breaches of the spirit and letter of the information laws from individuals and from a potentially identifiable group of persons about the LFRS and the LCC?
A. Yes.
- Q. Did the Commissioner identify that there were many individuals who were being adversely affected?
No.
- Q. Did the Commissioner at any point identify that a group initiative of some of these individuals was involved in this dispute?
No.
- Q. Did the Commissioner at any point identify that a group initiative involving disabled and infirm Fire Service Veterans was involved?
No.
- Q. Did the Commissioner when he was informed of the existence of an identifiable group of disabled, aged, and infirm Fire Service Veterans adversely affected by the actions of the LFRS and LCC make any enquiries at any point?
No.

- Q. Did the Commissioner when informed make any special arrangements to coordinate his response to these individuals by allocation more staff and providing a shorter time frame to a decision?
No.
- Q. Did the Commissioner previously identify that the LCC in particular had not been in compliance?
Yes.
- Q. Did the Commissioner take action by highlighting the LCC's failures and placing them on his 'watch list' to address their 'mischief'?
Yes.
- Q. Was the Commissioner's action sufficient to halt this adverse action?
No.
- Q. Did the Commissioner monitor this dispute throughout?
No.
- Q. Did the Commissioner take action based on the developing trends of the LCC in complicity with the LFRS not to comply, to arrest their adverse effect?
No.
- Q. Did the Commissioner explain to the Appellant why he concluded that the data controllers of the LFRS and the LCC in the light of their actions had not been deliberately negligent by disregarding the law?
No.
- Q. Did the Commissioner explain why he concluded that the LFRS and the LCC in the light of their actions had been not deliberately wilful or cavalier in their approach to the Acts?
No.
- Q. Did the Commissioner explain to the Appellant in the light of this non compliance by the LFRS and LCC which built a case of 'drivers' against them for the application of sanctions and penalties why he was not applying these sanctions and penalties to 'setting an example' to others so inclined?
No.
- Q. Did the Commissioner ever give a transparent explanation to the Appellant and the adversely affect individual taxpayers why he has failed to take any form of action?
No.



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Friday, 14th January, 2011.

BURNS

My Ref: PB00311

Your Ref: RFA0351582

RFA0351582.

Dear Ms.Hargreaves,

Thank you for your Eletter and update of Friday,14th January 2011.

For our part there are at least 8 applicants for their Personal Record Files whom have had those applications refused using the by now LFRS 'standard defence letter' which I know you have samples of in your possession, and you shall have more.

I am sure you can envisage the enraged reaction among disabled FSVs who have not only had an impertinent refusal to their individual requests for their own PRFs refused, PRFs which they have generated over a lifetime of service, but adding insult to injury have had a curt refusal to return their £10 application fee as well. In our opinion if you do not deliver the goods then you have no right to retain the fee. This we view as tantamount to not only thumbing their noses at everyone, including the ICO, but is simple insulting larceny to boot.

The European Commission cannot have had such a bizarre situation or such a bizarre organisation as the LFRS in mind when attempting to provide EU guidelines for the commonsense implementation of the dissemination of information to lawfully entitled individuals by local authorities throughout its Member States.

It is to be expected in the healthy 'testing' of such procedural matters that governments or local authorities might from time to time 'dig their heels' over a particularly sensitive issue involving matters of data of high personal sensitivity or, for example, national security.

In this instance we have a group of disabled FSVs who, with justification, no longer trust their pension administrators, *simply asking for a copy of their own pension subject data* so that they may raise legitimate challenges over matters arising from their own individual pension records which the LFRS have failed in statutory duty to maintain on their behalf.

There are no great 'matters of state' at play here neither are there such matters of human sensitivity which require the intervention of the UK Supreme Court or that only the Law Lords can adjudicate on this nonsense but there is the substantial matter of the Public interest test.

What will the Public's interest and conclusion be if they see a local authority such as the LFRS blatantly misusing the DPA to defend their hidden agenda and getting away with it? This will hugely damage any confidence the Public may have in the ICO if the ICO are seen to be incapable of delivering individual's personal record files to those individuals whose working lives they actually reflect. If the ICO is seen to fail in such simple matters how can they be expected to deliver on more complex issues?

In the light of the absence of matters of such great sensitivity the fundamental question is repeatedly raised why is the LFRS/LCC fighting such an aggressive rearguard action over a seemingly simple request for PRFs to be released to the very FSVs who generated them in the first place over a lifetime of their work?

Could it simply be a question of cost, of economics? The LFRS/LCC have at no point sought to claim exemption on this basis being content it seems just to play with 'filing' words whilst playing for time, but to what ultimate end? Is it simple capriciousness because the FSVs have had the temerity to challenge their assertions or assumptions? This also seems unlikely. What purpose therefore does their capriciousness serve, if any?

The answer, as in all such matters, is quite simple.

At the commencement of this debacle over three years ago the LFRS/LCC concluded without a shred of evidence that some disabled FSVs had been 'overpaid' by them, which is of course maladministration by their definition and admission in the first place.

The next logical step of the Pension Administrator Mr. Warren ought to have been to meticulously check individual pension PRF records which he had a statutory duty to maintain to determine whether in fact individuals had actually been 'overpaid'. The problem which immediately came to light for Mr. Warren was that because of his gross negligence and maladministration it was obvious that he had failed to maintain these statutory pension records and was thus unable to reach a documentary supported conclusion on each individual case. But this did not stop him reaching an arbitrary 'conclusion' which he then 'enforced' because he was in the financial position of gangmaster to do so.

Mr. Warren choosing to ignore his lack of records which he had failed to maintain chose then to 'guesstimate' who he thought and asserted had been 'overpaid' and immediately commenced clawing back monies he alleged were owed by FSVs. Because his records were in such a parlous state Mr. Warren when repeatedly challenged and repeatedly found wrong blamed the whole fiasco on the handy scapegoat the DWP who entirely rejected his assertions.

When repeatedly challenged by individual disabled FSVs about his 'overpayment' assertions Mr. Warren refused to produce documentary evidence from FSVs own PRFs to support his arbitrary decision because given the neglected state of his pension records he was completely unable to do so. Quite simply the truth of his negligent incompetence would have been revealed to the Public interest and accountability.

The stark fact of the matter is that Mr. Warren after taking precipitated action without checking his facts allied with his lack of individual PRF supporting documentary evidence which is attributable directly to his own negligence privately concluded that he could not support these claw back decisions in law because of his pension maladministration stretching back decades and is thus currently engaged in a massive defensive cover up of his negligent failure by whatever means, fair or foul, which comes to his hand. A personal professional failure for which he alone is responsible by failing to maintain a robust statutory pension administration regime under his direct control.

When FSVs including myself sought through the ICO under s7 of the DPA to get their own records and thus get to the individual truth of the matter Mr. Warren simply engaged in unbridled deceit, obfuscation, and the misuse of the DPA, finding every possible deceit he could misconstrue in law to defend his negligent hidden maladministrative failure from Public view and Public accountability. This is his current posture.

Mr. Warren's blanket refusal to issue PRFs is simply a massive cover up of his own maladministration bordering on criminality. There is no legitimacy or legal credibility whatsoever in his attempted gross misuse of exemptions within the DPA seeking as he does in malicious malfeasance to abuse the spirit and good intentions of the DPA. There is no legitimate point to be established by test case in law by him rather it is just a blatant misuse of the law to serve his own malign purposes.

Recently Mr. Warren, the author of all this chicanery, made a statement in which he attempted with a sly economy of truth and heresay evidence to make the case why no actual PRF pension record exist in my files to support his original and still standing arbitrary decisions on 'claw back'. This artful dodger statement implied that the lack of PRF pension records was all the fault of a previous(unnamed) no longer employed member of his staff, handily before his time, whom it conveniently appears no one can remember. This is a blatant example of how every single 'truth' can be spun, twisted, and manipulated to serve the LFRS's malign purposes in its corporate refusal to admit to or recognise the truth, but the truth will always out.

So this is not about DPA exemptions or non exemption per se, it is about the cover up of LFRS completely negligent maladministration of pension records for decades and a malignant and knowing abuse of the spirit of the Act to cynically self serve Mr. Warren's own twisted purposes of career self preservation.

My belief remains that little or no pension records will be held in general in FSVs' PRFs, the public revelation of which to individual FSVs will leave the LFRS/LCC exposed to substantial charges of breaches of statutory duty, negligence, maladministration, and deliberate malfeasance, with resultant individual litigation which will flow from their self generated debacle...

This is where the actual truth of this situation lies not in the semantics and posturing in 'case law' we are seeing from the LFRS/LCC under the guise of legitimate claims of DPA exemption. There is nothing legitimate about it. It is a blatant cover up of negligent maladministration by a cynical LFRS abusing due process to protect its self interest...

Please keep up the good work and thanks for not quitting on us....our thanks

Yours Sincerely,



Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter
Soviet Union



Oklahoma Medal of Honor
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Friday, 11th March, 2011.

BURNS

My Ref: PB00611

Your Ref:

RFA0351582 – LFRS.

Dear Ms.Hargreaves,

Thank you for taking my call yesterday the purpose of which was to confirm exactly what progress had been made by the ICO in its proposed issuance of a Preliminary Information Notice to the LFRS.

During the period from the 16th December 2010 until present you have kept me regularly updated with apologies in respect of the lack of progress in this issuance. It is my understanding that you did indeed prepare this Notice for issuance but it requires the signature of a Mrs Faye Spencer and that this Notice has been on her desk for the last 2 months or so.

Frankly I am dismayed to hear this as it was my impression that any anticipated delay would lie with the LFRS and not the ICO. The ICO and Mr.White in particular are aware given the nature of the infirmities and age of the surviving disabled Fire Service Veterans involved (we have lost two of the seventeen during this time) that time is just not on our side.

I indicated to you that I would take this matter up immediately with Mrs.Spencer and after a series of calls I was informed that although Mrs.Spencer was 'in the building' she could not be located. I was assured she would be informed of my call and that she would contact me back as a matter of urgency. You also informed me that you would email my concerns to Mrs.Spencer which I subsequently know you did.

It is very disappointing to record that I received no call back and that once more we are all left in limbo regarding any progress on this urgent matter.

I would be obliged if you would forward this correspondence to Mrs Spencer as another reminder of the urgency of this situation which she is sitting on and also forward a copy to your Mr. White who has been monitoring this entire issue from the beginning in early May last year.

This inordinate and unexplained delay simply will not do. I regret that all your good work is being allowed to wither on the vine of incompetence for want of a signature.

Yours Sincerely,

Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)



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Tuesday, 12th April, 2011.

BURNS

My Ref: PB01011

Your Ref: FS50351585. Case Reference Number FS50351585.

Dear Ms.O'Neill,

Thank you for your Eletter of the 5th inst., in response to one of my Complaints against the LFRS.

I agree given the history and reluctance of the LFRS to engage in any meaningful way that any attempt by the ICO to engage in informal dispute resolution would simply be a complete waste of everyone's time.

The LFRS have demonstrated a consistent contemptuous disrespect for both the ICO and the law throughout these last 3.5 years. This by its very nature is maladministration and whilst I understand the point you are making about generic maladministration I would make the counter point that failure of compliance with the law in this specific case is also maladministration of the Act by a public authority whom are bound to comply in the public interest if not merely mine.

I note the portions of my Complaint upon which you propose to take action.

I am comprehensively cognoscente of the Commissioner's remit, would that he was too.

I am also more than familiar with exploitative use by the LCC and now the LFRS in respect of S14 of the Act.

Can I with respect remind you of the history of this misuse as I see it and the inconsistency which the ICO has displayed in this regard during last year and earlier this year. To save us all time I copy the basis of my recent Appeal to the Information Tribunal on your last DN...

“ Appeal Outline.

- a) At the beginning of May 2010 I once more contacted the ICO to attempt to get assistance from them. Previous attempts repeatedly foundered at their end due to sheer incompetence;
- b) The objective was to lodge complaints of non compliance with the FoI 2000 Act by the LCC and the LFRS the local authorities that I and other disabled Fire Service Veterans I represent were in pension dispute with;
- c) The strategy I sought to follow in this dispute was to retrieve relevant information and correspondence from/between the DWP; the Audit Commission; the Lancashire County Council; and the Lancashire Fire & Rescue Service; in effect working my way back from the DWP to the LCC/ LFRS who throughout refused to cooperate in any manner;

- d) The DWP promptly under Fol request released all the information/correspondence at their disposal though stating some few documents had been 'weeded' or simply lost, a declaration which I believed. Indicators in the correspondence revealed the existence of further correspondence which I believed could be retrieved from the LCC. This DWP release revealed the existence of significant correspondence on this dispute with the LCC who are the pension service contractors for the LFRS;
- e) The Audit Commission acted equally promptly releasing the small but relevant documentation in their possession;
- f) The LCC resolutely refused to release a single document or any information quoting that I was being vexatious even in the light that they were informed by me that I had extensive correspondence of theirs released to me by the DWP and the AC which indicated that they still had further documents which should be made available to me;
- g) Finally the ICO took issue in July 2010 and I passed 160+ files to them for background information. In the months that followed the ICO caseworker obtained some further documents from the LCC but she decided that they were not relevant to my search. How could she have concluded this? This was beyond my comprehension and after writing to her line supervisor to force the issue the LCC documents were finally released to me;
- h) On the 1st October 2010 the ICO placed the LCC on its nationally published 'monitoring list' for poor compliance with the FoI Act;
- i) On the 8th November 2010 the ICO issued the LCC with a DN. It was cited for two breaches of the FoI Act in relation to my requests;
- j) My next Fol request was seeking information/correspondence between the LCC the contractee and the LFRS the contractor, once more I was refused on the grounds of being vexatious and wasting their time;
- k) The ICO caseworker on this request/complaint has now concluded in spite of me repeatedly reminding him of the prior decisions on this subject by the ICO that I am being vexatious. I regard his conclusion as simply fatuous nonsense given that the authority involved is the same, the overall issue remains the same, and the objective is the same, which is to seek information which by the previous actions, albeit forced and supported by the ICO, actually exists;
- l) My cynically conclusion is that my request kept this case worker employed for 7 whole months whilst he argued with himself. How could he ignore the progressing bigger picture involving his own organisation? The whole tone of his 'conclusions' is one of 'Judge and Jury' on my actions. I am bound to ask who appointed him to this role and is this a function of his duty? Once more I conclude that he did obtain documents from the LCC but he also has concluded that they are not relevant to my enquiries. How would he know? I find this attitude simply frustratingly insufferable and bizarre and brings no credit whatsoever on the ICO on its actual parliamentary mission;
- m) His conclusion seems to be in this loftily argued tome is that the LCC really do not like me, well I am hardly likely to lose any sleep about that am I? Is this a basis in law for refusing my legitimate requests for information?
- n) If this is not perplexing enough I have now received notice from the ICO that they are going to investigate my complaint that the LFRS have refused to release relevant correspondence between themselves and their contractee the LCC on this dispute because once more I am being vexatious. This is the same overall issue which remains the same and the objective is the same, to seek information which by the previous actions, albeit forced and supported by the ICO up to this point, actually exists;
- o) The basis of my Appeal is that the ICO in its conclusion *within this DN* is being completely and incomprehensibly inconsistent given the unchanging nature of my

enquiries, and the unchanging nature of those my enquiries are directed at, and the unchanging information I seek from them;

- p) All the ICO and this caseworker has managed to achieve with this time wasting inconsistency is that any shred of credibility in my eyes and the eyes of my 16 colleagues, widows, and families has simply evaporated and the good progress being achieved by his colleague right now within the DPA section is simply being discredited.”

This present Complaint that you are dealing with is an adjunct but nevertheless an important adjunct in pursuit of the truth and the exposure of corruption which patently exists within the LFRS. All of my actions continue to lie within the overall objective of my enquiry which remains the same quest; which is set against the same background; which is seeking the same information.

Persistence will always be regarded as vexatious by those who seek to prevent the release of relevant information and whether or not I am ‘popular’ forms no basis in law for a refusal of a legitimate request for such information.

Yours Truly,



Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter
Soviet Union



Oklahoma Medal of Honor
& Honorary Citizen





Information Commissioner's Office.
Ms.F.Spencer-Group Manager.
Complaints Resolution.
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Wednesday, 20th April, 2011.

BURNS

My Ref: PB01311

Your Ref: RFA0351582.

**Case Reference Number RFA0351582.
Two Complaints**

Dear Ms.Spencer,

This is a reply to your Eletter of the 15th inst. I intend to raise two Heads of Complaints against you:

- a) the first is about *your decision* concerning Case Reference Number RFA0351582;
- b) the second is about *your professional misconduct* before and after reaching this decision.

In framing my Complaints against you logic dictates that I relate the sequence of events in the third person with my added comments leading to my decision to lodge formal Complaints against you.

This is the sequence of events:

- a) On the 28th September 2010 I received an email from Mr.Bernard McNally "Sent on behalf of Andrew White and Rachael Cragg Group Managers Complaints Resolution"... "We note that you have requested this case be expedited; this has been communicated to the relevant casework team managers who will determine whether the matter should be expedited."
NB. This was because of the declining health and infirmity of some of the disabled Fire Service Veterans(FSVs) involved, two of the 17 involved having already died.
- b) On the 29th July 2010 various Case References of mine were allocated to Miss Hargreaves within Ms.Spencer's department who is now her Group Manager and thus her line manager.
- c) Work commenced commendably quickly thereafter and I worked with Ms.Hargreaves to progress or eliminate certain Case References as we worked together. With time my confidence in Ms.Hargreaves steadily grew indeed I reported her admirable capability to the above Mr.White and in correspondence to Lord McNally of Blackpool the Minister of Justice responsible for the ICO.
- d) In time we reached the above Case Reference Number which was a refused request by the Lancashire Fire & Rescue Service(LFRS) to release our Personal Record Files(PRF) which were especially germane to the ability of the disabled FSVs to mount a legal challenge against the LFRS on the basis of the DWP records retained, or ought to have been statutorily retained, in these PRFs.
- e) By consulting and communicating jointly and regularly Ms.Hargreaves was clearly aware of the critical human time factor and the need for us to receive our PRFs using my PRF as the pivotal request/complaint as soon as possible.

- f) It was clear to us from an early point that the LFRS would obfuscate as they had previously with my other Case References and refused to release my PRF(accumulated over 35 years of service) because it was their view that my PRF was not retained in a defined filing system.
- g) On the 6th October 2010 Ms.Hargreaves issued the LFRS and me with her formal comprehensive Assessment which concluded that the LFRS filing system was indeed a relevant filing system as defined within the meaning of the Act, as opposed to any contradictory informal interpretive opinion expressed in the ICO own guidance notes on this topic. This Assessment asked the LFRS as a “matter of priority” to release my PRF which they again refused.
- h) On the 21st October 2010 Ms.Hargreaves with *her then* Group Manager’s approval asked for and received 140+ files which were placed on the ICO’s system to assist her and other case workers dealing with parallel Complaints concerning PRFs from other FSVs. I regarded this as sound case management by Ms.Hargreaves and her then GM.
- i) On 18th November 2010 after further negative communications with the LFRS and following in house legal consultation with the Policy Delivery Department Ms.Hargreaves determined that she would prepare a Preliminary Information Notice(PIN) for issue to the LFRS which required further information from the LFRS concerning their filing system and which would also include the ability to carry out a physical inspection at the LFRS Service HQ if necessary. All to further support her original Assessment.
- j) I regarded her step by step approach as professionally sound and I had no argument with her strategy even though it would lose time which I attributed to the usual anticipated malignant approach of the LFRS.
- k) Regrettably sickness in early December on my part intervened and it was not until the 14th January 2011 that I was able once more to take up this issue. On this day Ms.Hargreaves indicated that the PIN had been prepared and had already been placed on the desk of her Group Manager for *her* signature and despatch.
- l) Clearly there had been a change of Ms.Hargreaves Group Manager because previously she referred in her correspondence to her GM as ‘*he*’. It is clear to me from events which were to follow that Group management of Ms.Hargreaves work for us deteriorated disastrously from this point on.
- m) Repeatedly without fail as the ICO and my records shows Ms.Hargreaves regularly contacted me to apologise for the delay and could report no progress. Because she was punctilious about her work Ms. Hargreaves never expressed any comment to account for this lack of progress nor did I press her. I considered the delay was the LFRS but that was not so.
- n) On the 10th of March 2011 after simply sensing a growing embarrassment on the part of Ms.Hargreaves apologies I contacted her and put it to her that the PIN had not yet been issued because someone was ‘sitting on a signature’. She reluctantly confirmed that this was the case and when asked supplied that person’s name who was her new Group Manager Ms. Faye Spencer.

- p) On the 11th March 2011 I wrote(PB00611) to Ms.Hargreaves expressing my dismay and attempted to contact her. You will note I was assured by her staff that she would call me back but she did not. You will note I asked Ms.Hargreaves to forward my letter to Ms.Spencer and Mr.White which Ms.Hargreaves confirmed she did.
- q) On Thursday 13th April 2011 I contacted Ms.Hargreaves once more to be informed that the situation regarding the PIN and Ms.Spencer had remained unchanged.
- r) At that point I indicated to Ms.Hargreaves that I would immediately contact Ms.Spencer through the main switchboard which I did and left a voice mail. Later that afternoon at 14:46hrs I received my rather flustered first contact by my voice mail from Ms.Spencer who made reference to a letter from her but none was forthcoming by email.
- s) On Friday 15th April 2011 at 10:30hrs approx I finally contacted Ms.Spencer.
- t) A rather flustered Ms.Spencer enquired whether I had received her letter to which I replied no. It then transpired that she was using an email address which was approximately 3 years old. I then supplied the correct email address to which she sent her letter. She did not seem to wish to continue the conversation at that point but pressing the point that we were in fact talking could she explain to me verbally why there was such a delay and why this PIN had been lying on her desk unsigned for 3 months.
- u) I did not press the point that this delay was nothing more or less than the usual generic laziness or incompetence I was generally used to at the ICO. I was more interested in why it was lying on her desk. Was this Ms.Spencer's and Mr.A.Laing's "New approaches to complaints casework."? Leave on the desk for 3 months and hope it will just go away?
- v) Reluctantly she explained that this was a "complex" issue and that whilst she agreed with Ms.Hargreaves Assessment she was not inclined to support the need for a PIN even though I knew that the ICO Policy Delivery Department had sanctioned this action. Her conclusion was that a PIN was not needed because the determination had already been made that the LFRS filing system and thus our PRFs were contained within a relevant filing system within the meaning of the Act and that no further information was necessary. I was pleased with this conclusion because it seemed to me we were now going to rapidly move forward to the issue of an Enforcement Notice.
- w) I asked when this was likely to occur and Ms.Spencer said that she had made the decision that this would serve no useful purpose, that ENs should not be thrown around lightly, and that her final decision had been made.
- x) To say that I was perplexed was an understatement. How could Ms. Spencer reach all her previous conclusions and in a bizarre volte facia now conclude that an EN would serve no useful purpose and leave us entirely in limbo after wasting such a huge amount of Ms.Hargreaves time and ours. Time we can ill afford.
- aa) I attempted to persuade her to let the issue run to an EN and if the LFRS appealed then it would be placed before a Principal Judge at the Information Tribunal for a final judgement but she refused to accept the logic of this argument.
- bb) When pressed I asked Ms. Spencer if in the letter(at last received) she had used the words that she was refusing to issue an EN she refused to confirm or deny this action and repeatedly urged me to read the words.

- cc) At this point in contradiction Ms.Spencer stated (as I knew) that she did not have the authority to issue an EN or deny it in the first place because this rested with the Enforcement Department.
- dd) I indicated that I knew that the Head of Complaint Resolution was Mr.Laing and I asked that she either put me through to him or supply his direct to desk phone number which she refused.
I asked for the name of Head of the Enforcement Department which she supplied but once more she refused to transfer me or to supply me with Ms.S.Poole's direct to desk number.
I asked Ms.Spencer to reappraise her decisions particularly her refusal to allow me to raise the issue above her yet she continued her refusals to do so.
- ee) I decided to conclude this tedious conversation which I did at 10:45hrs after indicating that I would raise complaints against her because I held her entirely responsible for this time wasting debacle and that her decision was in my opinion an complete abrogation of her duty to us, indeed I described it a total 'cop out'. This is just one more example in my awful experience of the ICO closing down viable cases just to make their 'productivity' statistics look good for political scrutiny.
- ff) On Monday 18th April at 10:08hrs I rang the ICO to speak with Mr. A. Laing. Ms.Clare Higgins answered. I responded to her questions and cited my Case Reference number. She disconnected for a moment and returned to state that she was unable to put me through to Mr.A. Laing. When I asked was this her personal decision or had she been instructed in this brief interval by her supervisor? She stated that this was her personal decision.
- gg) I then asked for her supervisor and a Ms.K. Holl came on. I renewed my request and once more after asking her to reconsider what she was doing she again refused.
- hh) I repeated this exercise asking to be connected with Mr.S.Entwistle Director of Operations, Mr. A.Laing's superior, and when this was refused by Ms.Holl asked to be connected to the Commissioner's Office or his PA to whom I have spoken previously, and once more after cautioning Ms. Holl that she was denying me my democratic rights of access to public servants, she refused.
- ii) Ms.Holl informed me when pressed that there was a message on the data system against my Case Reference from Ms. Spencer that I was to be denied connection to any official at the ICO and that if I was preferring a Complaint, which I had not indicated to anyone at this point, that I was to be told put it in writing. It was not made clear to me whether or not this statement from Ms.Spencer was in any manner personally derogatory and thus without evidence to the contrary I have concluded that it was. It seemed to me her implicit threat to her subordinates carried an undue amount of weight and was an abuse of her authority.
- jj) I concluded this conversation with Ms. Holl at 10:19hrs.

My charges and complaints against Ms.Spencer are as follows:

- 1) Ms.Spencer knew or ought to have known that this was a case which required expedition in the discharge of her duty and in this matter she knowingly failed us.
- 2) Ms.Spencer allowed this PIN to sit on her desk for 3 months during which time it is reasonable to assume that she will have been reminded of its presence repeatedly by an anxious and increasingly embarrassed Ms.Hargreaves.

- 3) Ms.Spencer did not reply to my letter 6 weeks previously or my phone contact and it is reasonable to assume that she is either ill mannered, lazy, or incompetent, or all three.
- 4) Ms.Spencer failed to supply leadership and support to her junior colleague Ms.Hargreaves by her manifest failure to supervise, advise, and support the excellent work of her junior colleague.
- 5) Ms.Spencer lacks managerial ability and is clearly unable to identify and supply a duty of care to her young colleague.
- 6) Ms.Spencer by her atrociously bad example and her selfish lack of care deliberately placed her junior in the most invidious of positions whereby her junior was perforce, in doing her duty as she saw it, to repeatedly and embarrassingly apologise for her Group Manager to members of the public. In this she did a grave PR disservice to the ICO.
- 7) Ms. Spencer has as consequence unforgivably demoralised the commitment of a young colleague under her care and tarnished her belief in the mission statement of the ICO.
- 8) Ms.Spencer took a decision concerning the issue or not of an Enforcement Notice without having the authority to do so. A position she herself confirmed.
- 9) Ms.Spencer failed to consult the Enforcement Department or to seek its advice or support which is a profound management failure before making what was in effect their decision without their approval or knowledge.
- 10) Ms.Spencer not content with all these failures attempted to circumvent and control any potential Complaint by me or access to the Commissioner in an abuse of authority by using an in house intranet system to instruct other staff lower in rank to her to defer to her malevolent instructions. I view this as a corrupt act and an act deliberately intended to obstruct the exercise of my democratic rights of free unencumbered access to all public servants at the ICO.
- 11) I call for an investigation of Ms.Spencer, her actions, and her motives, with a view to her dismissal for gross misconduct.

Yours Truly,



Paul P. Burns. GFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter
Soviet Union



Oklahoma Medal of Honor
& Honorary Citizen



CC Lord McNally of Blackpool. Minister of State for Justice.
Rt Hon Sadiq Khan MP.
Shadow Secretary of State for Justice.

Mr P P Burns
7 Kings Drive
Fulwood
Preston
Lancashire PR2 3HN

Sent by email - symbolseeker@tiscali.co.uk

20 May 2011

Our case reference: RFA0351582
Our case review/service complaint reference: RCC0389055
Your reference: PB01311

Dear Mr Burns

I write in response to your letter of 20 April 2011, in which you explained that you were raising two heads of complaint against Faye Spencer. I will address each of these in turn.

The decision under RFA0351582

As I understand it, you are concerned that Ms Spencer did not support Ms Hargreaves' view that a preliminary information notice (PIN) should be issued to Lancashire Fire and Rescue Service in connection with your subject access request. You are also concerned that Ms Spencer decided that an enforcement notice was not appropriate in this case.

I have spoken to Ms Spencer about this matter and read her letter to you of 15 April 2011. As explained in that letter, Ms Hargreaves recommended that we obtain further information about the filing system used by Lancashire Fire and Rescue Service (LFRS), so she could say whether it constituted a 'relevant filing system'. If it was, she could confirm the assessment she had already made (that in withholding your file it was likely that LFRS had breached the DPA) and decide if we should take any further action in respect of it.

It was Ms Spencer's view that we already knew enough about the system to say that it was likely to constitute a relevant filing system. From the information that was already available, she was satisfied that Ms Hargreaves had made a reasonable and sensible assessment.

Our assessment decisions can help us to decide whether we should take further regulatory action. However it is not the case that this will be inevitable even if we make a negative assessment based on the outcome of an individual complaint. One of the purposes of such assessments is to provide complainants with an ICO view that they can use to help resolve disputes with service providers. It also allows us to explain our view of their practices when handling personal information.

Ms Spencer has already explained that any formal enforcement action must conform to the criteria outlined in our regulatory action policy. Whilst Ms Spencer considered LFRS may have been interpreting some of our guidance around the technical aspects of the definition of a relevant filing system too narrowly, she has also considered that LFRS could legitimately point to guidance in support of its view. As a result she felt that it was it was questionable that formal enforcement would have been the correct course of action in those circumstances. Instead we have written to the LFRS and asked that they review their decision and again consider sharing any personal data in connection with your original request.

I appreciate that this is frustrating in the circumstances that you have described and in connection with your case. It is however within Ms Spencer's authority to decide on a course of action, and in connection with the decision to not issue an information notice, she is again authorised to give such views. Ms Spencer shared her views with specific reference to our published policy. I also understand that she was aware of advice given by a member of the enforcement team in relation to a similar case and that was taken into account when weighing up if we should consider further regulatory action. Having considered all of the factors involved in the case, and arguments provided by all parties, I am of the view that issuing an enforcement notice would not be appropriate at this point.

You have requested information in relation to your personnel file using your rights under section 7 of the Data Protection Act. Section 7 (9) of the Act explains that it is the courts that have the power to order compliance if they are satisfied that an organisation has failed in their obligations to provide you with your personal data. We have provided you with an assessment decision that may

assist in this action and we have again asked that the LFRS consider its position and share your personal data, in a letter that was issued in April.

The complaints raised about delayed action

I note that although Ms Hargreaves' recommended a PIN in January 2011, Ms Spencer did not communicate her decision not to pursue this with LFRS until April 2011.

In her letter of 15 April 2011, Ms Spencer apologised that you had had to wait so long for her response and that this put you to the trouble of trying to contact her. She also explained that, although the delay was partly due to her current workload and because the case raised some complex issues, you should not have had to wait so long to receive a response to your concerns.

There is little I can add to this other than to say that I agree that you should not have had to wait so long to hear from us and I add my apologies to those provided by Ms Spencer. I am sorry that the service you were provided fell short of your expectations.

You have said however that Ms Spencer abused her authority by passing instructions to junior staff designed to circumvent or control your complaints. I understand that this relates to requests that you be put through to, or be given the telephone numbers of me as Head of Complaints Resolution as well as other senior staff within the organisation.

Having spoken to Ms Spencer, I understand that she told you that I was out of the office on 15 April (which I can confirm) and that in any event, in order to invoke our case review and service complaints procedure, you should put your concerns in writing. She further explained that little could be gained from a telephone conversation with someone who had no previous knowledge of a case. She made a note to this effect on the case. When you called our Helpline, the representative could see that she had already explained how you could invoke our complaints process.

Our case review and service complaint policy makes clear that '*You must make your complaint in writing. It is important we have a record of exactly what you want to complain about, so we can address your concerns properly.*' I understand that Ms Spencer included a link to this policy in her email to you of 3 May 2011. I am also aware that in a letter of 27 April 2011, addressed to Mr A Slaughter MP, you suggest that the fact that we have not served a formal decision notice in

this case is 'disingenuous ploy' by Ms Spencer. The duty to serve a decision notice relates to the Freedom of Information Act 2000 (FOIA). The matter of your entitlement to your personnel file is relevant to the DPA, rather than the FOIA. There is no provision to serve decision notices under the DPA.

As indicated earlier I appreciate that this is frustrating issue for you as you pursue your dispute with LFRS with regard to your ongoing pension entitlements. I do hope however that this letter does a little more to explain the assessment outcome and the rationale behind the decisions that at this point have been reached in the case.

Yours sincerely

Andy Laing
Head of Complaints Resolution



Information Commissioner's Office.
Mr.A.Laing.
Head of Complaints Resolution
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Tuesday, 7th June, 2011.

BURNS

My Ref: PB02011

Your Ref: RCC0389055. Case Reference Number FS50351582.

Dear Mr.Laing,

Thank you for your letter of the 20th ult.

[1] I am not satisfied with your response or your failure to act in any decisive manner concerning the serious accusations I have laid before you regarding the misconduct of Ms.F.Spencer.

It seems I am expected to accept that when a serious complaint is laid against a member of the ICO that no procedure which guarantees the Public an independent investigation and impartial response actually exists? I simply refuse to believe this.

Unless I am very much mistaken the law of natural justice still discourages anyone from being a judge and jury in their own court and encourages an approach which is both clear minded and impartially objective, none of which applies to you.

[2] Now I turn to your response in detail because there clearly are incongruous and embarrassing matters occurring in your department which as the departmental head you do not seem to be aware of.

[3] I note you speak of my frustration. Deliberate frustration I can expect from my opponents in the matter which is critical to us but frustration is not to be expected from the ICO which grandiloquently in its supine pomposity trumpets the following... *"The ICO's mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals."*... well, not from our 'experience'.

There used to be within the satire of the 'Establishment' an organisation know as the 'Ministry of Funny Walks' now in the reality in which we exist our disabled Veterans have nicknamed the ICO as the 'Ministry of Funny Excuses' .

[4] You reply is in general self indulgent. Specifically you have carefully avoided investigating Ms.Spencer's abuse of her authority which extended beyond her remit involving other staff and other departments who do not work for her or you. You do not comment on how she deliberately obstructed my right of access to civil servants I pay the wages of and in a classical act of uproarious Gilbert and Sullivan she rhetorically asks what would be the point of me talking to you because you would know nothing about the case in question!

She assumes that you are incompetent like herself and that you would not take the trouble to brief yourself before giving me a call from your ivory tower which you and I both know a senior CS ought to have done if only to ameliorate the embarrassing debacle she has created for you. But you did not even do this though you were aware that another embarrassing issue was arising.

[5] Neither do you comment on Ms.Spencer's self evident failure as an administrative manager. She cannot since late summer last year, given Ms.Hargreaves constant reminders, have been unaware that a group of disabled Fire Service Veterans were pursuing a common goal concerning their Personal Record Files at the LFRS.

Any accomplished administrator, which she is not, would have made special arrangements to have their Complaints administratively grouped together; to have treated their Complaints in effect as a 'class action'; and then human resourced this action with coordinated staff who would have a commonality of purpose and a consistent ICO policy framework for this case with which to work.

Instead it was left to two junior caseworkers at the coal face working independently of each other with little or no expectation of loyalty or encouragement from Ms.Spencer.

[6] A Ms.Spencer who seems to have spent nine months of our time dithering around over the embarrassing position she found herself in with the LFRS. Her managerial concept seemed to be if you just ignore it, it will go away which is not a novel approach in the incompetent.

I note you have failed to comment on this hugely embarrassing matter at all. You do not confirm that I drew this matter to Ms.Spencer's attention which was the incorrect FAQ on your website concerning what is, or is not, a 'relevant filing' system.

An ICO error which Ms.Spencer finally confirmed to me she was entirely aware of, describing the issue as 'complex', a fact which she knew from the first moment the LFRS quoted it to the ICO. A FAQ which for the last nine time wasting months the LFRS have quoted to you as the main plank of their defence in its refusal of your 'recommendation' that they release our PRFs to us.

Let me lay Ms.Spencer's lie about what is, or is not, 'complex'. The ICO embarrassingly published incorrect advice on its website, let us have none of this slithery use of the word 'outdated'. It was simply wrong.

To crown it all once more lacking 'professional' courage or just born of Ms.Spencer's obvious 'professional' ineptitude she has left it to her subordinates to 'slither' out to individual FSVs and the LFRS by the backdoor this news concerning the ICO's belated correction of its own website advice.

I regret that you have chosen not to inform me of this correction or as the ICO coyly mentions it to the LFRS, this 'updating'.

[7] In human terms and in lack of common humanity it is simply inexcusable that Ms.Spencer and the ICO have allowed the LFRS to 'game up' this stupidity and as a consequence bought themselves at least 9 months of breathing space while the ICO figured out how to remove the egg from its own face whilst retaining any degree of credibility in this debacle. All the while letting matters drift on the 'shop floor' where it is clear that the disabled FSVs did not actually matter a jot and were the least of your concerns.

[8] You have commented on 'delayed action' in allowing (my dying time) of 3 months for my file to lie on Ms.Spencer's desk. Did you not mean delayed inaction? I cannot accept an apology couched in such terms of self abstemious balderdash used to cover up an ill organised and incompetent 'manager' who cannot even manage her own workload.

[9] Once more I ask a few simple questions on the matter of the Enforcement Notice which you have also failed to address in this carefully crafted piece de resistance of excuse making. Why does an Enforcement Department exist with its own Head, if as Ms. Spencer and now you maintain you both have the power to decide that enforcement should not take place?

[10] Ms.Spencer made it abundantly clear to me her complete lack of enthusiasm for enforcing anything and her extraordinary view that we should not throw Enforcement Notices hither and thither. She has obviously concluded that the Parliamentary time allocated in debating and providing the ICO with enforcement 'teeth' was a complete waste of everyone's time. What function does the existence of a Enforcement Notice serve if it is not to be used? What does this staffed 'Enforcement' department do all day long which we(Parliament) empowered with the ability to issue fines to force the recalcitrant like the LFRS to comply with the law if you, Ms.Spencer, this department, and the ICO, have not the will or the gumption to use it?

[11] I find it extraordinary in this matter of the Enforcement Notice that you did not approach the Enforcement department directly yourself in an objective evaluation of what might be possible in this growing debacle of the ICO's own making. You seem to be satisfied with ... "I understand this..." or that, from Ms.Spencer, what an extraordinary way to function as a senior supervisor.

[12] You speak in educating me of the ICO's rationale? God spare us from the ICO's rationale. If in our daily working lives up at the sharp end we been as gutless as the ICO and adopted its 'rationale' we would have cowered at the front door of a burning building with people screaming for help inside whilst we passed the buck and drew lots who would write to those terminally trapped people cringing, whinging, whining, spinning, and excusing our 'rationale' whilst commenting that we felt it would be 'inappropriate' to rescue the dying and 'recommending' that perhaps they could rescue themselves.

This rationale of yours is terminally damaging the ICO's credibility in the eyes of the 'man in the street' of whom I am one.

[13] Surely even the ICO as an 'organisation' will by now have grasped the fact that the Fire Service Veterans I represent are not best pleased by an organisation they pay for with their taxes, an organisation which before we can make any progress we have to argue with, wheedle, cajole, or encourage to do the very job it trumpets it was set up to do while the Ms.Spencer's of this world sit for 3 months filing her nails as these disabled Veterans pass away.

[14] The LFRS have immediately and smirkingly taken advantage of your debacle as you will note from the attached correspondence and point out to you that this was entirely your fault and in predictable and continuing corporate procrastination and deceit buy further time with which you have provided them claiming that not only is this matter not concluded but that the under pinning case law is authoritative never mind your website and that they are within their impudent rights to tell you to get lost once more.

[15] The LFRS have also concluded that you have not the guts for a fight when they regularly see you off.

This is the liability and consequences which Ms.Spencer's inaction and lack of enforcement brings by allowing the LFRS to use the Agincourt farewell once more to the ICO and who can blame them? The LFRS have secrets of pension maladministration to hide and the ICO have helped and are helping them once more to obstruct and defeat the law.

[16] The question begs asking what do you propose to do about this continuing embarrassing debacle of yours which both the LFRS and the FSVs agree is not yet concluded? The ball is in your court please inform us what you are going to do with it?

[17] I regret that you have not taken the opportunity presented to you to grasp the nettle of the debacle you are in charge of. You have given me no indication where I or the other disabled FSVs might proceed in the event we are entirely dissatisfied with your 'investigation', your response, or your decision not to issue an Enforcement Notice, or to whom we might Appeal at the Ministry of Justice Information Tribunal?

[18] Finally, I will end as I commenced. I am not satisfied with you response at all. It smacks of the original hand wringing whinging Uria Heap which I have now come to expect from the ICO and that is why in your reference to my correspondence with the Shadow Minister of Justice for the ICO I have called for and, using this as yet another example of organisational failure, will continue to call for a Select Committee to investigate where out taxes are being misspent by an inefficient, ineffective, uneconomical, and unaccountable organisation which is with justification disrespected by impudent local authorities.

It says it all when the political leader of this organisation Lord McNally of Blackpool cannot be even troubled to respond to a single letter the disabled FSVs have ever sent to him.

Accordingly I request that you now place this matter before Mr.S.Entwistle Director of Operations to hear what he has to say on this issue on our journey to the Commissioner.

The Commissioner in his public statements has, ad nauseam, told us all his casus belli is to crack down on the local authority 'game' players of which the LFRS and the LCC are outstanding examples, please pass this to the Commissioner as well so we may hear his pearls of wisdom.

Yours Truly,



Paul P. Burns. GIFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter
Soviet Union



Oklahoma Medal of Honor
& Honorary Citizen



Cc: Lord McNally of Blackpool.
Mr.A.Slaughter M.P Shadow Minister for Justice.

Mr P Burns
7 Kings Drive
Fulwood, Preston
Lancashire
PR2 3HN

24 June 2011

Case Reference Number RCC0389055

Dear Mr Burns

I am in receipt of your further correspondence in connection with the above case.

I appreciate that you remain dissatisfied with both the outcome in terms of the action taken by the ICO to date, and the way in which I have dealt with the issues raised with regard to Faye Spencer and comments and concerns you shared about her involvement in your case.

I am sorry that you still feel unhappy with the reply but I have looked into the case, provided you with further explanation about how decisions have been reached and given my view of the handling of your complaint, including apologising for the delays incurred.

I have explained that the assessment decision that we are obliged to reach has been made and we have shared our outcome with both you and the Fire Service. My understanding is that they are considering the matter, in line with the guidance that we have provided.

What I have to be clear about is that we have also decided that enforcement action would not be appropriate at this point, and whilst I again appreciate this will be disappointing to you, the decision was made taking all the circumstances into account, and that includes our



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regulatory action policy.

I am writing now to explain your route to further any concerns would be to approach the Parliamentary and Health Service Ombudsman, who may look at the service issues in connection with your case.

We will of course consider any action that the Ombudsman may recommend as a result of this complaint and how we have dealt with the issues you have raised.

I should point out however that if you wish to challenge our interpretation of the law then the Ombudsman cannot help you and you should consider taking independent legal advice.

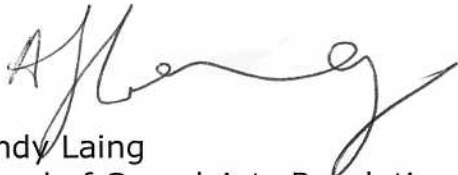
Finally I am aware that issues around access to your personnel file are connected to your ongoing dispute around pension entitlements. Any substantive issues and ongoing dispute around those entitlements or otherwise remain outside of our jurisdiction, and there may well be alternative avenues to help resolve those concerns with Ombudsmen or regulatory authorities elsewhere.

The Parliamentary and Health Service Ombudsman can be contacted via the address or helpline number provided below.

The Parliamentary and Health Service Ombudsman
Millbank Tower
Millbank
London
SW1P 4QP

0345 015 4033

Yours sincerely



Andy Laing
Head of Complaints Resolution



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Mr P Burns
7 Kings Drive
Fulwood
PRESTON
PR2 3HN

Please ask for: Bob Warren
Telephone: 01772 866804
Email: bobwarren@lancsfireandrescue.org.uk
Your Ref: PB01711
Our Ref: BW/JLW
Date: 27 May 2011

Dear Mr Burns

THE INFORMATION COMMISSIONER AND ALL MY SUBJECT DATA

In response to your letter dated 24 May 2011 under the above heading, I would advise you that having consulted the Service's Data Protection and Freedom of Information Officer, I have been informed that we are still in correspondence with the Information Commissioner over your complaint. Consequently it is our view that at this time no final determination of our practice regarding your access request has been made. You will appreciate that in these circumstances it would not be appropriate for us to take the steps you request until this correspondence with the Information Commissioner has been finalised.

Once this correspondence is concluded we will obviously review our position in light of any response received from the Information Commissioner and act accordingly.

Yours sincerely

A handwritten signature in black ink, appearing to read "R J Warren".

R J Warren
Director of People and Development

Headquarters

Lancashire Fire & Rescue Service
Garstang Road, Fulwood
Preston
PR2 3LH





Information Commissioner's Office.
Mr.A.Laing.
Head of Complaints Resolution
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire. SK9 5AF

**7, Kings Drive,
Preston. Lancashire.PR2 3HN.
ENGLAND.
Tel/Fax: +44 (0) 1772 715963.
symbolseeker@tiscali.co.uk**

Monday, 8th August 2011.

BURNS

My Ref: PB02611

Your Ref:

Case Reference Number RCC0389055.

Dear Mr.Laing,

Thank you for your letter of the 24th June 2011.

I have delayed responding to allow the LFRS more than enough time to reach a conclusion on your recommendations to them. Clearly their conclusion remains that they can with impunity completely ignore the Information Commissioner and his staff, and frankly who can blame them.

The Information Commissioner in this matter and in other matters before the Public have shown himself to be completely ineffectual in spite of the encouragement you have received from both myself and the other disabled Fire Service Veterans to get involved and use the powers Parliament placed at your disposal. The cynical view is that disabled FSVs do not make the headlines for the ICO.

Even in the simple matter of asking you to refer all my correspondence on my complaint against you and Ms. Spencer to Mr.S.Entwistle Director of Operations you have failed to either do as I asked or to comment on the reasons why you have clearly chosen not to.

I regard your failure in this most simple of tasks to be blatant obstruction by you in complicity with Ms.Spencer in my attempts to bring my complaint to the attention of Mr.Entwistle and ultimately the Commissioner himself.

For the record it is our view that you have failed to support 15 disabled Fire Service Veterans and their widows to obtain critical documents which you confirm, the LFRS confirm, and we know exist. You have also failed to use the Parliamentary powers placed at your disposal to enforce a bare faced breach of the law which you state and confirm is not being complied with by the LFRS.

You have yet to offer a transparent and rational explanation why you, Ms.Spencer, Ms.Poole, and the Commissioner have failed to carry out your taxpayer paid duty.

You do not satisfactorily explain why it would not be 'appropriate' for you collectively to proceed against the LFRS with an Enforcement Notice nor has Ms.S.A.Poole acting Head of Enforcement made it clear to me the basis for the decision which *you state* she has taken in not proceeding with Enforcement in this matter.

You make reference in your letter to your 'regulatory action policy' supposedly enforced by Ms.Poole which you have chosen not to publish or to quote supporting relevant excerpts from in support of your decision.

It is my opinion supported by your refusal to act that this unpublished ICO 'regulatory action policy' is that the Commissioner has decided or been instructed by this Coalition Government not to issue a single Enforcement Notice if it can be avoided.

What other explanation can there be?

If this is the policy, and I believe it to be so, then the Commissioner has a duty of transparency to the Public he is paid by to state who changed to this policy of non prosecution?

When was this decision taken?

Who took and authorised was such a major policy shift in effect neutering the ICO remit?

Why was this policy implemented contrary to the express wishes of Parliament who recently amended the powers of the Commissioner to Enforce and fine if necessary such non compliant organisations as the LFRS?

Why has this unparalleled change of policy not been published to the country at large in a press release?

For this policy to be implemented by the likes of Ms.Pooles then there must be an internal Minute or directive to her requiring her compliance with this diametric policy shift.

Indeed, I now make a formal FoI request to the Commissioner that he releases his written policy to me and the Minutes of the Meetings and associated documents at which such a neutering policy was debated, discussed, approved, and implemented.

Recently Ms.Poole the acting Head of Enforcement in an interview with a journalist Mr.K.Rawlinson of the Independent Newspaper was asked why she had not prosecuted Wandle Housing Association and Lewisham Homes both of which were found to be in breach of the Data Protection Act by the Information Commissioner's Office during which they released the personal details of 26,000 tenants?

Ms.Poole refused to answer the question instead choosing to make an anodyne statement which bore no relationship to the question whatsoever. Clearly Ms.Poole and the Commissioner have a hidden agenda protecting a hidden policy and such a reaction of disappointment in the press plus our experience makes one reach this inevitable conclusion.

I have raised the question before.

Why does Ms.Poole's acting appointment exist and what exactly does her department do if it does not prosecute in circumstances which clearly warrant it in our and other cases?

The simple question raised by one of the FSVs is, given all our circumstances, and given all the deliberate delay, incompetence, and obfuscation by the Commissioner and his staff why should we continue to fund this organisation which is clearly not fit for its purpose?

From this you must draw the conclusion that we as taxpayers have not the slightest confidence in the Information Commissioner and his senior staff. This is an annual budget of £20 million in these straightened times which the taxpayers of the UK can ill afford. This department is not only mismanaged it managed bankruptcy at one point and had to be bailed out by guess who?

The Commissioner and his staff are however extremely competent at moving the goalposts of 'closing out' statistics. Will our case be recorded as a success I wonder? It has an admirable reputation and record for massaging its statistics but the reality of bankruptcy says it all.

It produces nothing and contributes nothing to the all essential freedom of access to information for the man in the street, a freedom to which we all aspire.

It does little to justify its expenditure, indeed its incompetence and toothless presence, judging by its complete failure in our case only strengthens the hand of the nose thumbing law breakers who like the LFRS have secrets to hide from public accountability.

It is time this 'organisation' was overhauled root and branch or simply like the Audit Commission dispensed with as an unnecessary burden on us all.

Accordingly, because such an undeclared policy clearly exists to deny us justice and because this ethos is highly damaging to Public confidence in the role of the Commissioner, his staff, and the organisation the taxpayers pay for, I have concluded that it is imperative for us collectively through our Members of Parliament to raise Parliamentary Questions on the justification of the existence of the ICO before the Information Commission Parliamentary overseeing Committee which is the Parliamentary Select Committee for Home Affairs chaired by Mr. K.Vaz M.P. to whom I shall now write directly using all this correspondence as a costly example of the waste of taxpayers' monies.

The answer is profoundly simple. Parliament should change the law in such a manner that the onus is always upon LAs to release all documentation they hold and are asked for. They must automatically be required in a Court of Law to justify at their expense the reasons for withholding any such requested information.

As a consequence the ICO should be down sized to match this major reduction of workload.

Yours Truly,



Paul P. Burns. GFireE
Divisional Fire Officer (Rtd)
HM-t-Q-LSGCM



For Exemplary Fire Service

Order of Excellent Fire-fighter
Soviet Union



Oklahoma Medal of Honor
& Honorary Citizen



CC Lord McNally Minister for Information.
Mr.A.Slaughter M.P. Shadow Minister.
M.C.Ames Investigative Journalist Guardian Newspaper.
Mr.K.Rawlinson Journalist Independent Newspaper.