

[FREEDOM OF INFORMATION ACT 2000]

Determined on papers
On 14 December 2005

Decision Promulgated
16 December 2005
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Before

ANDREW BARTLETT QC
MRS J A THOMSON
MR P J B DIXON

Between

ROGER BUSTIN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: n/a
For the Respondent: n/a

DECISION

The appeal is dismissed.

Reasons for Decision

1. This appeal concerns a dispute over whether a public authority held requested information at the time of the request.

The request, the response, and the Information Commissioner's decision

2. By letter of 11 January 2005 the appellant, Mr Bustin, requested of Cornwall County Council a copy of the "approved drawing" relating to a Highways Act section 278 agreement concerning Doubletrees, St Blazey, Cornwall.
3. The Council sent Mr Bustin various responses which did not, until late February 2005, include a copy of the approved drawing. The Council's letter of 17 January 2005 indicated that the drawing was not held. Mr Bustin complained to the Information Commissioner on or about 25 January 2005, and received the document requested on or about 25 February 2005. The Council explained in a letter of 4 April 2005 that approval of the drawing took place after the date of Mr Bustin's information request.
4. By a Decision Notice dated 5 July 2005 the Information Commissioner decided that the information was not held by the Council at the time of the request, and that no remedial action was required.

The appeal

5. By an appeal notice dated 25 July 2005 Mr Bustin appealed to the Information Tribunal pursuant to Freedom of Information Act s 57 against the Commissioner's decision that no remedial steps were required.

6. The basis of the appeal is that the Commissioner was in error because the approved plan was in fact held at the time of the request, and the Council's response was untrue.
7. Both parties have requested that this appeal be determined without an oral hearing. We are satisfied that this appeal can properly be determined without a hearing under rule 16 of the Information Tribunal (Enforcement Appeals) Rules 2005.

Decision

8. Our jurisdiction in relation to the decision notice is set out in Freedom of Information Act s 58. We have power to review any finding of fact on which the notice was based. If we consider that the notice was not in accordance with the law, or that any discretion exercised by the Commissioner ought to have been exercised differently, we must allow the appeal or substitute such other notice as could have been served by the Commissioner; in any other case we must dismiss the appeal.
9. Pursuant to directions given by the Tribunal, Mr Bustin has furnished the evidence which he relies on to establish that an approved plan did in fact exist and was held by the Council prior to the date of his information request of 11 January 2005. This evidence appears to show that, contrary to the Council's assertions, approval had been given earlier. In particular:
 - (1) Mr Groves, the Council's Development Control Manager, wrote to him on 23 March 2004, stating that he was waiting for the Section 278 agreement to be engrossed.
 - (2) Mr Lobb, the Leader of the Council, wrote to him on 28 July 2004 stating: *"the Developer has now forwarded an acceptable drawing ... This will mean that engrossment of the Section 278 Agreement ... can take place"*.
 - (3) A County Councillor, Mr G P Hicks, received what he understood to be the approved drawing in November 2004 from Mr Oakes, a development control officer at the Council.
10. It seems to us, therefore, that the Commissioner's finding, that the approved plan was not held by the Council on the date of the information request, is open to question. It appears more likely that the Council held the approved plan at the time of the request and did not deal with the request in a satisfactory manner. We have not received evidence from the Council to explain the apparent discrepancy. If it

were necessary, in order to determine the appeal, to resolve the precise course of events and the timing of approval of the drawing, we would need such evidence.

11. In our view it is not necessary to do so. It is common ground that Mr Bustin received the approved plan in late February 2005. It seems to us, therefore, that, irrespective of the Commissioner's factual finding, the only possible conclusion for his decision notice was a conclusion that no remedial action was required.

12. For the above reasons we dismiss this appeal.

Signed

Date 14.12.05

Andrew Bartlett QC

Deputy Chairman