UA-2025-000396-GIRF
Neutral Citation Number: [2026] UKUT 187 (AAC)
Appeal No. UA-2025-000396-GIRF

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

PETER CLEASBY

Applicant

- v -

(1) UNIVERSITY OF EXETER

(2) INFORMATION COMMISSIONER

Respondents

Before:	**The Honourable Lady Poole and Upper Tribunal Judge Wikeley**
Hearing date:	**28 April 2026**
Mode of hearing:	**In person**
Representation:	
Applicant:	Party
First Respondent:	Cecilia Ivimy KC, instructed by Mills & Reeve LLP
Second Respondent:	Oliver Jackson, instructed by the Information Commissioner
On certification by:	
Tribunal:	First-tier Tribunal (General Regulatory Chamber)
Tribunal Case No:	FT/EJ/2024/0006
Tribunal Venue:	Determined on the papers
Decision Date:	31 March 2025

SUMMARY OF DECISION

The First Respondent failed to disclose information within a time limit set by the First-tier Tribunal. The First-tier Tribunal certified the case to the Upper Tribunal for consideration of contempt of court. The First Respondent then disclosed the information, accepting its failure to do so earlier was a contempt of court. The Upper Tribunal accepted the concession of the First Respondent that it had been in contempt of court, and made that finding. The Upper Tribunal determined that a sanction was

appropriate, and imposed a fine of £15,000, as well as ordering publication of its decision containing the finding of contempt.

Keywords

34.13	Tribunal procedure and practice: other
93.10	Information rights: practice and procedure

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

DECISION

1. The First Respondent was in contempt of court. It failed to disclose information until 8 May 2025, although it had been ordered to produce it by the First-tier Tribunal within 42 days of a decision dated 30 January 2024.
2. The First Respondent must pay a fine of £15,000 (FIFTEEN THOUSAND POUNDS STERLING) within 28 days of the issue of this decision. This decision will also be published, so that the finding of contempt of court is publicly available.

REASONS FOR DECISION

Background

1. Mr Cleasby, a retired civil servant, sought to obtain information from the First Respondent, the University of Exeter (the "**University**"). Mr Cleasby wanted the information in connection with an article he planned to write as community reporter for an online journal called the Exeter Observer. The information requested by Mr Cleasby on 31 October 2022 related to community liaison carried out by the University with the Exeter Community Panel and Resident Liaison Group. Mr Cleasby asked for information about each of the panel and group which included:

> "(2) The names of its members, and which organisation/interest each member represents…
> (5) The agenda and minutes of all meetings held to date…"

   The University produced some of the requested information. However, relying on certain exemptions, it did not produce information about membership of the panel and group requested in paragraph (2) of the information request (the "**withheld information**").

2. Mr Cleasby complained to the Information Commissioner ("**IC**"). The IC found the University was entitled to rely on the exemptions it claimed. Mr Cleasby then brought proceedings before the First-tier Tribunal ("**FTT**"). As noted in the FTT's decision of 29 January 2024 (para 6), the proceedings related only to the withheld information. The University did not initially participate in the FTT proceedings. On 30 January 2024, the FTT found that the University was not entitled to rely on the exemptions it claimed, in essence because legitimate interests in obtaining the information were not overridden by the interests or fundamental rights and

freedoms of members of the group and panel. The FTT substituted the decision of the IC, and ordered disclosure of the withheld information within 42 days of the date the decision was sent to the University (30 January 2024). The disclosure was therefore due by 12 March 2024.

3. The University did not comply with the order of the FTT. An application was made by Mr Cleasby for the FTT to certify the case to the UT to consider contempt of court. The University did not make any response to two sets of directions from the FTT giving it an opportunity to provide observations. The University did eventually enter proceedings, but that was initially to make two strike out applications. The first strike out application was made on 5 December 2024, and dismissed by the FTT on 7 January 2024. The second strike out application was made on 21 January 2025, after the University disclosed one further document, a minute of a meeting in October 2022. The University did not at that stage admit it had failed to comply with the FTT's order, produce the withheld information, or file any witness evidence to be considered.

4. In a decision taken on the papers dated 27 March 2025, the FTT refused the second strike out application, and certified the case to the UT to consider exercise of its powers in relation to contempt of court. The FTT found that the University had failed to produce the withheld information. Instead of engaging properly with Mr Cleasby's arguments, the University had elected not to provide a formal response to the certification application, or produce evidence, despite directions of the FTT giving it opportunities to do so. Instead the University had made two unfounded strike out applications. The FTT considered that on the information available to it, the University had knowingly and willingly failed to comply with the FTT's decision notice dated 30 January 2024 which was a contempt of court. Based on the University's behaviour during the contempt proceedings, it viewed this as part of a bigger picture of non-compliance. (The FTT in making these comments is to be read as making a finding that the University's conduct was capable of constituting a contempt, rather than making a formal finding of contempt. On a certification reference, the UT may inquire into whether the conduct would have been a contempt if committed in proceedings before it (*Moss v Royal Borough of Kingston upon Thames and Information Commissioner* [2024] 1 WLR 2869 paras 39-44, *Bence v Cornwall Council & Information Commissioner* [2025] UKUT 420 (AAC) ("***Bence***") paras 90-91)).

5. On 8 May 2025, the University wrote to Mr Cleasby, produced the withheld information, and apologised. The University wrote to the UT on 16 May 2025 with copies. Further letters were sent by the University to Mr Cleasby in June 2025, detailing steps taken to prevent recurrence, and inviting him to withdraw the certification reference. Mr Cleasby declined to withdraw the certification reference due to his concerns about the culture of the University towards information requests. He described his experience, and suggested the University's attitude to the disclosure of information could be described as "cavalier, evasive and entitled". The failure to produce the withheld information for so long meant that the information had become of minimal value for the purpose it was sought. There was no point in a journalist basing an article for the Exeter Observer on information that had become so out of date. Mr Cleasby's freedom of expression had been thwarted by the delay, at least to some extent.

6. Before the UT, the University lodged a lengthy witness statement from its General Director of Legal and Student Cases, Ms Chrysten Cole. The witness statement contained a full explanation by the University, a further apology, details of the steps which have been taken by the University to prevent recurrence, and supporting documents. The University listed various errors it had made. First, when the FTT decision of 7 January 2024 was issued, the University stated that it erroneously believed that because it was not party to the appeal before the FTT, the FTT decision was not binding on it and the ICO had to make a further direction. Second, the University had wrongly considered that disclosure of minutes of meetings listing attendees was sufficient, which it provided, and overlooked the detail of paragraph (2) of the information request. Third, the University mistakenly believed that personal data of non-University individuals fell to be redacted. Fourth, at one point the University wrongly thought it no longer held relevant information. After the University had realised its mistakes and taken external legal advice, it had disclosed the withheld information and apologised.

7. Parties provided helpful skeleton arguments and a joint bundle of authorities, all of which have been taken into account. At an oral hearing before the UT, Ms Chrysten Cole gave oral evidence before the UT on behalf of the University, and parties made further oral submissions. The UT therefore had before it additional information to that available to the FTT at the time it made its certification reference on 27 March 2025.

Governing law

8. Mr Cleasby made his information request under the Freedom of Information Act 2000 (the "**2000 Act**"). Where a party has not complied with orders of the FTT, for example orders to disclose information, section 61 of the 2000 Act makes provision for cases to be certified to the UT. The UT may inquire into matters and consider any appropriate sanction. Certification proceedings are intended to uphold the authority of the FTT, and make certain its orders are obeyed (*Rotherham Metropolitan Borough Council v Harron & The Information Commissioner's Office* [2023] UKUT 22 (AAC) para 54).

9. The powers of the UT on a certification reference for contempt by the FTT arise from section 61(5) of the 2000 Act, read with section 25 of the Tribunals, Courts and Enforcement Act 2007 (the "**2007 Act**"). The UT has the same powers as would be available to the High Court to punish a contempt of court (section 25(1)(a) of the 2007 Act, read with section 25(2)(c); *Bence* para 87, *YSA v Associated Newspapers Ltd* [2023] UKUT 75 (IAC) 367 ("***YSA***") paras 23-25). The power to impose a sanction for contempt of court is discretionary. If ordering a sanction, the High Court has wide powers as to the type of sanction it may grant. Sanctions available to the Upper Tribunal in respect of contempt of court include committal to prison for a period of up to two years, either immediate or suspended (Contempt of Court Act 1981 (the "**1981 Act**") section 14(1)). A fine may be imposed. Inferior courts are limited to imposing a maximum fine of £2,500, but no limit is set for a fine imposed by a superior court (section 14(2) of the 1981 Act). Assets may be confiscated. A published finding of contempt may of itself be a sanction *(R (Bempoa) v London Borough of Southwark* [2002] EWHC 153 *(Admin ("**Bempoa**"))*. Costs may be awarded, sometimes on an indemnity basis (*R (JM) v*

Croydon LBC [2010] 1 WLR 2472 at para 12); for example, in *Bence* agreed costs of £35,000 were awarded. Other types of orders are available such as mandatory orders to take specified steps (and the 1981 Act expressly mentions hospital orders and guardianship orders (section 14(4)).

10. Because each case turns on its own circumstances, outcomes of other cases can provide only limited assistance with the appropriate response to a contempt of court. The UT must assess the seriousness of the contemptuous conduct and the appropriate sanction in the context of a particular case. Deliberate disobedience of a court order is likely to attract a significant penalty, because the efficient and effective conduct of litigation depends on court orders being complied with. (*Khawaja v Stefanova & Ors* [2023] EWCA Civ 1201 ("***Khawaja***") para 38).

11. The type of matters which may be relevant to whether to impose a sanction for contempt of court, and its level, include later compliance, apology, explanation for the default, a lack of intention to flout the order, the length of time the contempt lasted, the seriousness of the contempt including the number of acts or omissions involved, the resources and support available to the contemnor to assist with avoiding the commission of the contempt, and the extent to which the respondent has taken steps to rectify matters and avoid future repetition (*Bence* paras 126-128). The seriousness of the effect of the breach of an order also appears to have been a factor in *Secretary of State for Justice v Prison Officers' Association* [2019] EWHC 3553 ("***Prison Officers Association***"). Similarly, the functions being carried out by a public authority and the impact any financial repercussions might have may be relevant (*Bempoa)*. An admission of contempt may reduce the seriousness of the sanction imposed, because it shows awareness of wrongdoing, and has a utilitarian value in reducing the scope of proceedings in the UT (cp *Bence*, para 5).

Contempt of court

12. In this certification reference, the UT must first consider whether there was an affront to tribunals, part of the justice system, which amounted to a contempt of court. That is a narrower issue than ensuring compliance with the information rights regime under the 2000 Act.

13. The University has admitted that it was in contempt of court, and the UT considers that concession is well made. There was a decision of the FTT which required disclosure of the withheld information by the University by 12 March 2024. The University was obliged to comply with the FTT's decision even though it was not a party (*Information Commission v Moss and the Royal Borough of Kingston on Thames* [2020] UKUT 174 (AAC) para 25). As the FTT's decision expressly stated that it was a substituted decision, it is inexplicable, inexcusable and disrespectful that the University thought a further decision was required from the IC before it had to disclose the withheld information, rather than obeying the order of the FTT. Given the contents of the FTT's decision, which carefully weighed interests of individuals, the University's continued insistence that it was not required to disclose the withheld information was also unreasonable. Also unacceptable was the University's failure to appreciate that it still held relevant information. The University's belief that production of the minutes of meetings met its obligations would have been instantly dispelled, had it taken the time properly to read the FTT's

decision and consider the terms of the information request. The University's failures to comply with the FTT's decision were the result of deliberate choices, based on its erroneous beliefs. If there was a deliberate intention to commit the act or omission in question, that is sufficient for contempt, and motive is irrelevant (*Navigator Equities Limited v Deripaska* [2021] EWCA Civ 1799 para 82(7)). Although the University has since provided the withheld information, that was not until 8 May 2025. The University disobeyed the order of the FTT which is a contempt of court (*YSA* para 11). The University remained in contempt of court from 13 March 2024 until it produced the withheld information to Mr Cleasby under cover of a letter dated 8 May 2025, and informed the UT on 12 May 2025.

14. Of concern to the UT, when assessing the seriousness of the contempt, was the University's behaviour in the proceedings before the FTT, followed by the UT, during the period of contempt. The University ought to have read the FTT's decision of 29 January 2024 properly, taken appropriate legal advice, and produced the withheld information by 12 March 2024. Instead, it relied on inadequate internal systems and insufficiently informed staff, and did not obey the FTT's order. The University proceeded on the basis of inexplicable assumptions that it did not have to comply with the decision substituted by the FTT. Rather than engaging properly in the FTT's proceedings, or with the clear explanations provided by Mr Cleasby why the University had still not complied with its obligations, the University sought on two separate occasions to strike out the certification proceedings, wrongly maintaining it had produced all information required of it. The University's actions have led to considerable procedure in the tribunal system at public expense, in order to deal with the certification reference both in the FTT and the UT.

15. With the benefit of the explanations provided by Ms Cole, it is accepted that the University's behaviour was not motivated by an animus against the FTT, or specifically designed to flout the FTT's order. The University's behaviour was, nevertheless, characterised by high level incompetence, inexcusable mistakes, and a failure to approach the order of the FTT with the seriousness and respect that it merited. The University's errors could have been avoided first by properly reading the FTT's decision (in particular paragraph 4 of the substituted decision, and paragraphs 5, 6, 49 to 56, and 58 of the reasons), and second by seeking proper and competent advice on its terms. The period during which the University was in contempt by failing to obey the FTT's order and disclose the withheld information was considerable, approximately 14 months. During that time, the University made two separate strike out applications, which were clearly misguided. The UT considers that it is a case in which imposition of a sanction for contempt of court is merited.

Sanction

16. Parties agreed with the indication by the UT at the outset of the hearing that, given the circumstances of this case, imprisonment was not among the range of potential sanctions to be considered. Beyond that, parties adopted differing positions on sanction. Mr Cleasby suggested a financial penalty (which might reflect estimated costs to the taxpayer in the ICO and tribunal system). He also suggested further steps, such as the University placing the judgment and an apology on its website, and distributing it to public and private bodies including the Department of

Education, the Office for Students, recipients of the University's media releases and the Campaign for Freedom of Information. Mr Cleasby also submitted that compliance should be reported to the Tribunal secretariat or the ICO, and disciplinary action should be considered against individual members of staff, with conclusions reported to the Department for Education and the ICO. The University submitted that given the mitigating circumstances, the issuing of a public judgment marking the contempt sufficed as punishment. The ICO submitted that a sanction should be imposed, to avoid undermining the proper functioning of FOIA and tribunals, but was neutral as to the appropriate level.

17. The UT reminds itself that its aim is to impose a sanction proportionate to the circumstances of the case. It seeks to uphold the authority of the FTT, but also punish contemptuous conduct, and deter from further breaches. In determining the appropriate sanction and its level, the UT assesses the University's contempt against relevant factors from those listed in paragraph 11 above.

18. Factors which tend to increase the seriousness of the sanction required in this particular case include:

    18.1 *Duration of contempt*. The duration of the non-compliance with the FTT's decision of 29 January 2024 was lengthy, approximately 14 months.

    18.2 *Resources to assist with avoiding the commission of the attempt*. The University is a large organisation with significant resources. In its witness statement, it mentions 40 staff on its legal and student cases team, and 5 officers on its information governance team. While there are undoubtedly many calls on the University's resources, and it is accepted that any financial repercussions may divert resources from its charitable educational activities, the University could and should have used its resources to obtain proper advice about the FTT's decision and what it was required to do. The expense to the public purse of the certification proceedings might then have been avoided.

    18.3 *The seriousness of the contempt and acts and omissions involved.* The UT agrees with Mr Cleasby's suggestion that the University's approach to the FTT's decision of 29 January 2024 was cavalier. With the benefit of the explanations in the witness statement and oral evidence on behalf of the University, which were not before the FTT but were available to the UT, it is accepted that the University's actions were not motivated by malice or intention specifically to disobey the FTT's order, which is a relevant factor in considering sanction (*Isbilen v Turk* [2024] EWCA Civ 568 436 para 42, *Buzzard-Quashie* v *Chief Constable of Northamptonshire Police* [2025] EWCA Civ 1397 para 62). But the University's actions were nevertheless deliberate, and amounted to disobedience of a tribunal order, a serious matter (*Khawaja* para 38). The failures are all the more grave because committed by a public authority for the purposes of FOIA (*JS v Cardiff City Council* [2022] EWHC 707 (Admin) ("***JS***") para 90). As already noted, the University's mistakes could easily have been avoided by it reading the FTT's decision carefully and taking proper advice. Instead, the University failed to provide a substantive response to the certification reference, or produce witness evidence before the FTT, despite being given opportunities to do so. It inexplicably brought not just one, but two, applications without foundation to strike out the certification reference. First-tier Tribunals are an important part of the country's justice system, and their

decisions deserve considerably more respect than shown by the University's actions in this case. Further, the University's actions added to the delay in Mr Cleasby being able to obtain information to which he was entitled, which in turn had an adverse effect on his right of freedom of expression. Considerable expense to the public purse has been incurred in the justice system dealing with the University's omissions. In short, the contempt of court in this case was serious.

19. Factors in mitigation include:

19.1 *Later compliance*. The withheld information was provided to Mr Cleasby by the University under cover of its letter dated 8 May 2025, and the UT was informed on 12 May 2025. The UT also notes that Mr Cleasby's request was in seven parts. Some information had been provided by the University on 23 November 2022 and thereafter. The contempt was in relation to an order covering only part of the initial request.

19.2 *Admission of contempt.* Before the UT, the University has admitted the contempt of court. It did so at a relatively early stage after the certification proceedings were referred to the UT. The concession has reduced the scope of the proceedings in the UT, saving time and costs. The serious approach the University has taken to the proceedings since making that concession has shown a degree of respect for the judicial process.

19.3 *Apology.* The University has apologised to Mr Cleasby on 8 May 2025, and repeated that apology since. There is no reason to believe the apology is not now sincere, even if it represents a change of heart (given that until 31 March 2025 the University was seeking to strike out Mr Cleasby's case).

19.4 *Explanation for the default.* The University had a right to remain silent and did not have to produce a witness statement (*Bence* para 125). Nevertheless, before the UT the University has produced a full witness statement supported by lengthy exhibits, and Ms Cole gave oral evidence enabling her to be cross examined by Mr Cleasby. Although Mr Cleasby suspects that the University's failures to disclose the withheld information earlier were to avoid being written about in the Exeter Observer, the production of some information from the outset (on 23 November 2022) tends to suggest that cannot have been the only explanation. The University has outlined the mistakes it made leading to its actions, as set out in paragraphs 6 and 13 above. In making those mistakes and in taking the actions it did, the University demonstrated extraordinary ineptitude. Its conduct was unbecoming of an institution providing education to others, and the antithesis of what should reasonably be expected. However, the UT has accepted the University did not set out intentionally to flout the tribunal order. The University's candour since realising its errors demonstrates some respect for the judicial system.

19.5 *Steps to avoid repetition*. The University wrote to Mr Cleasby in June 2025 detailing measures put in place to prevent a recurrence. These have included engagement with the ICO, training of staff, review and revision of internal processes, and a commitment to considering external legal input in complex cases. More detail is given by the University in its skeleton argument, including clarifying management structures, record keeping, weekly FOIA review processes, tracking of requests, making available software to assist with redaction, training, and, importantly, engaging appropriate external legal

support where required. Ms Cole in her oral evidence said that the changes that were likely to make the most difference going forward was the repositioning of information requests within the University's legal team, training, technical changes regarding storage, retention and searches for information, and working harder with requesters to ensure understanding of a particular information request. Mr Cleasby drew attention to other cases in which the ICO had upheld complaints about the University's handling of information requests. Although those have to be seen in the context of the overall numbers of requests the University has to deal with, it is to be hoped that the steps put in place to avoid repetition of what happened in this case will be of wider effectiveness. There have also been internal steps within the University in relation to the member of staff primarily responsible for what the UT has found to be a cavalier approach to the FTT's order, and that member of staff is no longer working for the University. The University has reported the matter to a regulator to which it is subject, the Office for Students.

20. Having considered all of the circumstances, the UT finds that part of the appropriate sanction in this case is publication of this formal finding of contempt of court against the University. However, the University's suggestion that such a published finding is sufficient of itself in the circumstances of this case to vindicate the interests of justice is rejected. It is true that there are some cases in which courts have been reluctant to impose fines or other sanctions beyond a finding of contempt on public authorities (*M v Home Office* [1994] UKHL 5, [1994] 1 AC 377 at 424H-425A, *Bempoa* para 53, *JS* para 95, cp *R (ZOS) v Secretary of State for the Home Department* [2022] EWHC 3567 (Admin) paras 83 to 85). That is understandable in cases where, for example, a housing authority has failed to comply with an order in relation to provision of housing, and fining it would deplete public funds which might otherwise be used to provide that housing. Nevertheless, there have been other cases where sanctions beyond a finding of contempt have been imposed on public authorities (*eg Buzzard-Quashie* v *Chief Constable of Northamptonshire Police* [2025] EWCA Civ 1502 ("***Buzzard-Quashie 2***")). The information regime under the 2000 Act inevitably involves public authorities. Refusing as a matter of course to apply a financial sanction in contempt cases in the context of the 2000 Act would effectively neuter the tribunals' enforcement powers for contempt, in a way not mandated by the 2000 or 2007 Acts. Accordingly, while the fact that a body in contempt of court is a public authority may be a relevant factor and indicate caution before imposing financial sanctions, it is not an absolute bar. Each case will turn on its own facts. In this case, the seriousness of the contempt and its lengthy duration, in the context of the University's level of resources and even given mitigatory factors, indicate that a sanction in addition to publication is necessary to vindicate the interests of justice.

21. Because Mr Cleasby has represented himself, very ably, and requests no order for costs, the course adopted in *Bence* of awarding agreed costs (in that instance of £35,000) is not suitable in this case. Balancing all of the various considerations, as outlined above, the UT finds that, in addition to a published finding of contempt, a fine should be imposed on the University. Although some reliance was placed by the University on the restriction of a fine to £2,500 if an inferior court is imposing it (section 14(2) of the 1981 Act), the UT is a superior court (section 3(5) of the 2007 Act), and the restriction in section 14(2) is not directly applicable. Fines for contempt

have varied significantly in amount, reflecting the inherently fact-sensitive nature of the jurisdiction. For example, the level of fine in *CB v Suffolk CC* [2010] UKUT 43 (AAC) was just £500; in *Buzzard-Quashie 2,* £50,000; and in *Prison Officers' Association* [2019] EWHC £210,000. The UT finds that the appropriate level of the fine to be imposed in the circumstances of this particular case is £15,000. That fine is deemed to be a sum adjudged to be paid by a conviction, and it can be enforced in the same manner as a judgment of the High Court for the payment of money (section 16(2A) of the 1981 Act). The level of fine would have been considerably higher had the University not admitted the contempt.

22. Mr Cleasby suggested various other possible sanctions, which, were the UT minded to grant them, would take the form of mandatory orders (for example publication on the University's website, direct intimation to a list of bodies, and disciplinary action against members of staff). The UT finds that publication of this judgment, which makes it available and a matter of public record, the fact the employee of the University primarily responsible for the failures no longer works there, and that the University has reported the matter to a regulator, means that these further orders are not necessary or proportionate in all of the circumstances.

Conclusion

23. Having weighed all of the various factors, the appropriate sanction in this particular case is a published finding of contempt, together with the imposition of a fine of £15,000. The fine is to be paid within 28 days of intimation of this decision, and further details of how to do so may be found at Pay a court fine - GOV.UK.

The Honourable Lady Poole
President of the Upper Tribunal (Administrative Appeals Chamber)

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judges for issue on 8 May 2026