



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

Appeal No: EA/2015/0158

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50568725
Dated: 22 July 2015**

Appellant: John Latimer

Respondent: The Information Commissioner

Heard on the papers:

Date of Hearing: 7 January 2016

Before

Chris Hughes

Judge

and

Dave Sivers and Paul Taylor

Tribunal Members

Date of Decision: 16 February 2016

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 22 July 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings is concerned about the operation and future of his local airport, Durham Tees Valley Airport, where there are a relatively small number of services operating. The airport is owned by Peel Airports and six local authorities in the region own a minority stake in the airport; one of these is Stockton-on-Tees Borough Council (“the Council”).

2. On 18 December 2014 he wrote to the Council requesting information in the following terms:-

‘George Garlick, 20/11/07: To appoint McInnes Corporate Finance LLP, in conjunction with Dickinson Dees, Solicitors, to undertake a corporate financial review regarding the Local Authorities' shareholding in Durham Tees Valley Airport, particularly the question whether the Councils should maintain that shareholding or allow it to be diluted, including a review of the pros and cons of investing further in the Airport. To appoint Dickinson Dees to provide legal advice and support to McInnes Corporate Finance, and to provide a view on the South Side documentation in the context of the Subscription and Shareholders' Agreement. Can the McInnes review and Dickenson Dees advice be made public?’

George Garlick, 07: 1. the report of the Directors and audited accounts for year ended 31/3/07 be adopted; 2. no dividend be declared for 2006/07. Can these accounts be made public including written resolutions that were accepted by Stockton BC?’

03 October 2013 Engaging Cavu Corporate Finance Limited to provide expert advice and 10 May 2013 To engage Dickinson Dees - DTVA. Can review and advice be made public?’

3. The Council responded on 21 January 2015. It advised him that the second request, for the accounts and resolutions, was for information available from Companies House. It confirmed that it held the reports mentioned in the first and third requests and refused to disclose them relying on exemptions contained in FOIA sections 36(2)(b) and (c), 41, 42, 43(2) and, insofar as the information was environmental

information EIR regulations 12(5)(e) and (f). On review it upheld this position and the Appellant renewed his complaint to the Respondent in these proceedings, the Information Commissioner (“ICO”) who investigated and on 22 July 2015 issued a decision notice rejecting the complaint and finding that the Council was entitled to rely on the exemptions under FOIA 36(2)(c) and EIRs regulation 12(5)(e).

4. The Appellant challenged this. His grounds of appeal were that:-

“The decision does not give sufficient weight to the demonstrated public interest.”

5. In support of that claim he submitted his correspondence with the ICO case officer who had investigated the case; this drew attention to a campaign to “Save Teesside Airport” and to apparent differences of opinion between councillors. He argued that the campaign to save the airport amounted to *“an unequivocal case for release of information held in secret by the minority shareholders who are accountable public bodies”*. In support of his appeal he filed a witness statement from a councillor supporting the disclosure of information, a letter from a local editor criticising development proposals for the airport, a statement expressing concern that Peel Holdings might not have met their commitments and claiming there was huge public opposition to the proposals for the airport and a statement from an individual detailing his unsuccessful attempts to use FOIA to obtain information from another of the local authorities involved in the airport.
6. The Respondent noted that the appeal did not contain any new arguments not previously considered by the ICO and resisted the appeal.

The scope of the appeal to the Tribunal

7. In his decision notice the ICO found that the information was protected from disclosure by section 36(2)(c) FOIA. This provides that *“in the reasonable opinion of a qualified person, disclosure of the information under this Act ...(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs”*. The Appellant has not challenged this finding and therefore the issue for the Tribunal is where the balance of public interest lies between the prejudice to the effective conduct of public affairs and the undoubted public interest in a fuller understanding of the position of the Council with respect to the airport and its future.

8. Regulation 12(5) permits a public authority to refuse to disclose certain environmental information “*to the extent that such disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;*”. Again this has not been challenged and the question for the Tribunal is essentially the same balancing of public interest test as is carried out under FOIA.

Consideration

9. The material in dispute consists in part of legal advice from a firm of solicitors (Dickinson Dees, later Bond Dickinson) on legal issues facing the local authority shareholders. The remainder of the material is financial analysis of those issues by firms of consultants. At the time of the request for the information there were discussions between the local authority shareholders and the Peel Group on future options. The Appellant himself on 22 January 2015 in a communication to the ICO (bundle page 42-44) endorsed a statement by the campaign group that “*Peel has the councils and the area over a barrel*”. It is clear that difficult negotiations between the local authorities and Peel Group were in progress and it is likely that the stance of the local authorities was significantly shaped by the advice that it received from its legal adviser and its financial consultants. Public disclosure of the legal and financial advice underpinning their approach would give a significant advantage to the Peel Group and thus would be highly likely to prejudice the public interest. Indeed the introduction to one of the documents is endorsed with a warning to that effect.
10. The material is highly confidential and relates to significant negotiations. The public was, at the time, aware of the issues, disclosure of the material would not significantly improve public understanding and engagement with the policy choices facing the councils and would harm the council's ability to discharge their responsibilities. The Tribunal is satisfied that the ICO has correctly analysed the issues raised by this request and has come to the only conceivable answer. The ICO's decision notice is correct in law and the appeal is dismissed.
11. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 16 February 2016