



Appeal number: EA/2016/ 0252

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

WARNER STAINBANK

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Ms ROSALIND TATAM
Mr HENRY FITZHUGH**

Determined on the papers, the Tribunal sitting in Chambers on 9 February 2017

DECISION

1. The appeal is dismissed.

REASONS

Background to Appeal

2. The National Union of Teachers requested information from a number of schools in September 2015.
3. The Appellant is the Head Teacher of a school to which the information request was made.
4. The Respondent issued Decision Notice FS50632969 on 17 October 2016, finding that the school (Wood End Academy) had not responded to the request within the timeframe required by s. 10 of the Freedom of Information Act 2000 (“FOIA”) and requiring it to respond.

Appeal to the Tribunal

5. The Appellant’s Notice of Appeal dated 25 October 2016 submitted that s. 10 FOIA had not been breached because he had posted a response on 30 June 2016.
6. The Respondent’s Response dated 24 November 2016 noted that, after the original request on 21 September 2015, the requester had chased the school for a reply on 16 and again on 30 November 2015. The requester had contacted the Respondent in May 2016 and the Respondent’s office had then itself contacted the school but received no reply.
7. The Respondent made an application for this appeal to be struck out under rule 8 (3) (c) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. We do not know why, but that application was not determined and the appeal proceeded to a final determination.
8. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising 60 pages, including submissions made by both parties, for which we were grateful.

The Law

9. S.10 of FOIA states that a public authority must respond to an information request promptly and no later than the twentieth working day following the date of receipt.

10. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“If on an appeal under section 57 the Tribunal considers -

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

11. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Evidence

12. The NUT provided the Respondent with evidence in the form of “proof of postage” receipts that letters were sent to the school in September and November 2015. The letters were addressed to “the Head Teacher” at the correct postal address.

13. The Appellant has provided the Tribunal with evidence in the form of an extract from the school’s postal ledger that a letter was posted to the NUT on 30 June 2016. He has also provided a copy of the letter sent, dated 24 June. He stated in the grounds of appeal that he had been appointed as Head Teacher in February 2016 and had become aware of the request for the first time on 9 June 2016.

Conclusion

14. We note that the Appellant’s evidence about postage and the copy letter was provided only after the Decision Notice had been issued so the Respondent was unable to take it into account in reaching her conclusions. We have considered the fresh evidence carefully.

15. We are satisfied that it is Wood End Academy which is the public authority for the purposes of FOIA. It is the school institutionally, rather than the Head Teacher personally, which is required to respond to an information request within the timeframe set by s. 10 FOIA.

16. We recognise that there was a change of Head Teacher in February 2016 and we accept the evidence before us that the Appellant personally responded to the request once he became aware of it.

17. Nevertheless, the timeframe for responding to the request, as set by s. 10 FOIA, commenced in September 2015 when the request was made. This means that the Appellant's response of 30 June 2016 was made in breach of the statutory requirements.

18. Although our findings of fact differ from those in the Decision Notice, we reach the same conclusion. That is that the school breached s. 10 FOIA. We recognise that there has now been a response to the information request so there are no steps which remain to be taken.

19. We conclude that there is no error of law in the Decision Notice and consequently this appeal is dismissed.

ALISON MCKENNA

DATE: 16 February 2017

PRINCIPAL JUDGE

DATE PROMULGATED: 17 February 2017