



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF
INFORMATION ACT 2000**

EA/2011/0220

B E T W E E N:-

CARDIFF COUNCIL

Appellant

-and-

THE INFORMATION COMMISSIONER

First Respondent

-and-

VICKY MICHELLE GRAY

Second Respondent

Before:

B. Kennedy QC

P. Taylor.

R. Creedon.

Appeal Hearing: 2nd April 2012.

SUBSTITUTE DECISION NOTICE

Introduction

1. This appeal was determined on the papers. The Commissioner did not oppose the appeal. The Tribunal issues this decision as a substitute decision notice for the Information Commissioners Decision Notice dated 20th September 2011, reference FS50366306 ('the Decision Notice').

Background

2. Vicky Michelle Gray, ('the Second Respondent') requested information regarding the cost to the Cardiff County Council ('the Council') of employing barrister's chambers or solicitors at employment tribunals over a nine year period. The Council refused to comply with the request on the basis that the estimated cost of complying with the request would exceed the appropriate limit, pursuant to section 12(1) of the FOIA ('the Act'). The appropriate limit set out in

the Fees Regulations for the cost of complying with a request is £450, or 18 hours work ('the appropriate limit').

3. Full details of the Second Respondent's request are set out at paragraph 2-5 of the Decision Notice and are not repeated here.

The Commissioner's Decision Notice

4. In its Decision Notice the Commissioner made two key findings: first, it found that section 12(1) of the Act was not engaged – in that the cost of complying with the request would not exceed the appropriate limit, £450. On that basis, the Council ought to comply with the request. Second, the Commissioner found that the Council breached section 16(1) of the Act in that it failed to provide advice and assistance to the Second Respondent, insofar as it would have been reasonable to expect the Council to do so.
5. In terms of section 12(1), the Commissioner accepted the Council's calculations regarding its estimate of the time taken to locate and retrieve information falling within the scope of the request from the legal services department. The Council's estimate was £434.50. This was £15.50 shy of the appropriate limit.

The Notice of Appeal

6. The Council's grounds of appeal set out in section 6 of the notice of appeal are:
 - (i) The Commissioner was wrong in concluding and had no reasonable basis for concluding that the estimated cost of complying with the request would not exceed the appropriate limit.
 - (ii) The Commissioner failed to ask the Council for clarification of those elements of the cost calculation which he did not understand or agree with and made his own calculations on a basis which had no evidential support and using assumptions which were patently unreasonable.
 - (iii) The Commissioner failed to give any, or any sufficient weight to the Council's evidence or statement that other service areas were likely to hold relevant information.
 - (iv) The Commissioner was wrong in law and in fact in limiting the type of valid refusals which the Council could give after further enquiry to one under section 17(1).
 - (v) The Commissioner failed to give any or sufficient weight to the reasonable advice and assistance provided by the Council in assessing whether the Council's approach to search and retrieval was reasonable and proportionate.

The Commissioner's response to the Grounds of Appeal – section 12(1)

7. Whilst the Commissioner was of the opinion that, at the time that he issued his Decision Notice, the Council had not provided sufficient evidence of the need to carry out enquiries in other areas of the Council, the Council submitted with its notice of appeal a statement from Phillip Bradshaw dated 30 September 2011. Mr Bradshaw gives evidence that, in addition to a search of the legal services department, a search would be required, as a minimum, of the Human Resources and Education Departments and that this would mean directing enquiries to around 15 senior officers at Operational manager level above, to ascertain

whether anything might be held. Mr Bradshaw states that this would not engage less than half an hour of officer time which would bring the estimate over £450.

8. The Commissioner accepted the evidence of Mr Bradshaw. In light of Mr Bradshaw's evidence, and in the absence of any evidence to the contrary, the Commissioner now accepts that the estimate of costs incurred in complying with the request would be likely to exceed the appropriate limit.
9. On that basis, the Commissioner accepts that it would be appropriate for the Council to rely upon section 12 of the Act. In the circumstances, this Tribunal for the same reasons as the Commissioner accepts that the Council is entitled to rely upon Section 12 of the Act.

Substitute Decision Notice

10. The Tribunal finds that section 12(1) is engaged. The Council is not required to take any further action in respect of the Second Respondent's request.
11. As regards section 16(1) of the Act, the Tribunal finds that the Council did comply with section 16(1). By way of example of the Council complying with its duty pursuant to section 16(1) to, so far as is reasonable, provide advice and assistance to the Second Respondent, the Tribunal highlights correspondence dated 1st February 2011 sent by the Council to the Second Respondent:

'It may be that we can supply some information if you can refine or reduce your request to more manageable proportions and resubmit your request so that it brings the cost within the appropriate limit. The Legal Department have suggested that a three year time period would be manageable. Please do not hesitate to contact me if you would like some advice on refining your request.'

Conclusion

12. For the above reasons, the appeal is allowed and the above substitute decision notice made.

Signed

Brian Kennedy QC.

30th April 2012.