



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

EA/2015/0300

ON APPEAL FROM:

The Information Commissioner's Decision No: FS50597755

Dated: 14 December 2015

Appellant: Martin Newbold

Respondent: Information Commissioner

Determined: on the papers

Date of decision: 18 July 2016

Date Promulgated: 19 July 2016

Before

**Anisa Dhanji
Judge**

Subject matter:

EIR regulation 5(1) – whether information held has been made available

DECISION

The Tribunal upholds the Decision Notice and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr Martin Newbold (the “Appellant”), against a decision notice issued by the Information Commissioner (the “Commissioner”), on 14 December 2015.
2. Mr Newbold’s complaint is about the authenticity of the information that he was provided with, in response to the request for information he made to Hastings Borough Council (the “Council”) under the Environmental Information Regulations 2004 (“EIR”). The request was in connection with the Council’s Local Plan for the development of the town of Hastings.

The Request for Information

3. On 25 June 2015, the Appellant wrote to the Council and requested information on the following terms:

“I would be very grateful you provide me under freedom information request [sic] the REPORT ON THE EXAMINATION INTO THE HASTINGS LOCAL PLAN DEVELOPMENT MANAGEMENT PLAN REVISED PROPOSED SUBMISSION VERSION 10 MARCH – 22 APRIL 2014 before it was edited by the HBC Officers please? I understand this Microsoft Word document was sent to you 29 May 2015.
4. The Council responded on 17 July 2015, disclosing what it regarded as being the requested information.
5. The Appellant requested an internal review, following which the Council confirmed to the Appellant that it was satisfied that it had disclosed the information that the Appellant had requested.

The Complaint to the Commissioner

6. The Appellant complained to the Commissioner.
7. The Commissioner noted that the information the Appellant had requested comprised a report created by the Planning Inspectorate and provided to the Council via e-mail on 29 May 2015 (the “Report”).

8. The Council explained to the Commissioner that in addition to the original form in which the Report was provided to it by the Planning Inspectorate, there was an earlier “fact check” version of the Report which had been issued by the Planning Inspectorate on 14 May 2015. The purpose of the “fact check” version was to identify any factual errors. The Council had responded to the “fact check” version and had set out a number of suggested modifications to the Report. The final Report was then sent to the Council on 29 May 2015.
9. The Council also explained that subsequent to the publication of the final Report on 22 June 2015, the inspector who was the author of the Report, had contacted the Council with a request to make a factual correction. That correction was made by the Council’s Planning Policy Manager, and the correction was explained on the Council’s website.
10. The Council confirmed to the Commissioner that the Appellant had been provided with all versions of the Report referred to above.
11. The Commissioner noted the Appellant’s concern that the Report had not been signed by the person who was named as its author, and therefore, that it did not constitute an authentic Report. The Appellant was concerned that if an “authentic” Report was not held, it had an impact on any actions taken in relation to the substantive matters referred to in the Report.
12. The Commissioner noted that the Council had explained that it had attempted to reassure the Appellant that the versions of the Report provided to him were the only ones it held. It had also explained the chronology and rationale for the different versions of the Report. It had further explained that all inspectors’ reports contained the relevant inspectors’ electronic signature, as opposed to an actual handwritten signature.
13. The Commissioner was satisfied that the Council had disclosed the information requested. He noted that the Appellant had provided no direct evidence that what had been disclosed did not mirror what was held by the Council. The dispute appeared simply to be about what form the requested Report should take. The Commissioner explained, in his decision notice, that the Commissioner’s role was to determine whether the Council had disclosed the information requested, and he was satisfied that it had done so.

The Appeal to the Tribunal

14. The Appellant appealed to the Tribunal against the decision notice. The Council has not been joined as a party.
15. The Appellant makes a number of points in his grounds of appeal. Certain of his points (for example, about the Commissioner’s investigation and the delay in issuing the decision notice), do not constitute substantive grounds of appeal or do not come within the jurisdiction of this Tribunal.

16. The Appellant's grounds of appeal also say that the conclusions in the Commissioner's decision notice contradict a different decision notice dated 5 October 2015 (reference FER0590308). I will refer to that decision notice as DN1.
17. There is a further relevant decision notice. This is dated 26 October 2015 (reference FER0601857) which I will refer to as DN2. I will refer to the decision notice which is the subject of this appeal as DN3.
18. The Appellant says that DN1 clearly states that the Planning Inspectorate does not hold an authenticated copy of the Report yet DN3 confirms that the Council does. The Appellant also takes issue with the fact that DN3 does not refer to DN1, nor the information gathered during the investigation leading to DN1.
19. All parties requested that the appeal be determined on the papers without an oral hearing. Having regard to the nature of the issues raised, and the nature of the evidence, I am satisfied that the appeal can properly be determined without an oral hearing.
20. I have considered all the documents and written submissions received from the parties (even if not specifically referred to in this decision), including, in particular, the documents contained in the agreed bundle of documents.
21. This decision has been made by one judge, pursuant to paragraph 11(2) of Practice Statement 11. The parties were notified that this would be the case by a letter from the Tribunal dated 15 April 2016.

The Tribunal's Jurisdiction

22. Regulation 18 of the EIR provides that the enforcement and appeals provisions of the Freedom of Information Act 2000 ("FOIA") shall apply for the purposes of the EIR (save for the modifications set out in the EIR).
23. Under section 58(1) of FOIA, if the Tribunal considers that a Decision Notice is not in accordance with the law, or to the extent that the Decision Notice involved an exercise of discretion by the Commissioner, if the Tribunal considers that he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
24. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, the Tribunal will often receive evidence that was not before the Commissioner.

Statutory Framework

25. The EIR implements Council Directive 2003/4/EC on public access to environmental information. There is no dispute that the information requested in the present case constitutes “environmental information” as defined in regulation 2(1), and therefore comes within the scope of the EIR.
26. A public authority which holds environmental information must make it available on request (regulation 5(1)). It must make the information available as soon as possible, and no later than 20 days after receiving the request.
27. Under regulation 12(1), a public authority may refuse to disclose information in certain circumstances. In the present case, the public authority has not refused. The Council says it has complied with the request. The only issue before me, therefore, is whether it has done so.

Findings

28. In order to understand the Appellant’s grounds of appeal, I have given careful consideration to his grounds of appeal as well as to the Appellant’s further document headed “Response of Appellant” dated 22 February 2016, in which he responds to the Commissioner’s Response dated 1 February 2016.
29. The Appellant’s position is not wholly clear, but it appears that the key point he is making is that the Commissioner’s conclusions in DN3 contradicts DN1, and must, therefore, be wrong. More specifically, the Appellant argues that DN1 clearly states that the Planning Inspectorate does not hold an authenticated copy of the Report, and yet DN3 confirms that the Council does hold an authenticated copy of the Report and has provided the Appellant with a copy of it.
30. It may be appropriate at this juncture to explain the background to DN1 and DN2. Both relate to requests made by the Appellant to the Planning Inspectorate. On 25 June 2015, the Appellant wrote to the Planning Inspectorate and requested a copy of the Hastings Local Development Plan. His description of what he was seeking was on almost exactly the same terms as the request he made to the Council, as set out at paragraph (3) above.
31. The Planning Inspectorate provided the Appellant with what it understood to be the requested information. The Appellant was dissatisfied. Amongst other things, he raised concerns that the document provided to him was not digitally signed by or otherwise authored by the Planning Inspector tasked with producing the document.
32. During the course of the Commissioner’s investigation, it became clear that the Appellant was not seeking the “fact check” version of the Report, but rather, he was seeking a copy of the final report as had

been forwarded by the Planning Inspectorate to the Council. The Planning Inspectorate provided the Appellant with this final version of the Report. However, the Appellant maintained that due to the electronic signature/meta data properties of the document, it was not the final version of the Report which he had requested.

33. In DN1, the Commissioner decided that the Planning Inspectorate had in fact satisfied the request, and had provided the Appellant with the versions of the Report he had requested.
34. On 1 October 2015, the Appellant submitted a further request to the Planning Inspectorate requesting the same information as he had previously, except he qualified this to be a request for the “authenticated” version of the final Report showing the Inspector as the author. In response, the Planning Inspectorate confirmed that it had already provided him with a copy of the document and that they did not hold any “authenticated” versions of the Report. The Appellant complained to the Commissioner and this led to DN2, in which the Commissioner set out his findings that the Planning Inspectorate did not hold an “authenticated” version of the Report.
35. In his reasons as set out in DN1 and DN2, the Commissioner noted that the Planning Inspectorate had confirmed that it did not hold any further copies or versions of the Report. Nevertheless, the Appellant maintained the document he had been provided with, did not constitute the final Report authored by the relevant Planning Inspector. The Commissioner invited the Appellant to accept the possibility that what he expected to receive may not necessarily reflect the reality of what was held by the Planning Inspectorate. The Commissioner also explained that it was not the Commissioner’s role to investigate the procedural arrangements which public authorities had in place for creating or editing documents. The Commissioner further suggested that the author of a document may not necessarily be the final person to edit or otherwise electronically manipulate the information.
36. There was no appeal against DN1 or DN2.
37. I turn now to consider what the Appellant asserts about the contradiction between DN1 and DN3. If there is a contradiction, I accept that may be a relevant matter in deciding the present appeal to the extent that it may cast light on whether the Council provided the Appellant with what it held.
38. However, it is not at all clear what contradiction the Appellant asserts exists. On my reading of both decision notices, I can see none that indicates that what the Appellant was provided in response to his request to the Planning Inspectorate is any different, in content, from what he has been provided with from the Council. I agree with the Commissioner that he did not conclude, in any of the decision notices, that an “authenticated” Report, as defined by the Appellant, had been provided to him. In fact, I note that neither his request to the Planning Inspectorate on 25 June 2015, nor his request to the Council on the same date, was made in terms of seeking an authenticated Report. It

is what he sought in his request to the Planning Inspectorate on 26 October 2015. In that case, in DN2, the Commissioner found that the Planning Inspectorate did not hold a version of the Report which was authenticated in the sense expected by the Appellant.

39. It may be that the difficulty has arisen from the Appellant's interpretation of authenticity and his expectation that an authenticated Report should be held.
40. It also seems that the Appellant's concern is more in relation to what he thinks the Council should hold and why it is important that there be an authenticated version of the Report. He says, for example, at paragraph 14 of his Response that:

“Any document can be authenticated genuine or legalised for around £30.00. The Government gives services to this end. The Commissioner's solicitors' inference that this request has been served and document is held is obscure. Would he suggest that any document can be served as a response to a Foyer and it is not important that it can be proved to be not from the origin it should have come from? Is he suggesting he or anyone could write this requested document, give it to 'the Council' and this would be quite correct to be served as a response from 'the Council' in this Foyer? Would this not make the whole process for obtaining 'Foyer' documents unworkable.”

41. If the Appellant's point is that there should be a system for ensuring that what is provided by a public authority in response to a request for information is authenticated in some way, that is not a matter within the Tribunal's jurisdiction. He is entitled only to be provided with what the Council holds.
42. Having considered all the evidence and arguments, I find, on a balance of probabilities, that the Council has satisfied the Appellant's request by providing him with all versions of the Report that it holds. The Appellant has provided no evidence that could undermine this finding. Whatever he considers that the Council should hold or the form in which the Report should be provided are matters that have no bearing on the outcome of this appeal.

Decision

43. For all the reasons set out above, this appeal is dismissed.

Signed

Date: 18 July 2016

**Anisa Dhanji
Judge**