



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

**Appeal No: EA/2013/0070**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50474375**

**Dated: 13 March 2013**

**Appellant: David Pickles**

**Respondent: The Information Commissioner**

**Heard on the papers: Field House**

**Date of Hearing: 3 October 2013**

**Before**

**Chris Hughes**

**Judge**

**and**

**Dave Sivers and Pieter de Waal**

**Tribunal Members**

**Date of Decision: 8 November 2013**

**Subject matter:**

Freedom of Information Act 2000

**Cases:**

Day v Information Commissioner & DWP EA/2006/0069

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 13 March 2013 and dismisses the appeal.

Dated this 8th day of November 2013

Judge Chris Hughes

[Signed on original]

## REASONS FOR DECISION

### Introduction

1. Mr Pickles has a long-standing concern about the introduction of a wheeled-bin based refuse service in his area. He has corresponded with his borough council about the matter for some time.

### The request for information and the Commissioner's investigation

2. On 7 February 2012 Mr Pickles wrote to the council indicating that he wanted information on:-

*“Consultation*

*Will the Council please*

*(a) set down the criteria*

*(b) state the source(s) and requirements on which this is based”*

3. In a subsequent letter he explained what he expected to receive as a result of his request:-

*“in regards to consultation criteria, most obviously for example-*

*Scope -who is involved*

*awareness-how those individuals are advised*

*duration-timescales for responses*

*timing-when exercise should take place in relation to the topic or project concerned*

*likewise with the basis that these sources, guidelines, directives these observe”*

4. The council provided him with two documents which deal with its consultation procedures – *Enfield Strategic Partnership Engagement Framework* and *Enfield Strategic Partnership Engagement Toolkit*. On review the council upheld this decision. Mr Pickles complained and the Commissioner investigated the complaint on

the basis of determining whether the council had supplied him with all of the information. Mr Pickles argued that the information disclosed did not fully respond to his request.

5. The council explained that consultations on individual issues are set up using these two documents as guidelines, however since each consultation has to address different circumstances each consultation will be tailored to fit the task it is designed for. The council therefore provided the information it held on consultations as a whole. It was not possible for there to be standard criteria to answer Mr Pickles' question since they will differ according to the nature of the consultation. The scope, awareness, timing and duration will vary according to what the council is attempting to achieve and the decisions of the council officers who are planning and implementing a consultation process. In the light of Mr Pickles' long-standing interest in refuse collection and the introduction of wheeled bins and his discussion of refuse collection matters in the rest of the request letter, the council also gave an explanation of how the consultation process had been carried out in that specific case.
6. In the light of this explanation the Commissioner concluded that the council had complied with the request.

#### The appeal to the Tribunal

7. In his appeal document Mr Pickles summarised what he wanted as:-  
*“Prompt, proper and full answers to issues accepted as outstanding”*
8. In his grounds of appeal Mr Pickles set out four headings. The first was “Procedure and Operation via the ICO” and in this section he set out certain comments of how the Commissioner handled the case. These do not amount to grounds of appeal. The second was “Circumstances and principles” and this argued that there were two information requests in his letter of 7 February 2012 and that the second of these (wheeled bins) had been ignored. The third was “1 Consultation” and argued that since his request related to current practices and it was clear from the documents provided that they were aspirational statements, *“the council response is not in the current prevailing terms requested”*. The fourth was “2 Wheeled bins” and this part argued that the second part of the letter of 7 February 2012 had been ignored.

9. The tribunal identified two specific matters for consideration in the appeal and whether the Commissioner's decision is correct in the light of the underlying facts. First, has the Council complied with the request concerning consultation arrangements? Second, was the Commissioner correct in considering that the second part of the letter of 7 February 2012 letter was not a valid request for information?

Consideration and conclusion

10. The Council provided two documents to Mr Pickles. He described them as follows:-  
*“ Their 13 March response enclosed the Enfield Strategic Partnership "engagement framework" and “ Toolkit" documents, described as "leaflets". As fact, these enclosures are (a) a six-page printout and (b) an 88-page printout: absolutely not leaflets in any normal individual's terms. While Mr Pickles may not like the material he has been sent, as the Commissioner fairly pointed out in his response to the appeal (bundle p36E):- “these documents clearly contain information about the Council's present consultation criteria and processes.... In so far as the appellant complains about the way in which the Council expresses itself within these documents, or questions whether the council does in fact operate in accordance with the established policy in relation to consultations, these are not matters within the tribunal's jurisdiction. The sole issue for this tribunal is whether the Council has provided the appellant with the information falling within the scope of his request. It is submitted that the Commissioner was correct to find that it had.”* The Tribunal agrees with the view of the Commissioner. While Mr Pickles may not like the information he has been given, that is the information which is available. The Council has complied with its duty under section 1 FOIA.
11. The full text of the letter of request of 7 February 2012 was set out at page 37 of the bundle. In addition to the request set out at paragraph 2 above, the following text appears:-  
*“2 Wheeled bins*  
*The Environment Scrutiny Panel in my understanding is the appropriate place to review and raise such issues as Borough-wide concern.*

*Direct assurances on the subject had been given on various occasions at other council meetings, for example to the town Forum on 16 October 08.*

*Under the Environment Scrutiny Work Programme for 09/10 review was promised for 2 Dec 09. It failed to take place.*

*It reappeared for 1 Mar 10; again it failed to take place.*

*Now, years on, despite being repeatedly raised and acknowledged it has still failed to take place whilst the Council has continued to relentlessly impose wheeled bins.*

*This appears absolutely contrary to the councils published policy on public involvement through scrutiny panels (e.g. "Interested in getting involved?").*

*Would the council fully account for its position throughout.*

*I trust the information will be promptly forthcoming and its published consumer service policy."*

12. The question for the tribunal is whether this amounts to a valid request for information under FOIA. The actual question embedded within this passage is:-  
*"Would the council fully account for its position throughout."* It is undoubtedly a question, however as the Tribunal noted in *Day v Information Commissioner & DWP EA/2006/0069*:-  
*"The Act only extends to requests for recorded information. It does not require public authorities to answer questions generally, only if they already hold the answers in recorded form."*
13. The question would require the council to consider the history of events related to its established policies, procedures and structures and then set out reasoning to justify what the council had done. That is not the function of requests under FOIA. Ultimately that is a matter of political accountability which is exercised through the ballot box. It is a misunderstanding of FOIA to argue that it gives a right to individuals to have answers to questions such as this.
14. Accordingly the tribunal is satisfied that the second ground of appeal is also without merit.

15. The tribunal is therefore satisfied that there are no grounds for criticising the decision notice and that it is in accordance with the law, and accordingly upheld.

16. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 8 November 2013