



Neutral Citation Number:

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

Appeal No: EA/2015/0025

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FER0545533
Dated: 6 October 2014

Appellant: Alan Cowx

Respondent: The Information Commissioner

Heard at: Carlisle Courts of Justice

Date of Hearing: 24 June 2015

Before

Chris Hughes

Judge

and

Andrew Whetnall and Mike Jones

Tribunal Members

Date of Decision: 18 July 2015

Attendances:

For the Appellant: in person

For the Respondent: did not attend

Subject matter:

Environmental Information Regulations 2004

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 6 October 2014 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. In 1988 Mr Cowx bought a shop in Maryport, within the area of Allerdale Borough Council (“ABC”). He is concerned that, as a result of demolition work and the construction of a car park near his property many years ago (which may have been carried out for the Council or its predecessor local authority) there has been damage caused to his property.
2. On 25 September 2012 he sent a letter entitled “Notice” to the Council. The second sentence read:-

“I now wish to give formal notice of damage caused to the above referenced property, due to the negligence of ABC...”
3. The letter went on to give details of his perception of the damage and asked a series of question:-

*“..why did ABC not build their own retaining wall to the boundary of their land?..
Could ABC also give a reasonable explanation as to what happened to the sewerage system...?
Also I wish to know whom, if anyone, gave consent for ABC to use my part owned boundary wall as a retaining wall?”*
4. Mr Cowx followed up the letter on 5 May 2013 and the Council replied on 29 May 2013 giving its understanding of the position and stating *“having considered the evidence we do not believe that there is any liability on the Council”*. Mr Cowx was dissatisfied, the Council confirmed its position.
5. Mr Cowx responded to this letter making a request for information under FOIA (the “second request” made on 12 July 2013) with respect to the use of powers of compulsory acquisition of properties in the area by ABC or any other local authority and the name of the contractor carrying out the demolition of the properties. In a reference to evidence from pre-contract enquiries made on his behalf to the vendor in 1988 he stated that the owner had had occasion to complain to the Council at that time...*”and of course, Allerdale will know fully what the issues were at that time.*

With that in mind I request to see all documentation in Allerdale's possession which refer to these concerns."

6. ABC responded by stating that the Property and Legal Section of the Council had checked its records it did not hold any information.
7. On 26 August 2013 Mr Cowx made a further request recapitulating and building on the previous request specifically asking about the nature of the dispute referred to in the 1988 document. The Council asked for further details of the dispute, and then on 4 October 2013 indicated that as Mr Cowx had not been able to give any further details it searches had been unable to find more than had already been disclosed, it suggested that the development of the land as a car park might not have required planning permission as it was within the Council's permitted development rights. Mr Cowx remained dissatisfied; the Council carried out an internal review and maintained its position. Mr Cowx complained to the Respondent the "Commissioner".
8. The Commissioner investigated, looking at the explanations given by ABC why the information requested was not held and making his determination of the issue on the balance of probabilities. He considered the explanations provided by the Council why information was not held (DN paragraphs 18, 20-23). This explained that much documentation would have been destroyed when land in the area was registered with the Land Registry in 1997, that it had treated the first letter as a claim and that it did not hold information on soakaways and sewers related to the land. With respect to the second letter, it was possible the acquisition and clearance happened about 1974 – when the Council was set up, but while it could confirm that it held the land and had registered it in 1997 it held no more information.
9. The Commissioner could not identify any reason why ABC should be withholding information and concluded that the information was not held and the Council was not in breach of its duty under EIR.
10. Mr Cowx appealed against this finding arguing that the Commissioner had erred in coming to his conclusion. The Commissioner resisted the appeal reaffirming and expanding his reasoning.

11. In the hearing Mr Cowx explained at length the situation on the ground using a number of photographs. His concern was the underlying dispute. He stated: “*My argument is that Allerdale created an embankment over intervening property using my boundary wall*” ... “*The Council created the problem by installing an embankment on their property*” ... “*constructed without proper attention to drainage.*”
12. He was suspicious at the claim that ABC had destroyed all the files “*while at the same time retaining files on other property – keeping 1970 information...it doesn’t seem to stack up.*” ... “*If they’ve got a file, what’s on it*” He referred to a dispute with ABC in respect of a planning issue relating to another property he owned in the area (some 10 years before) where he had complained and ascribed bad faith to the author of the letter responding to his “notice”. He had thought that the Council’s initial response to him was “*threatening*”. There had been difficulty with water ingress to an adjacent yard in 2003, tests had been carried out and it had been suggested that sewers in his property were responsible.

The question for the Tribunal

13. The simple question for the tribunal is whether the Commissioner’s decision is correct to find on the balance of probabilities that ABC does not hold any further information within the scope of the requests.
14. Mr Cowx is suspicious of ABC and disinclined to trust them. He claimed that the response to his first letter was “*threatening*”. Although Mr Cowx disputed this when it was put to him, his initial letter was clearly a letter advancing a claim against ABC which was properly treated by ABC as a claim and passed to its legal department to respond to. The contents of the letter were a proper and appropriate response to what was clearly a notification of a claim.
15. Mr Cowx produced two documents to the Tribunal which he felt were convincing evidence that there must be further information held. They are not. His “evidence” of what he claims is an ABC file dating back to 1970 giving information about a nearby property is not evidence of such a file – it is a part of a Land Registry copy of a registered title which was registered on 1 December 1997 by ABC to establish its ownership of land at the Land Registry. This registration was carried out by reference to the interest in land which was subject to some right reserved to another person. Since Mr Cowx has only provided the first page of the official copy of the registered

title the Tribunal is not aware of what that right is – but the fact that the Land Registry extracted details of that right from a conveyance in 1970 when it created the registered title does not mean that ABC has a file now – only that in 1997 the Land Registry had a duty to fully describe the registrable interests in the land when it created the entry.

16. ABC, once its title was secured in the Land Registry, would have no further need for any of the documents from its 1970 conveyancing file.

17. The other piece of documentary evidence produced by Mr Cowx is equally tenuous. In the pre-contractual enquiries his solicitor made on his behalf of the vendor who sold him his shop in 1988 under the heading of “Disputes” is the query:-

“During the past 3 years, has the Vendor complained or had cause to complain about the state and condition, or the manner of use, of any adjoining or neighbouring property? If so, please give particulars”

18. The information provided by the Vendor was:-

“Only the Council Development of a car park on Furnace Lane but this has been settled”

19. What this is evidence of is that, at least 24 years before Mr Cowx made his requests for information, his predecessor in title complained to the Council about the car park and the dispute was settled at that time.

20. Here again it is clear that there is no reason why a Council should retain a record of a complaint that has been settled for decades.

Conclusion and remedy

21. Mr Cowx is aggrieved and suspicious. He sees a nearby ABC carpark as the source of his problems. He believes that ABC should possess records which will establish that they made mistakes and it is possible that he believes that it should compensate him (in his submissions to the Tribunal he was inconsistent as to whether he thought that he had a claim).

22. The Commissioner investigated his complaint and concluded that ABC had looked where it could for information to answer Mr Cowx’s questions. He was satisfied that no information was held.

23. Mr Cowx has produced documentary evidence decades old which does not give any grounds for believing that ABC hold further records. There is simply no business case for the retention of such old records. Normal retention policies in any organisation would have disposed of them decades ago.
24. Mr Cowx's generalised suspicion is not grounds for disputing the propriety with which ABC conducted its search or the basis upon which the Commissioner made his decision.
25. The Tribunal is satisfied that the Commissioner's decision is correct in law and dismisses the appeal.
26. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 18 July 2015