



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

UPPER TRIBUNAL CASE NO: GIA/1157/2012

APPLICATION FOR PERMISSION TO APPEAL TO THE UPPER TRIBUNAL

Tribunals, Courts and Enforcement Act 2007, section 11
Tribunal Procedure (Upper Tribunal) Rules 2008

Appellant: Kevin Cross
Respondents: Information Commissioner
Havant Borough Council
First-tier Tribunal no: EA/2011/0155
Date of hearing: 11 January 2012

DECISION

Permission to appeal is refused.

REASONS FOR DECISION

A. When the Upper Tribunal can give permission

1. An appeal to the Upper Tribunal lies on 'any point of law arising from a decision' (section 11(1) of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion to give permission to appeal if there is a realistic prospect that the First-tier Tribunal's decision was erroneous in law or if there is some other good reason to do so (Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538).

B. The oral hearing

2. I held an oral hearing of this application today. I am grateful to Mr Cross, who attended and spoke on his own behalf, and to Mr Lucas and Ms Darge, who attended on behalf of the Council. The Commissioner did not send a representative.

C. Why I have refused permission to appeal

3. I have refused permission to appeal, because there is no realistic prospect that the decision involved the making of an error on a point of law and there is no other reason for giving permission.

4. It is important to understand that the First-tier Tribunal has only limited jurisdiction. That means that it can only deal with issues that arise in respect of the decision that is under appeal. In this case, that meant issues that arose from the Commissioner's decision notice FS50356035. Appellants often believe that an appeal is an opportunity to raise any issue that they have with the public

authority, which in this case is Havant Borough Council. That is not the case. It explains why a number of the points that Mr Cross made are not sufficient to secure him permission to appeal.

5. I could refuse permission in this case on the simple ground that Mr Cross has now been obtained all the information that he wanted *under his request* about the charges imposed by the Council. I asked him more than once what he wanted but had not received. He gave a number of answers. Some related to matters that were not covered by the Commissioner's decision notice and which may be the subject of later requests for information. In particular, those requests seem to relate to changes that the Council may or may not have made to the information that was disclosed under the request that was before the First-tier Tribunal. The other matters that he mentioned were matters of procedure and unrelated to the information that he sought. There would be no value in having an appeal in respect of those matters.

6. However, I will deal as best I can with some of the other issues that Mr Cross raised. I start with his written grounds of appeal.

7. Ground 1 concerns the meaning of 'communicate'. The Council chose to send Mr Cross a link to the information on their website. That is perfectly acceptable. It is within the normal meaning of communicate, which is to impart information. Having communicated the subject matter of the request, the Council did not have to issue a notice under section 17; the Council was not refusing to provide the information.

8. Ground 2 is incomprehensible. Mr Lucas could not understand it and could not see what it added to ground 1. Neither can I. The best sense I can make of it is that it relates to the information that Mr Cross obtained from an Environmental Health Officer. If that is the case, the information is not relevant as it relates to different legislation. I explain this below.

9. Ground 3 concerns Ms Darge's attendance and participation in the hearing before the First-tier Tribunal. That was a matter for the judgment of the First-tier Tribunal, which has control over its own procedure.

10. Ground 4 concerns internal review. Even accepting that the Council may have failed to carry out a review, this is not a reason for giving permission to appeal. The key issue is whether the information requested has been provided. The tribunal found that it had and Mr Cross has not been able to explain to me what information has not been provided *within the scope of his request*. In those circumstances, any procedural defects that may have occurred are beside the point. They do not justify an appeal.

11. I now try to deal with some of the points made by Mr Cross at the hearing.

12. Mr Cross argued that the information supplied by the Council was incomplete. As Mr Lucas explained at the hearing, that information related to the Re-use of Public Sector Information Regulations 2005, which have different provisions. Mr Cross asked only in respect of the Environmental Information Regulations 2004. The tribunal may have been wrong that Mr Cross was given information orally rather than in writing by an Environmental Health Officer, but that cannot have affected any issue that arose on the appeal.

13. Mr Cross argued that the Council did not disclose its policy on waiver. The tribunal dealt with that issue by finding that it did not have a written policy and dealt with cases individually as they arose. That was a permissible finding.

14. I was not sure whether Mr Cross was complaining that the Information Commissioner and the tribunal had failed to deal with his requests for environmental information. If so, there was no error. The decision notice under appeal dealt only with the administrative aspect of information held about charges and waiver.

15. I was concerned by the apparently genuine judicial review application that Mr Cross said he had been sent by the Office of the Judicial Appointments and Complaints Ombudsman. However, it is outside my jurisdiction to deal with that. If he is concerned, he must take this up with that Office.

16. Mr Cross also mentioned that he did not want his dyslexia to be made public. It was referred to in the Commissioner's anonymous decision notice, which could be linked to him as he was identified in the published First-tier Tribunal decision. This is not a matter that shows an error of law in the tribunal's decision. If Mr Cross is concerned, he must take this up with the First-tier Tribunal.

**Signed on original
on 22 January 2013**

**Edward Jacobs
Upper Tribunal Judge**

