



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

Appeal No: EA/2014/0037

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50497100
Dated: 16 January 2014**

**Appellant: Trevor Scott
Respondent: The Information Commissioner
Heard at: Manor View House, Newcastle
Date of Hearing: 27 June 2014**

**Before
Chris Hughes
Judge
and
Jean Nelson and Paul Taylor
Tribunal Members**

Date of Decision: 6 August 2014

Attendances:

For the Appellant: in person

For the Respondent: did not attend

Subject matter:

Freedom of Information Act 2000

REASONS FOR DECISION

Introduction

1. In 2012 the Appellant in these proceedings (“Mr Scott”) was concerned about the delay in cutting grass outside his home due to the wet weather. He had extensive correspondence with his local Council (Northumberland County Council – “the Council”) had face to face meetings and was advised of what information was available. The Council has spent significant time dealing with him (bundle page 121).

The request for information

2. On 3 January 2013 Mr Scott wrote to the Council asking for:-

All NCC timesheets for those persons engaged in grass cutting activities, covering the period 1st March 2012 to 30th November 2012 for the areas of Mickley, Morpeth County Hall grounds, the town of Morpeth and Darras Hall

Details of all complaints to NCC regarding grass cutting within Northumberland for the period 1st March 2012 to 30th November 2012.

3. On 25 January the Council replied providing timesheets for the Mickley area (subject to redaction to protect personal information) and confirmed that it had received one corporate complaint which was recorded on a currently unavailable system. On review it confirmed that complaint information could be obtained but would take over 60 hours to extract and refused the request relying on s12(1) FOIA (the cost would exceed the statutory limit).
4. Mr Scott complained to the Respondent in these proceedings (“the ICO”). He identified Hand Arm Vibration (HAV) timesheets (part of the process of monitoring staff exposure to potentially harmful vibrations from tools kept for the purposes of ensuring their health and safety) as relevant to his request, he disputed the cost of extracting complaint information. During the investigation the Council supplied redacted HAV timesheets and ceased to rely on s12(1) with respect to complaints, disclosing a redacted version of the information held with respect to one complaint on 7 January 2014 (bundle page 164) .

5. In dealing with the request for timesheets in his decision notice the ICO set out the different arrangements the Council had for recording the activities of grass cutting staff in different parts of the county as a result of the practices in areas formerly part of different local authority district councils (DN paragraph 15). This meant that the timesheets provided for Mickley and Darras Hall were the only ones available. The HAV timesheets provided during the course of the investigation were the only ones available. He concluded that all available timesheets had been provided (paragraphs 16-17).
6. With respect to complaints information the ICO explained the Council's practice of dealing with requests for service, where for example an area of grass had been missed, as distinct from complaints. The inclusion of such requests would have caused the cost limit to be exceeded. Excluding requests of this nature the Council had identified 66 complaints of which one related to grass-cutting which had been disclosed. The ICO therefore concluded that the Council had complied with the request (DN paragraphs 18-20).
7. The ICO confirmed that the redaction of personal information about staff was appropriate since they were junior staff who would have an expectation that their data would not be disclosed. Appropriate accountability was ensured by the availability of the manager responsible who could deal with any queries about the service. There was no public interest in disclosing their names (DN 24-32). The individual who had complained would have done so in the expectation that the complaint would be handled in confidence and accordingly should not be disclosed.

The appeal to the Tribunal

8. In his appeal Mr Scott:-
 - drew attention to the inconsistency between the arrangements the Council had explained to the ICO and information on their website which suggested the existence of timesheets
 - Argued that the sequence of HAV timesheets showed many gaps for which timesheets should exist as well as the missing data which made analysis of the timesheets impossible, he indicated that HAV timesheets were inaccurate,

related to non-grass cutting activities and seemed to be in only two different hands when there should have been more people completing timesheets

- Submitted that more information about complaints must be held, noting complaints information was contained on some of the disclosed timesheets
 - Contested the redaction of personal data from timesheets and took offence at correspondence from the Council
 - Contested the redaction of personal data from the complaint
9. The ICO maintained his position set out in his decision notice and resisted the appeal; inviting the tribunal to join the Council as a party to the case. The tribunal did not consider this necessary.

The questions for the Tribunal

10. The tribunal has to determine whether or not the ICO's decision is, in the light of the evidence available to the tribunal, correct in law. The issues for the tribunal to resolve are whether there is any more information held in the form of timesheets falling within the terms of the request, whether the request for "details of all complaints" relating to grass-cutting was correctly handled and whether the ICO was correct in his treatment of personal information.

Timesheets

11. In his evidence Mr Scott emphasised that his determination was to hold the Council to account and that to do so he required all the timesheets. He pointed to gaps in the sequence of time sheets, suggested that only two hands had written them (bundle page 150) and produced a photograph which he stated showed that grass cutting was taking place (by use of a sit-on mower) in August 2012, contrary to information provided by the Council to the ICO. He acknowledged to the tribunal that in depots where staff clocked in there was no need for timesheets to be completed.
12. That information was contained in a response to a query about why the Council had been able to provide complaints information to the end of August 2012, but could not furnish details of corporate complaints up to the end of November 2012. The reply, while giving details of computer failure in August 2012 which impaired access to the complaints data and gave details of the temporary use of a spreadsheet pending the

introduction of a new database, also gave an account of grass cutting in 2012 (bundle page 139) to provide context for the pattern of complaints about grass cutting. It noted the suspension of cutting in late spring due to the wet weather and the explanation given to callers inquiring about the service. While it may be taken as implying that there was no further grass cutting that year, it is also possible to interpret it as implying that there were two periods of suspension of cutting, with a resumption between the two. However since the Council supplied a HAV timesheet which appears to be dated 4 September 2012 there is in fact no claim by the Council that grass cutting entirely ceased, the statement was providing broad context to the background for 2012 and nothing more.

13. Similarly the tribunal considered that the timesheets did not indicate that only two people had written them. There were in essence three different sorts of timesheets disclosed by the Council, some relating to the work of a depot, others to individuals and the HAV timesheets. A set of 6 sheets for 22 March 2012 seemed to the tribunal to all be in distinct hands. There was no evidence of fabrication or misconduct. The account given by the Council of different practices in different depots and the suspension of grass cutting due to the weather seemed sufficient and credible explanations for the number and distribution of timesheets which the Council has supplied. The tribunal was satisfied, on the balance of probabilities, that an adequate search for timesheets was carried out, there were no further timesheets to disclose and that there was no evidence of the suppression or concealment of records.

Complaints

14. It is entirely understandable that Mr Scott felt frustrated with this issue. He has complained on a number of occasions and was surprised to be informed that there was only one complaint. He felt that information about performance was being manipulated. The Council website clearly flagged up how to complain – by telephoning or completing a form. The Council had provided information to the ICO (bundle pages 119-125, 136-143). This explained that to identify all complaints on this basis would need a search through the CRM system and an analysis of thousands of requests “*made by telephone call, letter and email. Individual staff, supervisors and service managers may have been emailed or called directly regarding a complaint which may not have been logged if not made formally through the Complaints or Customer Service systems.*” The letter went on to explain that 5732

grass cutting service requests (plus 1455 call back requests) were made in 2012 and set out details of the considerable time it would take to extract the information asked for which was not held centrally. While Mr Scott argued that he was not provided with the various summary figures set out in this correspondence; the terms of his request were clear – they were for “details of all complaints”. If the request were met by providing all the details on the basis that Mr Scott argued, then the costs would be prohibitive and the s12 exemption would apply. In his decision notice the ICO accepted the later position of the Council, which was that in its procedures across the whole Council there was a differentiation between service requests and complaints and that only one query which had been categorised as a grass cutting complaint had been received. The Tribunal is satisfied, on the evidence that that was the correct analysis of complaints and service requests, however even if the Tribunal had come to a different conclusion on this question, it would not have benefitted Mr Scott because of the s12 exemption.

Personal Data

15. Mr Scott emphasised that he needed all the information on the timesheets in an email to the ICO in November 2013 he stated (bundle page 150):-

Employee names, signatures, even employee numbers and locations are blanked out and render limited submitted information as completely meaningless, having no context

16. The ICO noted that the redacted information related to living and identifiable persons. He noted that the reasonable expectations of the junior staff was that personal information about them would remain confidential. Disclosing this information would expose them to an undue level of scrutiny. The disclosure of such information about junior staff would not enhance public accountability for the use of public money, issues could be effectively dealt with by contact with a manager whose details were available and known to Mr Scott. The complainant also had an expectation of privacy. There was no public interest in the disclosure of this information about staff or of the complainant, it would be unfair in breach of the first data protection principle.
17. The tribunal was satisfied that this analysis was correct.

Conclusion and remedy

18. The Tribunal is therefore satisfied that the ICO's decision was in accordance with the law and the appeal is therefore dismissed.
19. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 6 August 2014