

Date: Monday 20th August 2012.



APPLICATION for COURT ORDER(Part 8 CPR).

- (1) The Defendants are the Lancashire Combined Fire Authority(CFA).
- (2) The verified correct address for legal service is as follows:

**Lancashire Combined Fire Authority
Headquarters
Garstang Road
Fulwood
PRESTON
PR2 3LH.**
- (3) The Plaintiff was asked by the Court to identify the data controller in this action. The Plaintiff's data controller under s35 of the Data Protection Act 1998 is the Lancashire Fire & Rescue Service.
- (4) The Lancashire Fire & Rescue Service are directly controlled by the Lancashire Combined Fire Authority and they produce the effect of the directions of the Lancashire Combined Fire Authority.
- (5) The Claimant makes an Application for a Court Order requiring the Defendants to comply with the s7 Data Protection Act 1998 (Rights of Access to Personal Data) and with the enactment's Sixth Principle, in order to gain access to *all* the Claimant's subject data.
- (6) Furthermore the Claimant under this enactment seeks disclosure of all his subject data under s35 paras(1)&(2), sub-para(a);(b) for the following purposes:
 - to establish, exercise, and defend his legal rights;
 - for the purpose of evaluating evidence for prospective legal proceedings;
 - for the purpose of obtaining legal advice.
- (7) The Claimant requests copies of *all* his subject data held by the Defendants. In particular his Personal Record Files(PRF)and associated pension files from his commencement of service in the Fire Service.
- (8) The Claimant seeks reimbursement for his issuance fee;
- (9) The Claimant seeks damages from the Defendants, or as the Court sees fit, for calculated and deliberate breaches of the Data Protection Act 1998 which have caused unreasonable deliberate frustration and hurt to the Claimant by the Defendants' premeditated time wasting and obfuscation over an unreasonably extended period of time whilst procrastinating with an initial standard application for the disclosure of the Claimant's subject data.

Time Line of correspondence of a Subject Data request:

Form:	Date:	To:
Claimant Application #1 Letter-Hand drafted; no copy retained. Recorded Delivery dated 25/10/2010. Page No:8.	25 th October 2010.	CFA.

CFA-Letter	1 st November 2010.	Claimant.
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Proof of Identity and £10.0. required.
Page No:9-10.

Claimant-Letter 9th November 2010. CFA.
Proof of Identity including Passport copy and £10.0.,
Cheque No:002269 sent.
Recorded Delivery dated 09/11/2010.
Page No:11-13.

CFA-Letter 19th November 2010. Claimant.
Page No:14.

Claimant Application #2 29th November 2010 CFA.
Letter-hand draft. Recorded Delivery dated 30/11/2010.
Page No:15-16.

Claimant 15th December 2010 CFA.
Letter-hand drafted; no copy retained;
Reminder Statutory time frame for response breached.

CFA 20th December 2010. Claimant.
Letter-Refusal. Not "captured" by s7 DPA 1998.
Page No:17.

Claimant 23rd December 2010. CFA.
Email-Appeal & Review lodged.
No copy retained.

CFA 4th January 2011. Claimant.
Email-Reply-Appeal "To be reviewed".
Copy not retained.

Following no further response from the CFA the Claimant complained to the ICO who carried out an Assessment.

ICO 20th April 2011. Claimant.

Assessment Report:

"In this case we have decided that it is unlikely LFRS(CFA) have complied with the requirements of the DPA."

"Mr. H [REDACTED]'s PRF (*Personal Record Files*) is subject to the DPA, and should be provided without delay."

"I will now write to them and inform them of the assessment that has been made in this case..."

Page No:18-21.

Claimant 11th May 2011 ICO.
Seeking Clarification. Hand draft-retained.
Page No:22-24.

ICO 16th May 2011 Claimant.
Letter-Clarification.
Page No:25-26.

Claimant Application #3 28th May 2011. CFA.
Email-copy not retained.

CFA 1st June 2011. Claimant.
Letter-Reply-No action until finalised (?) with ICO.

No further correspondence.
Page No:27.

Claimant 13th June 2011. ICO.
Seeks further clarification. Letter-hand draft-no copy retained.

ICO 13th June 2011. Claimant.
Email-no copy retained.
Letter-Follow up 21st June 2011. Claimant.
Page No:28.

Claimant seriously ill over extended period due to recurring effects of Hepatitis 'C' received from infected US blood administered after disabling on duty Service injury. Records if retained are in the Claimant's Fire Service records held by the Defendant.

Claimant Application #4 15th December 2011 CFA.
FOIA request included.Letter-hand drafted -no copy retained.

CFA(Letter) 21st December 2011. Claimant.
Substantive reply promised by20th January 2012.No further response.
Page No:29

Claimant Application #5 21st May 2012. CFA.
Recorded Delivery dated 30/11/2010. (Signed for as "Cattle").
14 day notice of proceedings. No acknowledgement or response.
Page No:30-32.

**DRAFT ORDER.
IT IS ORDERED THAT:**

1. The Defendants shall within 28 days of the service of the Order deliver up to the Claimant relevant copies of *all records* in their possession, power, custody, or control relating *directly or indirectly* to the Claimant and/or a full summary of such records upon which the Claimant may rely in the future prospective legal proceedings and claims, following legal advice and disclosure specifically relating to the following:
 - a.** All CFA files, records, and communications known within the Lancashire Fire & Rescue Service as the Claimant's Personal Record Files(PRF) and associated files;
 - b.** All relevant bilateral communications pertinent to the Injury Award dispute between the CFA and its contractor the LCC Pensions Services from January 2007- to date which relate to the Claimant;
 - c.** All relevant bilateral communications relevant to the Injury Award dispute between the CFA; the DWP; the Audit Commission; and other agencies and persons to date which relate to the Claimant;
 - d.** All Part II Minutes of the Lancashire Combined Fire Authority and communications from January 2007 to date relevant to the Injury Award dispute relating to the Claimant in which the Claimant is listed or discussed in reports or communications; in recorded Minutes or contemporaneous notes; or is alluded to;
 - e.** All CFA Injury Sub-Committee Minutes and communications from January 2007 to date, relating to the Claimant in which the Claimant is listed or discussed in reports or communications; recorded Minutes; or is alluded to.
2. Without prejudice to the generality of the above *all* relevant Claimant's subject data in which the Claimant has been alluded or referred to, or which a reasonable person could draw the reasonable inference that the Claimant is being referred to.

N.B.

'Communications', for the purposes of this Order is defined in its broadest sense which includes correspondence; emails; contemporaneous notes; Minutes and recordings of vox conversations whether by electronic means or otherwise. The foregoing examples are not meant to be exhaustive nor exclusive.

'Subject data' as defined within the enactment.

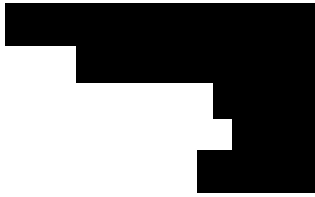
'All', as defined in the OED.

Statement of Truth.

Insofar as the matters to which I refer in my documents are within my own knowledge they are true; insofar as they are not within my own knowledge they are true to the best of my knowledge, information, and belief.

[REDACTED]

.....
W.H. [REDACTED].



Date: Saturday, 11th May 2013.

Case Number: 2PR01324.

Mr. [REDACTED] -v- Combined Fire Authority.

The Data Protection Act 1998(the DPAct);

1. The Claimant has engaged professional legal assistance in the preparation of this document;
2. The Claimant seeks, under the DPAct, Part II Rights of Data Subjects and Others, s7(1) , a complete and unabridged hard copy of all his Personal Record Files(PRF) accumulated throughout his Fire Service career; subject data which is in an intelligible form held in a “relevant filing system” by the data controller of the Lancashire Fire & Rescue Service which is the sole agent of the Combined Fire Authority;
3. The Claimant’s subject data is held in an intelligible form in a filing system deemed by an Assessment of the Information Commissioner to be a “relevant filing system” which it legally recognises as a system for the immediate release of the subject data to the Claimant;
4. The Defendant has never confirmed or denied that the Claimant’s subject data exists or is held in safe keeping by the them;
5. The Claimant asks the Court to exercise its discretion under s7(9) of the DPAct to Order the Defendant, who has repeatedly failed to comply with his subject data access requests, which is in contravention of the provisions of the DPAct and EU Directive, to disclose this subject data to the Claimant;
6. The Claimant seeks his subject data for the following reasons which are not exhaustive or exclusive:
 - (a) to check, in the first instance, that the information held about him actually exists; is accurate; is adequate; is relevant; is up to date; and is not excessive;
 - (b) to ensure that any decision, in particular in relation to his pensions, which is based on that information is justified;
 - (c) to ensure that no inaccurate information about him has been supplied to any other person or body;

(d) to correct any unfair decision taken on the basis of information which he has not been able to see;

(e) to ensure that no use is made of his personal data which is incompatible with the specific and lawful purpose or purposes for which it was obtained;

(f) L.J. Scott in his revision of the CPR encouraged prospective litigants including this Claimant, in saving the Courts time and expense, to evaluate their potential for success by acquiring all relevant documentation, if necessary, using early Court supported disclosure as an 'enabler' for this purpose;

Reasons(a-e) are all based on the "Data Protection Principles" set out in Part 1 of Schedule 1 of the DPAct.

European Directive 31995L0046(the Directive):

Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; a Directive to which the United Kingdom is a Member State signatory:

7. The Claimant in his Application seeks the protection and implementation of his rights guaranteed under the European Directive. Furthermore he now seeks to exercise those guaranteed rights in European and UK law for a purpose which the European and UK law itself acknowledges and makes provision;
8. The following examples of Recitals, which are not exhaustive, are the Directive's objectives which are applicable to the Claimant's Application:
 - (a) Recital 28: "Whereas any processing of personal data must be lawful and fair to the individuals concerned; whereas, in particular, the data must be adequate, relevant and not excessive in relation to the purposes for which they are processed; whereas such purposes must be explicit and legitimate and must be determined at the time of collection of the data; whereas the purposes of processing further to collection shall not be incompatible with the purposes as they were originally specified;"
 - (b) Recital 38: "Whereas, if the processing of data is to be fair, the data subject must be in a position to learn of the existence of a processing operation and, where data are collected from him, must be given accurate and full information, bearing in mind the circumstances of the collection"
 - (c) Recital 41: "Whereas any person must be able to exercise the right of access to data relating to him which are being processed, in order to verify in particular the accuracy of the data and the lawfulness of the processing;"

- (d) Recital 53: "Whereas, however, certain processing operation are likely to pose specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, such as that of excluding individuals from a right, benefit or a contract, or by virtue of the specific use of new technologies; whereas it is for Member States, if they so wish, to specify such risks in their legislation;"
- (e) Recital 55: "Whereas, if the controller fails to respect the rights of data subjects, national legislation must provide for a judicial remedy; whereas any damage which a person may suffer as a result of unlawful processing must be compensated for by the controller, who may be exempted from liability if he proves that he is not responsible for the damage, in particular in cases where he establishes fault on the part of the data subject or in case of force majeure; whereas sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive;"

This is not an exhaustive list of what may be relevant but simply demonstrates to the Court that the Claimant is seeking access to his data for a purpose which the Directive and thus EU and UK Law by extension itself recognises.

- 9. The Claimant respectfully reminds the Court that under both the DPAct and the Directive the term "processing" covers a multitude of purposes, for example, what the body(in this case the Defendant) holding the data does with it; including data use (or misuse); disclosing it; or merely holding the data.
- 10. The Claimant is seeking to exercise his rights, privileges, and protections under both UK and European Law in that he seeks access to his personal data based on his belief that he has an inalienable right to the data under the applicable legislations, specifically his personal data, which he believes is not excluded by DPAct or Directive exemptions, and that the Court should exercise its discretion to Order disclosure from the Defendant.

The Submissions:

- 11. The Claimant believes he has:
 - (a) an absolute and inalienable right to all his personal subject data regardless of his reasons for so seeking it;
 - (b) and, if this is not the case, his reasons are in any event sufficient to require the Court to order disclosure;
 - (c) that in any event, the Court must give effect to the European Data Protection Directive and cannot use its discretion to override the Directive, and that any decision not to order disclosure must either be perverse or based on one of the exemptions set out in the Directive or DPAct themselves.
- 12. The Defendant has not advanced any reasonable, logical, or cogent "good reason" in law why the Claimant's subject data ought not to be disclosed to him;

13. A "good reason" for not disclosing his personal data must be a reason set out by the Defendant within the framework of the European Data Protection Directive (from which the DPAct is itself derived), such the exemptions are set out in the Directive.
14. Given that the grounds for withholding the Claimant's subject data are *not* found within the Directive's exemptions the Court cannot further exercise any discretion in respect of the EU Directive by overriding a right granted by that European Directive to this Claimant.
Furthermore, the DPAct must be interpreted and applied so as to conform with the Directive.
15. These exemptions, which for example, allow information to be withheld on the grounds of national security (s.28); prevention and detection of crime (s.29); avoiding prejudice to an authority's regulatory functions (s.31); to avoid an unreasonable disclosure of a third party's personal data (s.7(4)); etc; do not apply in this Claimant's Application;
16. With respect, the Court's approach to the exercise of its discretion in this case should be, as Lord Justice Ward put it in granting permission for the Durant appeal, "to allow disclosure unless good reason is shown why it should not be disclosed". The Defendant thus far has not advanced any pleading and/or 'good reason' for not disclosing the Claimant's subject data;
17. The Claimant relies on the fact that the Directive created a guarantee of inalienable entitlement for him to access to his personal data, a guarantee that cannot, save as provided by the Directive, be 'watered down' by the UK DP Act or UK Courts. He maintains that, as a result, the scope for any UK Court to exercise its discretion against requiring compliance when a person had otherwise justified his request under s 7 of the DPA is extremely limited and in this respect he relies on Articles 12 and 22 of the Directive;
18. Article 12 requires Member States including the UK to "guarantee" every data subject the inalienable right to obtain the relevant data from the data controller; and, although Article 13 enables a Member State legislatively to restrict the obligations and rights provided for in, among other Articles, Article 12, Article 22 requires each Member State to provide a judicial remedy for any breach of rights guaranteed by its national law. Thus section 7 as a whole, and section 7(9) in particular, should be construed so as to circumscribe the discretion of a Court to give effect to that guarantee.
19. The Claimant contends that the only practical discretion derived from the word "may" in section 7(9) is to give effect to the partial exemption provided by Article 13 to "restrict" the obligation to disclose to certain specified circumstances, for example, when such a restriction constituted "a necessary measure to safeguard" various national and public interests and "the protection of the data subject or of the rights and freedoms of others", none of which the Claimant believes apply in this case. There are other examples which

need not concern the Court here. Nevertheless the power to restrict does not extend to interpreting section 7(9) of the Act to empower a UK Court, by way of an exercise of discretion, to override the guarantee to the Claimant which the Directive provides for;

20. The DPA is on the Statute Book and in order to comply with a Directive from the European Union, it is recognised Court custom and practice that the Court should construe the Directive rather than the words of the Statute as the applicable legislation. In practice the Statute must bow/give way to the Directive in the order of 'authority'. Consequently the Directive requires all Member States to guarantee the data subject, namely the Claimant, the right to obtain relevant data from a data controller.

21. The Claimant respectfully requests the Court to exercise its discretion under s7(9) to Order the Defendant, who has repeatedly failed to comply with the Claimant's requests in contravention of the provisions of the DPA and EU Directive, to act to provide his subject data to the Claimant.

22. The Claimant seeks costs and damages as the Court sees fit.

Statement of Truth.

Insofar as the matters to which I refer in my documents are within my own knowledge they are true; insofar as they are not within my own knowledge they are true to the best of my knowledge, information, and belief.

[Redacted signature block]

.....

W. [Redacted]
Litigant-in-Person.

General Form of Judgment or Order

In the	
Preston	
County Court	
Claim Number	2PR01324
Date	16 August 2013



MR [REDACTED]	1st Claimant Ref 116493-001/HEWITT/SRC
LANCASHIRE COMBINED FIRE AUTHORITY	1st Defendant Ref

Before District Judge Rouine sitting at Preston County Court, Openshaw Place, Ringway, Preston, PR1 2LL.

IT IS ORDERED THAT

*****Please see attached order*****

Dated 31 July 2013

Naphans Llp
Greenbank Court
Challenge Way
Greenbank Business Park
Blackburn
Lancashire
BB1 5QB
DX 745450 BLACKBURN 12

RECEIVED

20 AUG 2013

ORDER

In the Preston County Court

Case number:
2PR01324

Parties	W [REDACTED] H [REDACTED]	Claimant
	LANCASHIRE COMBINED FIRE AUTHORITY	Defendant

At a hearing on 31st July 2013

before District Judge A.P.Rouine sitting at The Law Courts Ring Way Preston
the Judge heard the solicitor for the Claimant and the solicitor for the Defendant
and made the following Order



- 1) The personal record file of the Claimant shall be disclosed by the Defendant to the Claimant's solicitors by 4pm 9 August 2013
- 2) Each party shall bear their own costs of this claim.