



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2013/0141

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50473345
Dated: 11 June 2013

Appellant: Alan Davis

Respondent: The Information Commissioner

2nd Respondent: Department for Communities and Local Government

Heard at: Truro Magistrates Court

Date of Hearing: 4 December 2013

Before

Christopher Hughes

Judge

and

Suzanne Cosgrave and Alison Lowton

Tribunal Members

Date of Decision: 11 December 2013

Date of Promulgation: 11 December 2013

Attendances:

For the Appellant: in person

For the Respondent: no attendance

For the 2nd Respondent: no attendance

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 11 June 2013 and dismisses the appeal.

Dated this 11th day of December 2013

Judge Hughes

[Signed on original]

REASONS FOR DECISION

Introduction

1. Mr Davis is a leaseholder in the Isles of Scilly. He wishes to enfranchise his lease but is unable to do so because his landlord is the Prince of Wales. He raised his concerns with government departments in 1998 and since then he has pursued the matter through various means.

The request for information

2. On 9 April 2012 Mr Davis wrote to the Department for Communities and Local Government and requested information:-

*“...it is requested that in the public interest, full disclosure of **all** information and communications between the Government and their advisors and the Prince of Wales and his advisors be made in his role as a land owner on the exemptions appertaining to the Duchy of Cornwall and the Leasehold Reform Acts from 1967 to 2002.”*
3. The Department responded on 7 August 2012. It provided one letter, relied on the exemption in S21 FOIA for other material (the material was reasonably available to Mr Davis having been previously supplied to a campaign group with which he was associated) and for other documents it had identified relied on S37(1)(aa) (information relating to communications with the heir to the Throne) and S41(1) (information in confidence).
4. Mr Davis complained to the Information Commissioner who on 11 June 2013 issued a decision notice upholding the refusal to provide the information by reason of the exemption in S37(1)(aa). Having made this determination he did not then consider the application of S41(1).

The appeal to the Tribunal

5. In his appeal and his written and oral submissions Mr Davis set out in detail the history of the landholding in this part of the Scilly islands and his attempts to understand the position and obtain the enfranchisement of his lease. He was critical of the actions of Government and the non-availability of papers.

6. He stated that disclosure was in the public interest “and I am the public” in particular as he wanted to know how the Duchy had persuaded the Government to grant the exemption from the Leasehold Reform Act as detailed in the voluntary undertaking which explicitly exempted properties on the Garrison, St Mary’s. Mr Davis had understood that when the 1967 Act was passed the Duchy whilst not covered by the Act had agreed on a voluntary basis to comply with the Act subject only to some minor exemptions, he was critical of what he saw as secrecy in the widening of those exemptions to include his property. He felt that he had a normal contract (i.e. rights under the Leasehold Reform Act) and he should have been treated fairly by being consulted before his contract was changed. He felt that commitments given to abide by the provisions of the Leasehold Reform Act had been reneged on. He had 46 years left of his lease and was financially disadvantaged should he ever wish to sell it.
7. In the Tribunal he argued that the request went back to 1998, before FOIA and before the amendment to FOIA contained in S37(1)(aa) and that therefore the FOIA exemption did not apply to his request as it predated the amendment – that argument was not made in his notice of appeal.
8. Mr Davis told the Tribunal that although the lease “says the Prince by his full name, I take the point the lease does not simply say Duchy of Cornwall, it gives the leaseholder his full titles.” He argued however that the Prince of Wales was a ceremonial title with no powers, whereas the Duchy of Cornwall role was very different. The Prince, in his role as the Duke of Cornwall, had a functional role as Chairman and Trustee of the Duchy which was a private estate. In considering the case it was appropriate to split off the functional from the ceremonial roles as, in his view, the exemption from FOIA applied only to the ceremonial role, or in any event did not apply to his role as Duke of Cornwall. He acknowledged that the Prince of Wales took an active role in the administration of the Duchy of Cornwall.

The questions for the Tribunal

9. The simple question for the Tribunal was whether the decision notice issued by the Information Commissioner was in accordance with the law in the light of the facts of the case. The issues raised by Mr Davis are that S37(1)(aa) was not applicable at the date of the request, that S37(1)(aa) permits the disclosure of some information, that it is in the public interest to disclose the information and that the circumstances of the

case mean that the claim for the confidentiality of the information should not be upheld.

The date of the request

10. Although Mr Davis did not raise the issue in his appeal in the hearing he put forward the argument that there had been an on-going request for information since 1998 and therefore the amendment to FOIA to insert S37(1)(aa) did not apply to this request since the request had been in existence when FOIA did not contain this provision and therefore the information should be provided.
11. This argument is untenable on a number of grounds. The facts are simple. While in his letter dated 9 April 2012 he referred to the previous history, he formulated a specific request for information in that letter and complained to the Information Commissioner about the Department's response to that letter. The letter is the request for information and was made after the amendment to FOIA. The applicable law is FOIA as amended by the insertion of S37(1)(aa).

Whether a ceremonial/functional split is possible

12. S37 provides:-

(1) Information is exempt information if it relates to-

(aa) communications with the heir to, or to the person who is for the time being second in line of succession to, the Throne

13. The request for information may be appropriately analysed in two parts. The information is identified as *information and communications between... and the Prince of Wales and his advisors*. The request therefore *relates to the heir to .. the Throne*.
14. The request however seeks to limit the request by reference to *his role as the land owner*. The difficulty for Mr Davis is there is no such distinction in the statute. While as Shakespeare wrote *each man in his time plays many parts*; these parts are all part of the whole history and life of the man. The Prince of Wales has many roles some personal, some related to his public role. FOIA does not distinguish between these roles; information relating to all of these roles are protected from disclosure under FOIA because they all relate to *communications with the heir.... to the Throne*.

15. It is therefore not possible under FOIA to split certain roles with part being susceptible to FOIA and others not. The statutory wording is unambiguous.

Public interest

16. The general right of public access to information under FOIA is contained in S1:-

1 General right of access to information held by public authorities.

(1) Any person making a request for information to a public authority is entitled—

.....

(b) if that is the case, to have that information communicated to him.

17. However the effect of exemptions in FOIA is set out in S2. This provides:-

(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(3) For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption—

.....

(ea) in section 37, paragraphs (a) to (ab) of subsection (1),

18. Therefore S37(1)(aa) FOIA is an absolute exemption; that means that if it applies there is no obligation on the public body receiving the request, the Information Commissioner or the Tribunal to consider and weigh the benefits of disclosing the information because there is no entitlement on the part of Mr Davis to have the information disclosed to him.

Confidentiality

19. In the light of the clear statutory exemption from disclosure it was not necessary for the Tribunal to consider the application of the exemption in S41.

Conclusion

20. For the reasons stated above we dismiss the appeal and find that the Information Commissioner's decision notice was in accordance with the law.

21. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 11 December 2013