



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

**Appeal No: EA/2013/0111**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50453520**

**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:**

**Environmental Information Regulations 2004**

**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 12 April 2011 he wrote a detailed letter to the council which extended over two and a half pages. It contained many statements or assertions of fact, expressed his concerns and some questions relating to aspects of the service. There were in total 18 headings in capital letters with some text below them; including:-

*“HEIGHT*

*the new bins are conspicuous over walls, fences and hedges and equally from inside where they had to be kept in front of low windows. The slimline variety are further prone to being blown over. To mitigate any such problems, in the five years or so the council has been considering changes, what in date investigation has been undertaken into , simply, less obtrusive lower -height ones?*

*RECYCLING RATES*

*the claimant jumped from 28% to 47% appears astonishing which the spontaneous response did not meet. Please give the full range of factors accounting for this in respect of "dry and "green "*

*EXISTING SYSTEM*

*both quick and efficient, as recorded this achieved a 75% resident satisfaction level.*

*What attempts were made to identify and resolve the remaining 25% element?*

*Considerations would include-avoiding the most problematic items in black bags*

*.....”*

3. The council responded in an informal way providing some answers, indicating that it did not hold some material and seeking clarification of parts of the request.  
Following the intervention of the Information Commissioner the council applied Regulation 12 (4)(a) to some requests (the information was not held by the council) and seeking further clarification of other requests. Following his investigation the Commissioner concluded that the council had complied with its obligations.
4. He concluded that many of the “requests” were not true requests but sought to enter into a debate with the council, which was not a right protected by FOIA or the Environmental Information Regulations. The council had sought clarification of some of the requests, which Mr Pickles had not provided, and accordingly the council was not required to respond to that part of the requests. The Commissioner had explained to Mr Pickles the need to make clear requests (DN17) however Mr Pickles considered that he had already clarified the requests and the council was delaying and avoiding answering.
5. The Commissioner analysed the letter in detail. He considered much was statements of opinion, and some requests were unclear. He considered the council’s response to each identified question and whether the council had provided or had not provided any answer, and which of the provisions of Regulation 12(4) or Regulation 6(1) of EIR had been applied by the council. In an appendix he set out his analysis of which parts of the letter appeared to him to contain questions and which were statements of opinion.
6. Where the council had relied on Regulation 12(4)(a) – that the information was not held by the council - the Commissioner satisfied himself that on a balance of probabilities the council did not hold the information requested because it explained how it had taken its decisions. He concluded that he “*does not find it necessary to order the council to carry out searches to ascertain whether any recorded information is held because it appears clear from the council’s responses that that is not how its decisions were in fact reached.*”
7. The Commissioner concluded that the Council had complied with its obligations (DN48): “*the Commissioner therefore considers that on the balance of probabilities*

*no information is held by the Council that can assist in responding further to the requests "*

The appeal to the Tribunal

8. In his appeal document Mr Pickles summarised what he wanted as:-

*"The Tribunal's findings in respect of items appealed and particularly*

- *IC use of "opinions" to exclude issues ("inception", "street litter" and "existing system" refer)*
- *Timescales reflected in the extremely protracted progress and the substantial factor of mail handling within the council's civic centre*

*Prompt, proper and full answers to issues accepted as outstanding"*

9. In the five page document supporting the appeal he criticised the Commissioner and his conclusion that the requests are "long and numerous". With respect to "long" he stated: *"as towards the Council, I do not believe the records support this, rather the Council several times claimed it needed more information or has required infinite persistence on my part in pursuit."*

10. He justified "numerous" on the basis of the deficit in prior information, the lack of consultation concerning the introduction of the bins, an insufficient number of public meetings held and a large number of press letters being ignored.

11. He went on to explain how he had structured the request with a heading and introductory paragraphs setting the context:

*"Establish the circumstances under which issues, and anomalies and deficiencies have been brought about and hence a need for information in explanation and answer, including information to account for actions taken by the council,*

*Immediately following are subject headings with various factors identified (although not always in strict FOIA terms)"*

12. In his appeal he explored many of his concerns as to the quality of the decision making by the council:-

*“most businesses, politicians or councillors would regard a 75% satisfaction rate as a good basis from which to seek to improve, and is not to be jettisoned from a wholly new strategy. Again I submit these are not appropriate to be excluded as "opinions" (appeal paragraph headed DN40)*

*“ALTERNATIVE METHODS (letter 08 May 11, fourth paragraph) DN23,24,25 I submit this request is adequately clear as of that date , and that the first attempted direct response-the Review Report enclosed on 15 March 12 –“To enable us to answer this in full we would require more detailed information “ and without any indication what it believed it needed-is both inappropriate and inadequate; principles I put to the Council on 7 May 12, p2, under the 06 May 11 headings citing conservation factors.“*

### The question for the Tribunal

13. The question for the tribunal may be simply stated: Whether or not the Commissioner's decision is correct in law in the light of the underlying facts. This involves a consideration of the actual requests made, the answers provided, and where answers were not provided whether the explanation (that the information was not held) is credible.

### Statutory framework

14. The relevant parts of EIR are Regulations 6(1) and 12(4):-

*“6.—(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—*  
*(a) it is reasonable for it to make the information available in another form or format;*  
*or*  
*(b) the information is already publicly available and easily accessible to the applicant in another form or format.”*

#### Regulation 12

*“(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*

- (a) it does not hold that information when an applicant's request is received;*
- (b) the request for information is manifestly unreasonable;*
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;.....”*

### Consideration and conclusion

15. The purpose of the regulations and FOIA is to enable individuals to access information which is held by public bodies. It is not a right or mechanism to enter into debate or argument with a public body about the merit of matters of policy. That is a separate matter which is not to be equated with the exercise of a right of access to information under the Regulations or the FOI Act. Nor is the right of access to information a right to require the public body to carry out research or surveys or a remedy to require a public body to take steps such as reversing a decision which it has already made. The right of access to information requires a public body (subject to certain exceptions and exclusions) to provide actual recorded information in its possession. There are many issues of public controversy with which tax-paying individuals become engaged. Public bodies make decisions which are not universally popular. This is clearly such a case. In his request for information and in his appeal, Mr Pickles has set out his views at length, criticised the council for the way it has handled the issue of refuse collection and at many points argued that the decisions the council has made have been based on inadequate information. None of these are matters which go to the question before the tribunal of whether or not information held by the Council has been provided.
16. In considering Mr Pickles' complaint arising out of the request for information, the Commissioner has carefully and thoroughly analysed each part of the request to determine whether or not it is a request for information. Where it is a request for information, the Commissioner has considered whether the council has supplied the information and, if it has not, the council's explanation for not supplying the information. In his appeal document Mr Pickles has not effectively come to grips with this process but essentially repeats his criticisms of the council and the method of waste collection. However, this process adopted by the Commissioner was the

appropriate way to consider whether the complaint is justified. Mr Pickles has not put forward any arguments of law or any factual evidence which undermines the approach the Commissioner has taken or casts doubt on the his conclusion.

17. 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.

18. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 8 November 2013