



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF
INFORMATION ACT 2000**

EA/2013/0116

B E T W E E N :-

JAMES NICHOLSON

Appellant

-and-

THE INFORMATION COMMISSIONER

First Respondent

-and-

**THE COUNCIL FOR THE CURRICULUM, EXAMINATIONS &
ASSESSMENT**

Second Respondent

Tribunal

**Brian Kennedy QC
Paul Taylor
Henry Fitzhugh**

Hearing: Bedford House on Monday the 6th December 2013 & 7th January 2014.

Appearances: The Appellant as a Litigant in person.

Peter Hopkins of counsel appearing for the second Respondent instructed by Carson McDowell, solicitors.

Subject matter: Freedom of Information Act 2000.

DECISION OF THE FIRST-TIER TRIBUNAL:

The Tribunal refuses the Appeal.

REASONS

Introduction

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (**“the Act”**).
2. The appeal is against the decision of the Information Commissioner, who is the First Named Respondent, (**“the Commissioner”**) contained in a Decision Notice (**“the Decision Notice”**) dated 29th May 2013 (reference FS50468444).
3. The Tribunal Panel sat on the 6th December 2013 and after an oral hearing and later written submissions deliberated on the 7th January 2014.

Request by complainant:

4. The complainant wrote to the second respondent on 15th & 20th August 2012, with the following request for Information :
 - *“A copy of the written record of any changes to the MOU for John Barwick and Tony Holloway.*
 - *A copy of any correspondence or records of telephone conversations between Mr Barwick and CCEA or Mr Holloway and CCEA relating to a change in the MOU or what might be termed as a clarification of the MOU.*

- *Is the principal examiner referred to in pages 7 and 11 of Mr. Barwick's report the same person?*
 - *Page 11 of the Barwick report says that the principal examiner did not highlight any specific concerns. How was this reorted "fact" ascertained by Mr Berwick given that he did not interview the principal examiner"?*
 - *Why was the principal examiner not interviewed?*
5. By letter dated the 24th August 2012 the CCEA responded refusing to respond because the request was not valid.
6. The Appellant requested an internal review, and got no response and then complained to the Information Commissioner ("the Commissioner") on the 15th October 2012. The complainant contacted the Commissioner to state he had received an internal review response on the 26th October 2012, complaining that it was late and that it did not provide him with all the information which he believed the CCEA to hold in relation to his requests.

The Commissioner's Decision:

7. The Appellant contacted the Commissioner on the 15th October 2012 to complain about the way his request for information had been handled. The Commissioner noted that the CCEA had not initially treated the Appellants request as a request under FOIA, but later provided a refusal notice on the 26th October 2012. It provided some information in response to the Appellants request and stated that it did not hold the remaining requested information. The Commissioner accepted this as a refusal notice and served the Decision Notice in relation to this matter. The Commissioner made detailed inquiries of the CCEA in order to determine what information it held that was relevant to

the scope of the request and these inquires are set out in full in the Decision Notice wherein it was decided that on the balance of probabilities the CCEA holds no further information within the scope of the Appellants request other than that which it has already provided to the Appellant.

8. Although not part of this appeal the Commissioner did make findings against the second respondent for failure in time compliance.

Grounds of appeal:

9. The Tribunal accepts that the grounds of appeal can properly be summarised in that the Commissioner erred in concluding that, on the balance of probabilities, the CCEA holds no further information within the scope of the request that it has not already disclosed to the Appellant.
10. The Commissioner has provided detailed reasons for coming to the impugned decision and the Appellants disputes these reasons. The Tribunal accept the reasoning of the Commissioner, who has clearly qualified his acceptance on the facts of this particular case, but the Appellant also argues that the credibility of the personnel within the CCEA is not to be accepted for various reasons which he has given inter-alia, they have deliberately made false or misleading statements.
11. This Tribunal has had the advantage of hearing the evidence of witnesses on behalf of the CCEA who were cross examined by the Appellant in depth at the oral hearing herein. We heard from Phyllis Rolleston who was the person responsible for dealing with the Appellants' request internally within the CCEA. Ms Rolleston was subjected to an in depth cross examination about the nature and extent of the request and as to how she had dealt with it.

12. The Tribunal were entirely satisfied that she had properly interpreted the request for information and had taken all possible steps to find all information within the scope and within the possession of the CCEA.
13. We also heard from Mr Martin Quinn who had been employed by the CCEA at the relevant time. While he had taken no direct part in the request, he had satisfied himself that Ms. Rolleston had diligently and properly exhausted her search for all relevant information within the scope of the request and that he had reasonably accepted that there was no other relevant information within the scope of the request that was within the possession of the CCEA. The Appellant had the opportunity to, and did cross examine Mr. Quinn in depth also. During his cross examination the Appellant put his suspicions and speculation about other material that should have been present but the Tribunal are satisfied, on the balance of probabilities that there was not any further material that Ms Rolleston could have found or should have found within the scope of the request herein.

Tribunal's Reasons:

14. The Tribunal accept that in seeking the information sought, the Appellant had acted with good public spirited concern about inadequacies within the second respondents conduct of their functions and in good faith. We also accept that the Appellant and the second respondent were both relatively inexperienced in dealing with such requests. The appellant less than precise in the wording he used in his requests for information and the second respondent perhaps defensive and initially less than co-operative.
15. However having listened carefully to the witnesses and the evidence we do not accept that the Appellant has established, on the balance of probabilities in the circumstances of this case, that the second respondent was deliberately withholding any information within the scope of the request.

16. The Tribunal feels that the second respondent have learned much from this and a previous appeal and in this regard should be indebted to the Appellant as their approach to FOIA requests should be more readily transparent and accountable from the outset on receipt of requests for information.

17. Accordingly this Tribunal finds (having heard Ms. Rolleston, who was a most helpful witness, under extensive and effective cross examination by the appellant) we are satisfied, on the balance of probabilities, that there was no other documentation within the scope of the request at the time she investigated it.

Brian Kennedy QC

Judge

3 February 2014.