



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

Case No. EA/2013/0233

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50484953
Dated: 30 September 2013**

**Appellant: DEPARTMENT OF THE ENVIRONMENT
(NORTHERN IRELAND)**

Respondent: INFORMATION COMMISSIONER

**On the papers: ON 13 MAY 2014 AT TAX TRIBUNAL,
BEDFORD SQUARE, LONDON**

Date of decision: 6 JUNE 2014

Before

**ROBIN CALLENDER SMITH
Judge**

and

**DAVE SIVERS and NIGEL WATSON
Tribunal Members**

Representations:

For the Appellant: Mr Dave Brittain, Department of Environment Information Manager

For the Respondent: Ms Clare Nicholson, Solicitor for the Information Commissioner

**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
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Case No. EA/2013/0233

Subject matter: FOIA 2000

Whether information held s.1

Request for information s.8

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 30 September 2013 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. This appeal relates to information requested from the Department of the Environment in Northern Ireland (the Appellant) about mobile telephones that had been issued to its staff.
2. The Appellant provided some of the information requested but withheld other information. The Appellant claimed that Part 6 of the request was not a valid request under section 8 (1) (c) of the Freedom of Information Act 2000.
3. Part 6 of the request was for a copy of all emails sent and received from 1 May 2012 to 31 May 2012 inclusive of [two named employees].
4. On 19 June 2013 the original requester confirmed to the Commissioner that he was dissatisfied with the way his request for information had been handled. The requestor specifically asked the Commissioner to consider the Department's responses to Parts 3, 4 and 6 of his request as well as the time taken to conduct the internal review.

5. The Commissioner was satisfied that the withheld information in relation to Parts 3 and 4 of the request was personal data relating to the respective Departmental staff. The Commissioner accepted that there would often be a legitimate public interest in the disclosure of information relating to the work of public authority employees but, in this case, he agreed with the Appellant that disclosure of the names of the staff and itemised telephone call lists relating to the phones they used would be disproportionate and would not meet any legitimate public interest.

6. In relation to Part 6 of the request, section 1 (1) of the Freedom of Information Act stated:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request.

7. Section 8 (1) (c) provided that:

In this Act any reference to a "request for information" is a reference to such a request which

(a) is in writing,

(b) states that name of the applicant and an address for correspondence, and

(c) describes the information required.

8. The Commissioner's position was that, although the Freedom of Information Act provided a right of access to information rather than to copies of documents, requests might refer to specific documents as a way to describe the information requested. A request for a particular document, such as an email, should generally (unless the context made clear that this might not be the case) be interpreted as a request for all of the information that was recorded in that document.

9. In addition the Commissioner considered that the purpose of the section was to enable the public authority to identify the requested

information. The Freedom of Information Act did not prescribe how the requested information must be described, or define what constituted an adequate description.

10. Section 1 (3) of FOIA provided that the public authority could seek clarification from the requester if that was required to assist with identifying and locating the requested information.
11. The Appellant maintained that this part of the request was invalid because "it did not describe identifiable information by subject or topic, but was for a medium upon which information was is recorded".
12. The Commissioner disagreed with the Appellant. He took the view that the requested information constituted sufficient description to enable the Appellant to understand what was being requested. The Commissioner accepted that the requester was unlikely to be aware of the nature of the information contained within the emails. In his view it did not follow that the request was not for "identifiable information".
13. The Commissioner had considered a similar issue in a previous Decision Notice¹ in which he set out his view that the wording of section 8 (1) (c) was clear and should bear explain meaning. The provision simply required the request to "describe the information requested". It did not specify that the request must describe the subject matter of the information. Descriptions relating to origin, date and type of document could still – in the everyday meaning of those words – describe the information requested. A request for the minutes of a meeting held on a particular date would clearly describe the information requested even though it did not describe the content by reference to the matters discussed. Similarly the Commissioner considered that the request in this case sufficiently described the information requested.

¹ Decision Notice FS50465008 (issued 27 February 2013).

The question for the Tribunal

14. Is the Appellant's approach to the information requested in Part 6 of the original request correct or not?

Conclusion

15. The Appellant points out that the definition of "information" in FOIA is set out in section 84, which states:

"information" (subject to sections 51 (8) and 75 (2)) means information recorded in any form.

16. The Appellant argues that the effect of this is to limit the definition of the word "information" in relation to FOIA to recorded information, save for sections 51 (8) and 75 (2).

17. The specific meaning of the word "information" had not been defined in the Act and, therefore, it should be interpreted in line with common experience and the ordinary use of English.

18. The Appellant believed that the Oxford English Dictionary definition was helpful. That stated:

Knowledge communicated concerning some particular fact, subject, or events; that of which one is apprised or told; intelligence, news.

19. The Appellant believed there was a distinction to be made between "information" and the medium on which information was held or by which it was communicated. That distinction was reflected in:

(a) section 11 (1) (b) of FOIA which referred to "a record *containing* the information....); and

(b) the Information Commissioner's guidance which, at the first indent, referred to "... Information held *on* computers, *in* emails and *in* printed and handwritten documents..."

20. That distinction was also reflected in the definition of “environmental information” in Article 2 EIR which referred to “information *in* written, visual, aural, electronic or any other material form on...” a range of topics.

21. The Appellant also noted views expressed by the First Tier Tribunal in *ML Johnson v Information Commissioner and Ministry of Justice* (13 July 2007).

22. In relation to whether information was held by public authority that Tribunal had discussed the definition of information in FOIA.

The right of access established by Section 1 of the Act, applied to information “held” by a public authority (see sections 1 (1) (a) and section 1 (4). The Act does not contain a definition of “held”. What is clear, however, is that the Act is concerned with access to information, rather than access to the documents containing the information. Pursuant to section 84, “information” means “information recorded in any form”. The focus of the Act is on the content of the information. This is particularly clear in Part II of the Act where exemptions turn on what the information is about, rather than the form or document in which it is held.

23. The request in question had asked for a medium on which information was held rather than for information of a particular description. The request had no subject or fact at its centre and was at odds with common experience and the ordinary use of the English language. In that sense the request did not adequately fulfil the condition required in section 8 (1) (c) and, consequently, was not a valid request under section 1 FOIA.

24. This approach appears to the Tribunal to be too limited. The Tribunal agrees with the Commissioner’s approach that the correct question at the heart of this issue is whether the request “describes the information requested”.

25. New guidance had been issued by the Commissioner entitled “Recognising a request made under the Freedom of Information Act (Section 8)”.

26. That guidance made a number of points:

- There had to be a low test for a description to meet the requirements of section 8 (1) (c);
- Authorities should treat any description that allowed the requested information to be distinguished from other information held by the authority as valid under section 8 (1) (c);
- There were many distinguishing characteristics that could help set the information apart from any other material held by the authority when referenced in a request;
- It was possible for a requester to describe the distinguishing characteristics of recorded information without reference to its subject matter or content;
- It was sometimes possible to infer the recorded characteristics of electronically held information from its location alone; and
- If a request based on an electronic location was unreasonably broad then a public authority could consider refusing the request under section 12 and offer the requester advice and assistance to help refine the request.

27. Even without the Commissioner's new guidance, the Tribunal would have come to the view that the request in Part 6 indicated that the requestor was interested in specific, identifiable information even though he did not – and could not be expected to – know the exact subject matter of that information.

28. The Appellant could have considered whether any of the exemptions detailed in FOIA applied, but the request was still a valid request for information under FOIA.

29. Our decision is unanimous.

30. There is no order as to costs.

Robin Callender Smith

Judge

6 June 2014