



IN THE FIRST-TIER TRIBUNAL

Case No. Appeal No. EA/2014/0308

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM Information Commissioner's Decision Notice FS50543774

Dated 17th November 2014

BETWEEN

Mr J Warrington

Appellant

And

The Information Commissioner

1st Respondent

And

Telford and Wrekin Council

2nd Respondent

Determined at an oral hearing at Telford on 28th April 2015 and at Birmingham on 11th August 2015

Date of Decision 30th September 2015

Date of Promulgation 29th September 2015

BEFORE

Fiona Henderson (Judge)

Anne Chafer

And

Mike Jones

Representation

The Appellant represented himself at both hearings

The Commissioner chose not to be represented at either hearing

The Council were represented by Mr Paines of Counsel on 11th August 2015.

Subject matter: s1 FOIA whether information is held

Decision: The Appeal is refused

REASONS FOR DECISION

Introduction

1. This appeal is against the Information Commissioner's Decision Notice FS50543774 dated 17th November 2014 which decided that the public authority held no further information.

Information Request

2. In June 2013 the signage indicating that the speed limit on a short stretch of road at Honnington was 30mph was removed and the road therefore reverted by default to 60mph. The Appellant wrote to Telford and Wrekin Council (the Council) on 5th April 2014 asking¹:

"...under the Freedom of Information Act, I seek disclosure of all changes to speed limits in the last 12 months with the supporting documentation that they are legal.

I also seek disclosure of the "Circular" referred to and relied upon to change the speed limit at Honnington.

3. The Council responded on 1st May 2014² stating that:

Changes to speed limits have taken place at five locations over the last 12 months. I have enclosed sealed legal Orders for the following...[list of 5 changes].. The change to the speed limit at Honnington is not included above as there was no speed limit Order in Place before the change was made."

¹ He also requested information relating to the events surrounding the loss and recovery of the street lights in Lillyhurst Road. This was also the subject of the Commissioner's decision notice and originally a ground of appeal, however, the Appellant withdrew this element of his appeal at the oral hearing on 11th August 2015. See paragraphs 10-12 below.

² P29 Bundle

The letter also included a link to Circular 1/2013 “Setting Local Speed Limits” and the Council referred to its previous explanations for the reasons for the changes to the speed limit at Honnington.³

4. In their letter of 9th May 2014 in response to a request for clarification from the Appellant the Council explained that:

“FOIA response TWC-31050 gave you the requested information – we sent you copies of the 5 No. Sealed speed limit Orders that have been introduced over the last 12 months and we made reference to the only other change in speed limit that took place over the last 12 months, at Honnington... the process undertaken to change the speed limit at Honnington [was that] A speed limit change is made by either creating a speed limit Order, by installing a system of street lighting (thus making a road “restricted road” status) or by revoking (removing) an existing Order. I again confirm that there was no legal Order for the 30mph speed limit on Lilyhurst Road, therefore we could not send you a copy of any revocation Order as there was no Order to revoke (remove)”.

5. Following an internal review the Council wrote to the Appellant on 6th June 2014 stating that it had provided all the information that it holds in relation to this request. The Appellant complained to the Commissioner on 6th June 2014 stating:

“In short, I sought:

a) Changes to all speed limits in order to investigate the extent of illegal changes and as you will see, the Council withheld information pertaining to “illegal” changes.”

6. The Commissioner asked the Council for a detailed explanation of the searches it had made. The Council explained in its letter to the Commissioner dated 9th September 2014 that searches included searches of electronic copies of sealed speed limit Orders, the Council had not deleted/destroyed recorded information relevant to the request, the Council’s records management policy determines that for speed limit

³ The Appellant had had previous correspondence with the Council relating to the removal of the signage.

changes the speed limit orders are valid until they are revoked or replaced by another order, the documentation for speed limit orders would therefore be maintained for the life of each order⁴. As the Statutory Authority making the Order the Council has a statutory requirement to retain this information.

The Appeal

7. The Appellant appealed on 12th December 2014 on the grounds that:
 - i. The Council have relied upon the wrong individual to provide information (the request was referred to the Service Delivery Manager), and the ICO had not made reasonable enquiries – in particular of the Senior Traffic and Streetworks Engineer.
 - ii. The Council's assertion that there are no other speed limit changes was a reckless assertion in the absence of a reasonable enquiries for speed limit changes outside the Speed Limit Orders. The ICO had not established if the Council were categorically denying any other speed limit changes that formed a review of which Honnington was included.
 - iii. The ICO have been influenced by the Council's view of the Appellant which he believes to be biased against him.
 - iv. The decision and its publication would impact upon the Appellant's health.
8. This case was listed for an oral hearing on 28th April 2015. The Appellant represented himself, the Commissioner chose not to be represented and relied upon the written materials. Upon consideration of the bundle prepared by the Commissioner and the Appellant's written and oral submissions provided at the hearing, the Tribunal was unable to determine the case as it did not have sufficient information. In particular it was not apparent to what extent the Council had searched for speed limit changes (like the one at Honnington) which were not supported by a speed limit Order. The case was adjourned and the Council joined as a party and directed to provide further evidence.

⁴ P61

9. Having joined the Council in order to clarify this issue, the Council in their response⁵ argued that the removal of the signage at Honnington in June 2013 was not a change in the legal speed limit as it was never legally 30mph (because there was no speed limit order and insufficient lighting for the road to be “restricted”). Their primary argument was that this was a change to the signage and not a change to the speed limit and thus not within scope of the request. Their secondary position was to confirm that in any event a sufficient search had been undertaken and there were no other speed limit changes or supporting documentation to disclose.

Scope

10. The Appellant’s appeal originally also related to a request under FOIA in the following terms:

“Explain the events surrounding the loss and recovery of the street lights on Lillyhurst Road and then subsequently, under the Freedom of Information Act disclose all relevant material that supports the purported events”.

11. Following the adjournment on 28th April 2015, the Council had made further specific enquiries of their lighting contractor Prysmian, who had reviewed their records and indicated in their letter of 27th July 2015 that they could find:

“no record of Prysmian having undertaken any works on Lillyhurst Road using a cherry picker during the week up to and including 21st March 2014. Our records indicate that Prysmian’s last attendance at either of the two streetlights in question prior to 24th March 2014 was on 10th May 2013.”

They did however indicate that it was possible that their operatives passed through the relevant area in relation to other nearby works.

12. In light of these enquiries of Prysmian the Appellant indicated that he was satisfied on a balance of probabilities that the Council did not hold any further information and in his view a sufficient search had now taken place. He did not therefore consider it proportionate to pursue this issue at the adjourned oral hearing of 11th August and withdrew this ground of appeal. It was the Council’s position that they were not

⁵ Dated 17.6.15 para 16

obliged under FOIA to make enquiries of Prysmian who, they argued, were holding this information in their own records for their own purposes. The Tribunal has not heard evidence or argument on this point and with the agreement of both parties makes no finding in relation to this issue.

13. The Appellant alleges that the Commissioner's Decision was biased by the correspondence with the Council which detailed the Council's history of the dealings between the parties. The Tribunal has had sight of the correspondence between the Commissioner and the Council relating to the Commissioner's investigation of the complaint. We are satisfied that the Commissioner's decision reflects the evidence before him and there is no evidence of bias, this ground is not made out.
14. The Appellant's fourth ground of appeal does not amount to a challenge to the Commissioner's decision and is such is not a valid ground of appeal under s 58 FOIA.

Meaning of the request

15. The Tribunal heard argument on the meaning of the request and gave an oral decision on this point at the hearing in order to aid the parties to present their arguments relating to the sufficiency of the search. The Tribunal sets out its reasoning here.
16. The request was for: *"all changes to speed limits in the last 12 months with the supporting documentation that they are legal."*
17. The Tribunal heard evidence from Mr Harris service Delivery Manager – Transport and Highway Development and Mr Kitchen Senior Traffic and Streetworks Engineer for the Council, both of whom accepted that they had understood the information request to include changes of the type identified at Honnington. Mr Harris stated that in interpreting the request as including changes of the type shown at Honnington he was using "ordinary parlance". Indeed in the correspondence we have seen from the Council the Honnington speed limit signage change is referred to as a speed limit change:

- *The change to the speed limit at Honnington*⁶
- *we made reference to the only other change in speed limit that took place over the last 12 months, at Honnington...*⁷
- *... there is currently a small section of 30mph speed limit..... we are proposing to make changes to the speed limit to ensure that it is correct...*⁸

We are satisfied that this usage is consistent with the objective understanding of what is meant by a speed limit change. The Tribunal is satisfied that a member of the public seeing the speed limit signs would understand that to be the speed limit that they were obliged to follow, whether it was in fact enforceable was not material. To import the Council's technical interpretation would require the information requester to have had specialist knowledge which in our view would be a subjective reading of the request. The use of the word "legal" in the request in our judgment relates to the legality of any change and not the legality of the speed limit.

Evidence

18. The Appeal constitutes a complete rehearing of the case, the Tribunal is not limited to the evidence before the Commissioner or bound by the findings of fact made by the Commissioner. In addition to the original bundle that contained some 132 pages, following the joinder of the Council, the Tribunal was in receipt of the response of the Council and witness statements and exhibits from Mr Harris and Mr Kitchen on behalf of the Council. The Appellant also provided a witness statement dated 11th May 2015 and another dated 24th June 2015 in which he made various applications relating to the evidence to be heard at the hearing of 11th August 2015. The Tribunal made a ruling in which it limited the breadth of evidence that the Appellant sought to bring before the Tribunal for the reasons set out in the ruling dated 17th July 2015.

⁶Council's letter 1st May 2014

⁷ Council's letter 9th May 2014

⁸ letter to Lilleshall and Donnington Parish Council 14.2.13 NK/2

19. The case was listed for a further oral hearing on 11th August at which Mr Harris and Mr Kitchen attended to give evidence. At the oral hearing the Tribunal made a direction excluding the second witness from the hearing until the first witness had given evidence pursuant to rule 35(5) of the GRC rules 2009. Although witness statements had already been exchanged the Tribunal was satisfied that this was in the interests of justice and proportionate and fulfilled the requirement for flexibility pursuant to rule 2 in light of the issues of credibility that had been raised by the Appellant. The Tribunal has had regard to all the evidence before it in reaching its decision.

20. Section 1 of FOIA provides:

Any person making a request for information to a public authority is entitled:

a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

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

The Appellant did not dispute that he had had disclosure of all the speed limit changes for which there were valid speed limit orders. His contention was that there had been a review of speed limits and there had been other changes where speed limits had been changed outside the speed limit order system.

21. From the documentary and oral evidence provided by the Council the Tribunal accepts that the then Traffic Management and Streetworks Team Leader - Highways noticed an anomaly in the signage at Honnington as he was driving by and asked a colleague to take photographs and investigate this, the Parish Council were consulted and the 30mph signage was removed as part of the monthly minor signing works sent to contractors in June 2013. Mr Kitchen attended a site meeting with the Appellant and another resident in which reference was made to “a speed limit review”. The Appellant’s evidence was that he understood this to be a reference to a comprehensive review of speed limit signage and indicated that there were more examples where signs had been removed or relocated without a supporting legal Order. Mr Kitchen’s evidence which we accept was that this was a reference to a review of the Honnington

signage and that there was no comprehensive review of speed limits looking for anomalies in the area.

22. Mr Kitchen and Mr Harris did agree that the Council receives a number of enquiries relating to vehicle speed and speed limits e.g. requests for traffic calming, following which the Council will conduct a speed limit review which uses criteria including collision history and surveyed vehicle speeds. It does not automatically mean a change to the speed limit will follow. Any speed limit change following this type of review will only be made following consultation and with a formal Speed Limit Order. Speed Limit reviews are not listed as such and records relating to them are found under ordinary correspondence on the network drive, it would require manual interrogation of the electronic records to ascertain whether any had in fact led to a speed limit change not supported by a speed limit order.
23. Additionally the Police have asked for a “certificate of compliance” for each speed limit that exists by virtue of a Speed Limit Order – to reassure the Police that any potential enforcement would be supported by the correct signing and legal documentation and is a verification process on speed limits. The Tribunal understands that this only occurs in the context of an existing Speed Limit Order and as such is satisfied that any changes relating to certificates for compliance would be revealed through the searches already undertaken.
24. Mr Harris was at the relevant date the service Delivery Manager (Transport and Highway Development) for the Council responsible for the team that investigates and makes changes to speed limits across the Borough. His evidence was that it is a very small team of 9 who would be aware of changes made. The type of change made at Honnington was very unusual and he would expect that any member of his team dealing with this type of change would recall it. Having been made aware of the FOIA request Mr Harris said that each member of the team at that time was asked if there were any other areas where the speed limit signs had been changed and was told that there was not.

25. Mr Kitchen's duties include providing advice on speed limit irregularities or requests for changes in speed limits when these are raised with the Council. He also attends regular operations meetings with The West Mercia Safer Roads Partnership who provide speed enforcement with fixed and mobile speed cameras across the region. He confirmed that he had been asked at the time of the request if there were any changes without a speed limit Order and that he had not known of any apart from Honnington.
26. It was apparent to the Tribunal that the Council had not considered whether any additional searches could have been done to confirm their recollection. The evidence was that when a speed limit is changed the Parish Council would be consulted, similarly it was likely that the Police would be notified and there was a single point of contact with the Police. However, it would not be possible to conduct a complete and accurate search electronically because it was not inevitable that any relevant email would have "speed limit change" in the title, it could just be a reference to an area or a road. The Tribunal notes that the email to Lilleshall and Donnington Parish Council included in the bundle at NK/2 does make reference to speed limit signing in its title, but accepts the evidence that there was no systematic entitling of correspondence. We accept that in order to conduct a complete search of individual emails to Parish Councils an estimated 500 records would have to be looked at and that even where a Parish Council has been consulted, this would not necessarily lead to a change. In relation to notifying the Police whilst this was best practice the evidence was that this was not automatic. Each email sent to the Police point of contact would have to be looked at to see whether it was relevant or not.
27. Similarly no consideration had been given to checking contractor job sheets to show that signage had been altered from one speed limit to another. The evidence was that signage works went to the same contractor in batches of 10 or so jobs and that these were sent 10 or 20 times per year. There was no indication from their title or their grouping as to whether a job related to a change in signage from one speed limit to another. Each job sheet file would need to be opened to see whether it related to a change in speed limit rather than a replacement of an existing sign or e.g. a parking sign. Each file contained roughly 5 or 6 pdfs which would need to be opened to

ascertain the nature of the job. Mr Harris estimated that there would be approximately 200 relevant jobs during the period in scope. As the contractor was identified (the Council uses the same one for this type of work) and the payment would relate to batch number, the Appellant accepted that scrutiny of the Council's accounts would not shed light upon whether work related to a change in speed limit signage as opposed to other types of signage work.

28. The Appellant relied upon a reference in an internal email which stated:

*“ On Google there appears to be an issue with the signing for the speed limits”*⁹

In support of his contention that the Council must have corporate access to Google maps API Speed Limit Data, the evidence of Mr Harris and Mr Kitchen was that the Council does not have access to this application and that they both understood the reference was to the use of Google Street View to look at the signage remotely. We accept this evidence which is consistent with the content of the email which is in the context of asking a colleague to check and photograph the actual signage an anomaly having been identified.

Credibility

29. In response to objections to the removal of the 30mph signs, following a speed survey and consultation, a sealed speed limit Order was created in December 2014¹⁰ which designated an extended stretch of road (including the original zone at Honnington) as having a speed limit of 30mph. The Appellant argues that the change and re-imposition of the 30mph signs constituted a mistake and he relies upon a newspaper article in the Shropshire Star on 9th May 2014 in which a Council spokesman *“acknowledged that we made a mistake”*. The Appellant argues that acknowledging that further of these changes had taken place would be an embarrassment for the Council and that it was easier for the changes to go unacknowledged.

30. The Tribunal weighs this argument against the embarrassment to the Council should such a change come to light having been denied. We are satisfied that the

⁹ KH/2 email 5.2.13

¹⁰ After the information request

considerable paper footprint both within and outside the Council and the visibility of any changes to the public is incompatible with a deliberate attempt to conceal information. In particular we take into consideration:

- The consultation with Parish Councils,
- The likelihood that any changes would have been notified to the Police,
- Contractor Job Sheets showing that the signage had been altered,
- It would be checkable against Google information for those with corporate access to Google maps API Speed Limit Data,
- Any change is visible to local road users who could be expected to notice a change on a familiar road whilst using it.

31. The Tribunal found that Mr Harris and Mr Kitchen were credible witnesses, they were consistent with each other (the evidence of Mr Kitchen was given without having heard the evidence of Mr Harris) even when being asked about areas which were not dealt with in their witness statements and their evidence was consistent with the documents before the Tribunal. They conceded that they agreed with the Appellant's definition of the scope of the request (rather than the Council's legal interpretation) and were frank in acknowledging the areas where further searches could have been made but had not.

32. Additionally the Appellant contends that Mr Harris and Mr Kitchen's evidence of recollection is not reliable and that the additional searches identified should take place before the Tribunal can be satisfied on a balance of probabilities that there is no further information held on speed limit changes not supported by a sealed speed limit Order.

33. We are satisfied on a balance of probabilities that further information is not held (even though other searches could have been undertaken to support the investigation that was undertaken). Although we have heard some evidence of the time and effort that would be required to make these additional searches, the Council were not relying

upon s12 FOIA.¹¹ If the evidence of the searches done is sufficient to satisfy on a balance of probabilities that no further information is held, we are not satisfied that it is necessary or proportionate for additional searches to be undertaken to support the conclusion. The thoroughness of the investigation relies upon the accuracy of the recollection of those who were asked. This is not the same as a bare assertion. We take into consideration the smallness of the team, that every team member was asked, the rarity of the Honnington-type situation and that this was not a case where the passage of time was likely to make the situation unreliable. We are satisfied that those who were asked would be expected to know. As overall team leader Mr Harris was 99.9% certain that he would have been made aware of another change in circumstances similar to Honnington. Mr Kitchen estimated that he was 90% confident that he would have been aware of any change in similar circumstances we are satisfied that this was to allow for the possibility that it would not come across his desk, although in his role on The West Mercia Safer Roads Partnership, we consider it unlikely that he would not have been made aware of a similar change.

Conclusion

34. For the reasons set out above we refuse the appeal and uphold the decision notice. Our decision is unanimous.

Dated this 30th day of September 2015

Fiona Henderson
Tribunal Judge

¹¹ That the cost of compliance would exceed the appropriate limit.