



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2011/0071

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50298913
Dated: 28 February 2011**

Appellant: Malcolm Stabler
Respondent: Information Commissioner
Second Respondent: West Rainton and Leamside Parish Council
On the papers: 19 August 2011
Date of decision: 14 September 2011

Before

Robin Callender Smith
Judge

and

Dr Malcolm Clarke
Gareth Jones
Tribunal Members

Subject matter:

FOI

Whether information held s.1

Cases: *Linda Bromley & Others v the Environment Agency (EA/2006/0072)*

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 28 February 2011 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Malcolm Stabler (the Appellant) asked to inspect various documents he believed were held by West Rainton & Leamside Parish Council in Durham (the Second Respondent).
2. The Parish Council allowed him to view its information on site. The Appellant was not satisfied he had seen everything that was held. He believed the Parish Council had withheld some of the information he had requested.

The request for information

3. On 1 November 2009 the Appellant submitted the following request to the Parish Council:

"I am writing to submit a formal request to inspect the following documents held by the Parish Council (since the May 2007 local government election):

- All documentation/correspondence between the Parish Council and its auditors BDO.
- All documentation/correspondence between the Parish Council and Durham Association of Local Councils (including Steve Ragg).
- All documentation associated with the appointment of the new Parish clerk with the exception of any application forms or

curriculum vitae submitted by the candidates which would be exempt under the DPA.

4. The Parish Council provided a response to the Appellant on 10 November 2009. It invited him to meet with the Clerk so that he could view the requested information.
5. There was then a chain of correspondence showing that the Appellant had met with the Clerk on 4 December 2009 to view the requested documents. The Appellant stated that he did not believe that he had seen everything he had asked for.
6. As a result of that meeting – in a letter dated 4 December 2009 – the Appellant requested an internal review of the Parish Council's handling of his request. He was offered further inspection.
7. The Appellant, in a letter dated 19 January 2010, maintained that the Parish Council's stance was incorrect. It had falsely stated that he had refused to read some of the information provided to him. He questioned why the Parish Council was trying to mislead him.
8. 1 February 2010 the Parish Council stated that the Appellant had been given the opportunity to view everything it held that was covered by the scope of his request.
9. The Parish Council also stated that it was unable to assist him any further and informed the Appellant that it considered his repeated requests were now vexatious.

The complaint to the Information Commissioner

10. On 28 February 2010 the Appellant contacted the Information Commissioner (IC) to complain about the way his request for information had been handled. He made the following specific points:

- The Parish Council had not provided all of the requested information.
- The Parish Council was attempting to conceal information to prevent it being disclosed to the public

11. The IC wrote to the Parish Council on 21 October 2010 informing them of the complaint and asking for information regarding its handling of the request. There were a series of subsequent telephone conversations between the IC and the Council.

12. In a letter dated 6 December 2010 the Council provided further information about its handling of the request. It reiterated that it had provided the Appellant with the opportunity of viewing all the information it held relevant to the scope of the request.

13. The Council pointed out that the Appellant had not provided a telephone number or e-mail address. As a result arrangements for him to view the requested information had to be made by post. It had tried to clarify with the Appellant which particular documents he wanted to view at the meeting and that he had failed to clarify the information that he was seeking.

14. The IC had concluded – on the balance of probabilities – that apart from the information made available to the Appellant at the on-site meeting there was no further information that was held that was relevant to his request and that the Parish Council had complied with FOIA section 1 (1) (a).

The appeal to the Tribunal

15. The Appellant contended – opening his six-page grounds of appeal (together with annexed copies of a considerable number of other documents) – that:

"The Information Commissioner's Office failed to carry out a thorough investigation of my complaint. I was not contacted by the ICO for clarification or further information to support my complaint nor was I apprised of the contents of the decision notice prior to its publication. As a consequence I was denied any opportunity to challenge the false information provided by the authority which would have highlighted the inconsistencies [sic] in the authority's facts, but also the failure of the ICO to properly interpret the evidence already in its possession which has directly effected [sic] the outcome of my complaint."

The question for the Tribunal

16. The single question in this appeal is whether the IC was wrong to conclude that the Parish Council had disclosed all the information it held that was within the scope of the request.

Conclusion and remedy

17. The Tribunal considered all of the matters presented to it by the Appellant.
18. It was clear, not just from the Notice of Appeal but the tone of all the other submissions made by the Appellant, that he has a serious and long-standing grievance against the Parish Council.
19. Adjudicating on the merits of that is not part of the IC's function nor is it part of the Tribunal's jurisdiction.

20. For the avoidance of doubt the Tribunal has taken no account of correspondence from Ms Roberta Blackman Woods MP dated 26 July 2011 or from Dr Grenville Holland, a Councillor with Durham County Council, dated 26 August 2011. They had no evidence relevant to the appeal to provide.

21. The Tribunal is satisfied (as was the IC) to the required standard – the balance of probabilities – that the Council had made the following information to the Appellant at the relevant meeting:

- Details of the Audit for 2007 – 2008 including the accounts and accompanying documents and correspondence related to this material.
- Such paperwork as existed that related to the Clerk's appointment/position.
- Original paper files covering a three-year period of correspondence received and sent to BDO, the ICO and County Council and general correspondence between different organisations.
- Copies of e-mails received and sent.
- Brochures and catalogues.

22. The Council told the IC – as evidenced in the Decision Notice – that the Appellant often "changed the goalposts" and that his requests, while demanding, were "often vague".

23. That had provided the context with regard to the paperwork the Appellant wanted to see. It stated it had always maintained an open policy and had never knowingly withheld any paperwork. It had made searches through the paperwork held in the filing systems of the Parish

Council and also searched in all the documents retained on the computer system and e-mail facilities.

24. All documents and correspondence which it thought the Appellant might be interested in were extracted or originals made available. The Parish Council's Clerk retained the paper files and e-mail access. There was only one computer on which data was stored and that was in the Clerk's possession.

25. The Council had stated that no documentation or files of importance were destroyed. The only e-mails that were deleted on the e-mail system were those of a very general nature advertising services and catalogues which were already available in the public domain and which were not unique to the Parish Council. Brochures and catalogues – if individual councillors did not want those when offered – would be destroyed as there was no facility to store those items. The information in the catalogues was freely available in the public domain. The Parish Council had stressed that no documents or correspondence of importance were destroyed.

26. In respect of the actual meeting between the Clerk and the Appellant, all of the documents and files of papers and copies of e-mails (as listed at Paragraph 21 above) had been made available for inspection. The Appellant had refused to look at some of the information provided and stated that "it wasn't what he was looking for".

27. At this meeting the Clerk had attempted to clarify what information the Appellant was seeking but the Appellant had refused to provide any further clarification.

28. The Tribunal is satisfied that the IC applied the normal procedures in determining whether or not the Council had complied with its

obligations under FOIA including whether it had correctly identified all the information falling within the scope of the request.

29. The IC had contacted the Council seeking unedited copies of correspondence with the Appellant. The Council provided more material in respect of that request than the IC had originally sought. That was clear evidence of constructive engagement by the Council in relation to the complaint.

30. It is not a requirement of the legislation that the IC needs to seek specific clarification or information from the Appellant during any investigation. The IC's function is to consider whether the Council had undertaken the appropriate searches for the requested information and dealt with any information falling within the scope of the request as required by FOIA.

31. For the avoidance of doubt there is no requirement in the legislation for the IC to consult on the contents of any decision notice.

32. On this basis – having considered all the matters put before it – the Tribunal is satisfied that the Decision Notice issued by the IC was in accordance with the law and the facts before him.

33. On that basis this appeal must fail.

34. Our decision is unanimous.

35. There is no order as to costs.

36. A person wishing to appeal must make a written application to the Tribunal for permission to appeal within 28 days of the date the Tribunal's decision was sent. Such an application must identify any

error of law relied on and state the result the party is seeking. Relevant forms and guidance can found on the Tribunal's website at www.informationtribunal.gov.uk.

Signed:

Robin Callender Smith

Judge

14 September 2011