



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No EA/2010/0159

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50299777
Dated: 24 August 2010**

Appellant: Mr Bruce Teuten

Respondent: Information Commissioner

Additional Party: Shotteswell Parish Council

Decided on the papers on 14 December 2010

Date of decision: 5 January 2011

Before

Robin Callender Smith
Judge

and

Darryl Stephenson
Tony Stoller
Tribunal Members

Attendances:

For the Appellant: Mr Bruce Teuten made his own representations

For the Respondent: Ms Michele Voznick, on behalf of the Information
Commissioner

For the Additional Party: no representation

**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No EA/2010/0159

Subject matter:

FOIA

Means of communication of information s.11

Cases:

Berend v Information Commissioner & London Borough of Richmond on Thames (EA/2006/0049 and 0050), Tanner v Information Commissioner EA/2007/0106 and Swain v Hillman [2001] 1 All ER (CA).

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Case No EA/2010/0159

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 24 August 2010 and, by way out striking out, dismisses the appeal.

**IN THE FIRST-TIER TRIBUNAL
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REASONS FOR DECISION

Introduction

1. On 21 May 2007 Mr Bruce Teuten ("the Appellant") wrote to Shotteswell Parish Council ("the Additional Party") about an e-mail he had sent the Council on 11 May 2007 to which he had received no response. That e-mail stated:

"I would like to make an appointment to inspect the Parish Accounts for the years 2004/2005 and 2005/2006.

"I would be obliged if you would provide some dates and times for week commencing 13 May 2007. I have one or two other appointments during that week but if you are able to provide a list of your availability I would be grateful."

2. On 22 May 2007 the Additional Party replied and explained that it had not received the e-mail dated 11 May 2007 because it had been sent to an account that had been closed two years ago. In respect of the request for inspection of the Parish Accounts it stated:

"I can offer you 11 AM on Friday, 25 May 2007 or, if you prefer, you may come slightly earlier than the arranged time for the next Parish Council Meeting. If this is not convenient you will have to let me know...."

3. There was then an exchange of correspondence between the two parties about the difficulty they were both experiencing in arriving at a mutually acceptable time and date for the inspection. The correspondence culminated in a refusal notice dated 21 July 2007 when the Additional Party wrote to the Appellant stating that it considered his request was vexatious.
4. The Additional Party explained that it believed the request had no real purpose or value because the Appellant did not know what he was looking for. It also stated that the request was excessive and manifestly unreasonable because the Appellant already had a hard copy of the relevant accounts.

5. It added that it felt the request formed part of a campaign of harassment against Shotteswell Parish Council and the Additional Party stated that it believed the Appellant was acting in concert with another member of the public (because it had received another request in similar terms from another member of the public). The Additional Party did not offer an internal review but it referred to the right of appeal to the Respondent (the Information Commissioner").

The complaint to the Information Commissioner

6. The Appellant complained to the IC on 3 August 2007 about the way his request had been handled. He specifically requested the IC to consider whether the Additional Party had correctly determined that his request was vexatious.
7. The IC served his decision notice on 24 August 2010. He held that the request was not vexatious under section 14 FOIA but that it was reasonable in the circumstances of the Additional Party to make the information available to the Appellant by means other than inspection, following reasons:
 - (a) While the initial request had expressed a preference for inspection of the information, there was no guaranteed right to do so. That was limited by whether it was "reasonably practical" to do so.
 - (b) The Additional Party had provided the Appellant with a hard copy of the requested information and the information had been displayed on the Parish Council noticeboard.
 - (c) The Additional Party and the Appellant had a difficult relationship.
 - (d) The Additional Party was a small parish council which did not have its own premises, paid staff or office equipment. Records were kept at the home of the Clerk.

The appeal to the Tribunal

8. The Appellant appealed to the Tribunal on 9 September 2010 on the following grounds:
 - (a) The IC had incorrectly considered the right of inspection. The Audit Commission Act 1998 (particularly section 15 of the 1998 Act and related regulations in the Accounts and Audits Regulations 2003)

together with the Code Local Government Audit Practice for England and Wales required a local authority to give assurances that electors had been given a right to inspect the accounts and all supporting documentation.

- (b) It would be unreasonable not to allow an elector to inspect the accounts and make copies in accordance with the 1998 Act.
 - (c) The Village Hall had been offered to the Additional Party as a venue so that electors could inspect the accounts if they wished to do so.
 - (d) The Additional Party had a copy of "Local Council Administration" which set out actions that Councils must take before and after an audit.
9. The IC's findings in relation to section 14 and section 17 were not challenged in the grounds of appeal.

The questions for the Tribunal

- 10. Whether any of the four heads of appeal set out Paragraph 8 above disclosed any reasonable prospect for overturning the IC's findings?
- 11. Whether the Appellant should have been provided with the "supporting documentation" to the accounts under FOIA rights?

Evidence

- 12. The Appellant, in his written representations, maintained that it was not acceptable to say that information could not be seen because it was impracticable. Neither was it acceptable to say that a Public Body may not be aware of legislation. Public Authorities were bound by Local Government legislation and had a duty both to understand and to uphold the legislation that applied to them.
- 13. In particular he stated: "If it is impracticable for electors to inspect information (that is not Data Protected) at the home of the Clerk of Shotteswell Parish Council then it must be made available at another venue. The Clerk's responsibility is to ensure that those documents which are open to public inspection are readily available (this is a duty under a Council's Publication Scheme). At no time has the Additional Party offered an alternative venue."

14. The Appellant had had no problems inspecting "exactly the same" information held by other Parish Councils and had been allowed full access to inspect the accounts and had been freely offered any other information that he wished to see in accordance with the legislation. Inspection had taken place at the home of another Parish Clerk who was Clerk to three Parishes.

Analysis

15. The request for information by the Appellant to inspect the accounts for 2004/2005 and 2005/2006 made no reference to the Audit Commission Act 1998 or any other local government finance audit legislation in terms of the scope of the requested information. The Appellant had been notified by the IC that the scope of the investigation would be limited to the refusal notice of 21 July 2007 relating to his request. The Appellant did not dispute that when told of it. The IC had further confirmed with the Appellant the precise details of his request to telephone conversations.
16. In *Berend v IC & London Borough of Richmond-upon-Thames* a previous Tribunal had noted: "The request should be read objectively. The request is *applicant* and *motive* blind and as such public authorities are not expected to go behind the reason for the request."
17. As a matter of fact the Additional Party had provided the Appellant with a copy of the accounts but the Appellant had then subsequently stated that he wished to be provided with the "supporting documentation" which he referred to as spread-sheets.
18. In relation to this it is clear to the Tribunal that the Appellant is seeking to expand terms and scope of his request after he had agreed its limited terms with the IC.
19. The IC and the Information Tribunal are not in a position to consider compliance by a public authority in relation to the rights of inspection under the Audit Commission Act 1998. That statutory legislation is enforceable other courts but not before the Information Tribunal in these circumstances.
20. The Appellant had confirmed to the IC that he had received hard copies of the "spread-sheets" and then indicated that he wished to verify the spread-sheets from further background and supporting documentation.

21. The Parish Council has no offices and the information relating to Parish Council business was held at the Clerk's home. Section 11 (1) FOIA stated that the public authority should give effect to the preference expressed in so far as it was "reasonably practical" to do so.
22. The request for inspection of the accounts was made not under a general right of inspection given to an elector or an interested person as set out in the Audit Commission Act 1998 (at sections 14 and 15) but related to the Appellant seeking a preference under FOIA for the communication of information.
23. The Tribunal finds the IC's decision was correct in circumstances and that it was reasonable in the circumstances to provide the information by other means. The "other means" in this case were photocopies of the information.
24. The IC's decision related compliance with FOIA and could not involve areas of law that were outside his statutory functions.

Conclusion and remedy

25. In *Tanner v Information Commissioner EA/2007/0106* the Tribunal concluded that the appropriate test for striking out an appeal was analogous to the test under Part 24 of the Civil Procedure Rules 1998. That made provision for a claim which had no real prospect of success to be summarily dismissed.
26. Guidance on the meaning of that test was provided in *Swain v Hillman [2001] 1 All ER (CA)* by Lord Woolf MR. He said that the words "no real prospect of succeeding" did not need any amplification as they spoke for themselves. The court must decide whether there is a "realistic", as opposed to "fanciful", prospect of success.
27. In this appeal, for the reasons set out at Paragraphs 15 to 23 above, the Tribunal has concluded that there is no realistic prospect of this appeal succeeding and dismisses it by striking it out.
28. Our decision is unanimous.
29. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure an appeal against a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to

the Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can be found on the Tribunal's website at www.informationtribunal.gov.uk.

Robin Callender Smith

Judge

5 January 2011