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

Appeal No: EA/2017/0118

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50610846
Dated: 9 May 2017**

Appellant: Damian Francois

Respondent: The Information Commissioner

Heard at: Field House

Date of Hearing: 6 October 2017

Representation:

Appellant: in person

The Commissioner did not appear

Before

HH Judge Shanks

and

Suzanne Cosgrave and Marion Saunders

Date of decision: October 9, 2017

Subject matter:

Freedom of Information Act 2000 (FOIA)

Section 21 (Information accessible to applicant by other means)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

1. The Appellant, Mrs Francois, has a long-standing dispute with the London Borough of Waltham Forest over her entitlement to housing and council tax benefit. In February 2015 she brought an appeal against various decisions of the Council. She lost before the First-tier Tribunal in April 2016 but succeeded before the Upper Tribunal in July 2017, although it appears that unfortunately this victory has still not brought an end to the matter, particularly as there is a related dispute with the DWP. During our hearing she described the whole process as resembling an octopus.
2. On 11 June 2015 she wrote a long letter to the Council about her appeal, asking questions about various steps the Council had taken and the legal justification for them, and asking to be provided with various regulations and policy documents. These requests were treated by the Council as requests for information under FOIA. Following a response from the Council and her request for a review the Council wrote to her on 12 February 2016 (in a letter which unfortunately she did not receive for many months thereafter) addressing her points and providing her with links to official websites through which she could access the regulations and policies.
3. Mrs Francois applied to the Commissioner under section 50 of FOIA saying in effect that she did not have access to the internet and that she was entitled to be provided with hard copies of the regulations and policies. The Commissioner decided that the Council had dealt with her request properly and was entitled to rely on section 21 of FOIA, on the basis that, although it was accepted that Mrs Francois did not have

direct access to the internet, there were a number of libraries provided by the Council where she could access the material through the internet free of charge by clicking on the links provided. She has appealed against that decision to this Tribunal.

4. Section 21 provides an absolute exemption in these terms:

- (1) Information that is reasonably accessible to the applicant otherwise than under [FOIA] is exempt information.**
- (2) ...**
 - (a) Information may be reasonably accessible to the applicant even though it is accessible only on payment ...**

It is also relevant to note that under section 9 of FOIA and regulation 6 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (SI 2004/3244) a public authority is entitled to charge a fee to an applicant for the provision of information, which can include the cost of complying with a request under section 11 of FOIA as to the means of communicating the information, the cost of reproducing a document containing the information and the cost of postage or other forms of transmission of the document.

5. Mrs Francois says that the Commissioner failed properly to take into account her financial position and the costs involved when deciding that the material she sought was reasonably accessible to her through the internet. She is a carer for her disabled daughter and was in receipt of only £62.70 per week. It would cost her £3 in bus fares to get to the nearest library and back and 10 pence a sheet to obtain hard copies of the material from the library.
6. We have considered the matter and we agree with the Council and the Commissioner that the material was indeed reasonably accessible to Ms Francois through the internet. However parlous her financial situation, we cannot accept that a bus fare of £3.00 would render it unreasonable for her to have to travel to the library to access it and we feel sure that there would have been scope for her to combine going to the library with other necessary activities. Once in front of a computer with access to the

internet, she would have had access to the material she wanted (i.e. the information requested) at the click of a link.

7. Although there is provision in section 11 of FOIA for an applicant to express a preference as to how information is to be provided and for the public authority to comply with the request in so far as reasonably practicable, it is open to the public authority to charge the applicant the cost of complying with that request under section 9. The Council would therefore have been fully at liberty to charge Ms Francois the full cost of producing hard copies of the regulations and policies. She would therefore have been in a worse position so far as cost was concerned if the Council had complied with her request for hard copies, since in the library she would have been able to look at the material and decide which pages she needed printing off before deciding to pay for that operation, as opposed to receiving the entirety of the material in hard copy and being charged for its printing.

8. We therefore dismiss the appeal. Our decision is unanimous.

HH Judge Shanks

Date: October 9, 2017

Promulgated: October 9, 2017