

# Freedom of Information

Volume 18, Issue 5

May / June 2022

## Headlines

- ICO Director: “FOI Act has never been more important”, p.18
- Upper Tribunal decision creates further potential certification of contempt, p.19
- SNP may have ‘broken law’ over missing ferry paperwork, p.20

## Contents

<i>Expert comment</i>	2
<i>Let’s talk Records Management: Metadata and indexing</i>	4
<i>Anonymisation and personal data: engaging Section 40</i>	7
<i>Recent decisions of the Information Commissioner and Tribunals</i>	10
<i>FOI news</i>	17

## High Court to consider first instance of contempt of court finding over FOI

The High Court is to consider for the first time a contempt of court finding against a public authority over its failure to comply with a Tribunal’s FOI decision.

The First-tier Tribunal (General Regulatory Chamber) Information Rights (‘FTT’) certified ‘contempt’ by the Royal Borough of Kingston-upon-Thames (‘the Council’) due to the Council’s neglect to comply with the decision of a differently-constituted FTT in 2017.

The decision has emerged from a complex

series of developments following FOI applicant Derek Moss’s original information request in 2016.

Mr Moss had requested information regarding a local regeneration project. The Council refused his request, relying on section 12 FOIA (exemption for ‘costs limit’).

Whilst the Council was considering Mr Moss’s request for an internal review, he complained to the Information Commissioner’s Office (‘ICO’).

The ICO agreed with the Council that responding to

the request would exceed the cost limit under section 12 and that its obligations under section 16 (the duty to provide advice and assistance) had been discharged.

Upon appeal, in March 2017 the FTT dismissed Mr Moss’s complaint in relation to section 12 FOIA but allowed his appeal regarding section 16.

Mr Moss subsequently appealed the aspects of the FTT’s decision in relation to which he had been unsuccessful. This was dismissed by the Upper

[\(Continued on page 17\)](#)

## Commissioner agrees there are ‘matters for further consideration’ in Open Letter

More than 100 journalists, politicians and campaigners have signed an open letter warning that the UK’s freedom of information laws are being undermined by a lack of resources, and government departments obstructing lawful requests.

Among the signatories of the letter, which was coordinated by openDemocracy, are editor-in-chief of the *Guardian*, Katharine Viner, editor of the *Observer*, Paul Webster,

Shadow Solicitor General, Andy Slaughter, former Brexit secretary David Davis, and former Green party leader Caroline Lucas.

The letter, which is addressed to Information Commissioner, John Edwards, cites the growing concern among journalists and researchers that the UK’s FOI system is being frustrated by under-resourcing and deliberate non-compliance by government departments.

It calls for the ICO to assign more resources to FOI casework; greater monitoring of public bodies that fail to comply with the law; and stronger enforcement protocols for government bodies that repeatedly flout the law.

It also recommends the extension of FOIA to cover private companies that provide public services.

[\(Continued on page 18\)](#)