



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

EA/2014/0086

DEBBIE BRYCE

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Date of Decision: 8th October 2014

Date of Promulgation: 9th October 2014

Hearing

Held on 29 July at Court 13, Fox Court
Before Gareth Jones, Darryl Stephenson and Judge Taylor.

Decision

The appeal is unanimously upheld for the reasons set out below. This decision is to be treated as a substituted Decision Notice.

Steps to be taken

Within twenty working days of the date of promulgation of this decision, Trinity Hall, Cambridge, of Trinity Hall, Trinity Lane, Cambridge, CB2 1TJ is required to provide the Appellant (whose address is set out in the Decision Notice Ref FS50511975), with all THA correspondence and minutes of all meetings for 2003 to 2008, (whether these are archived or held in the college premises held elsewhere but on behalf of the college and Trinity Hall Association), save for AGM minutes that are publicly available online. Where, the AGM minutes are available online, the college is to provide the Appellant with the relevant links, or failing that, provide her with the minutes.

Within twenty working days of the date of promulgation of this decision, The College is to confirm to the Information Commissioner, the list of correspondence and minutes of meetings that are held, whether in archive or at the college premises or held elsewhere but on behalf of the college and Trinity Hall Association, and confirm that these have been provided to the Appellant.

Reasons

Background

1. Trinity Hall Association ('THA') is an alumni association set up to keep members of Trinity Hall, Cambridge ("THC") in touch with each other, and the College.

The Request

2. On 25 February 2013, the Appellant requested from THC, as a 'public authority' for the purposes of the Freedom of Information Act 2000, "*correspondence and the minutes of meetings which Chris is depositing¹ [ie in the College archive] up to five years old.*"
3. The documents related to THA. According to the subsequent Decision Notice of the Information Commissioner's Office ('ICO'), the Appellant clarified that she intended to seek access to "**archived records (minutes of meetings and correspondence of THA) from 2003 to 2008.**" We have not been told by the Appellant or THC that that this interpretation of the scope of the request is disputed, and as such proceed on the basis that the wording in bold is an accurate summary of the agreed scope of the request.
4. THC responded on 20 March 2013 that that they would not be responding to further correspondence. We understand from the Decision Notice that a further response was made on 19 June 2013, explaining that 'with regard to archived records that Trinity Hall did not hold the requested information as THS is a separate legal entity.' We understand from the Decision Notice that the Appellant requested an internal review, but the college failed to carry one out, such that the Appellant made a second complaint to the ICO on 31 August 2013.
5. The ICO's Decision Notice of 17 March 2014, found that:
 - (1) THA was not a public authority under the FOIA. (*Para 15 of the Decision Notice*)
 - (2) This would likely mean that THC did not have access to information created and held by THA. (*Para 15 of the Decision Notice.*) (This logic does not seem complete in its reasoning to us).
 - (3) There is no compelling evidence to suggest that THC has access to or holds documents of THA.
 - (4) Historical documents of the THA placed in the archive are 'held' by THC. (Whilst this conclusion seems somewhat likely to us, it is unclear to us how the ICO reached it. In any event, it is not disputed in this appeal.)
 - (5) Notwithstanding sub-paragraph (4) above, the minutes from 2003 to 2008 were published on the THC website, such that, no further steps were required to be taken. (*Para.s 1, 19, 21 of the Decision Notice for sub-para.s 4 and 5 combined*).

¹ In the College archive.

- (6) THC confirmed it did not hold any correspondence and none had been submitted to the archive. (*Para 19 of the Decision Notice*).
 - (7) THC did not hold minutes of the THA from the last five years. (Para 20.) (Again, it was not clear how the ICO reached this decision.)
6. The Appellant has appealed this decision, asking for it to be clearer and more widely applicable to take into account the status of THA, its interrelationship with the college, and that that it is not clear where the requested material is located and held, which material is subject to FOIA and which dates.
 7. The Appellant also asked for clarity on filing in relation to the Data Protection Act, however this is beyond our remit. (See paragraph 9 below).
 8. The ICO noted as part of its arguments before this Tribunal that the Appellant had stated that she did not disagree with the Commissioner’s findings, and sought ‘*further consideration and clarification*’ of the decision. We too, found the Decision Notice somewhat confusing to follow and draw conclusions from. For instance, paragraph’s 10 to 13 explains the college archivist’s position on whether information held by it is held on behalf of the college. It concludes that information submitted by THA is held by the archive, but it is not clear if this means it is held on behalf of THC. We must assume the conclusion that they are held by the college for FOIA purposes from the ICO’s summary in paragraph 1.

The Task of the Tribunal

9. Our task is to consider whether the decision made by the ICO is in accordance with the law or whether any discretion it exercised should have been exercised differently.

The Law

10. Under s1(1) FOIA:

“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, and (b) if that is the case, to have that information communicated to him.”

11. Under s3 FOIA:

A “public authority” means—

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which—

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or (b) a publicly-owned company as defined by section 6.

(2) For the purposes of this Act, information is held by a public authority if—

(a) ...

(b) it is held by another person on behalf of the authority.”

The Issues

Question 1:

12. Is the requested material held by the public authority within the meaning of sections 1 and 3 of FOIA? In particular, is THA part of THC for the purposes of being a public authority under s.1 FOIA, or otherwise does THA hold information on behalf THC, under s.3 FOIA such that the requested information is 'held' for our purposes?

Question 2:

13. Did the ICO properly consider all the relevant minutes and correspondence that had been requested in reaching its decision?

14. We note that various other topics raised are not issues for this Tribunal. These include, but are not limited to:

- a. The Appellant's arguments on whether material deposited in the archives was held on behalf of THC. It seems that the ICO accepts that any materials that were held in archives that formed part of the request would be held on behalf of THA. THC declined to be joined as a party. Therefore this matter is agreed and we do not explore it further.
- b. Whether THA is a public authority on its own account. The Appellant seems to have accepted that it is not.

15. We received a Decision Notice, the Appellant's grounds of appeal, and responses, and the ICO's responses as well as a bundle of documents. We have reviewed all these submissions and those documents that the submissions referred us to, even if not specifically referred to below.

Question 1: Is the requested material held: Part of or on behalf of

16. The ICO maintained that:

- a. With the exception of the THA AGM minutes which were on its website, the information falling within the scope of the Appellant's request was not held by the THC. It claimed this was because the college did not 'hold' THA archives, other than those records already in its own archive.
- b. THA did not hold information on behalf of THC. It did not undertake work on behalf of the public authority. In contrast, THC provided administrative support to THA. The association was a separately constituted and financially independent alumnus association of the College.

17. The Appellant argued:

THA is not truly independent or separate from THC, but rather an 'offshoot' of it:

- i. Unlike other clubs and societies, college staff work closely with it.

- ii. THA is described a function of the development office in the on the JANUS archive catalogue.² It is not THC providing a service to THA in order for THA to carry out its mission. THA has no mission other than to keep people in contact with THC, which could explain why THA is a development function of THC, unlike other clubs and societies, which have actual purposes such as the promotion of music and sport.
- iii. THC provides a secretariat service to THA and so has access to information. The secretariat normally produces minutes and agendas, and it would be reasonable to consider that they keep them afterwards.
- iv. Whilst it is hard to understand the true inter-relationship, the two organisations share the same headed paper, which is unlikely to be the case with the other clubs and societies. It cannot be claimed that THC staff act only in a secretarial capacity. This is not stated in their constitution.
- v. Regarding the role of THC staff in managing THA, the staff speak on behalf of THA, with references often made to *'THA officers and college staff'* in relation to management matters rather than to the *'THA committee'*. THA channels its Special Access Requests for personal data by email through Trinity Hall on a template headed 'Trinity Hall'. This indicates they act as one data controller.
- vi. THA was not financially independent of the College until it received a benefaction from an alumnus.
- vii. THC generates THA's information (including surveys and mailings) and publishes results online. THC has access to such information it is on its system.
- viii. THA committee members are not chosen by the ordinary THA membership but presented to the membership for rubber-stamping. For a long time, it was not possible to directly contact them, and emails to THA's official email address were handled by THC staff who chose whether to pass them on.
- ix. THA's committee members are year representatives of THC, and THA says that THC staff handle its communications with members: *"When members book for events, this is handled on our behalf by the College"*.
- x. THA has no staff, no telephone, no premises and no contact details for committee members. All committee members and general members are simultaneously members of THC.

Our Findings on Question 1

18. We have limited information before us, because THC declined to be joined as a party, and the bundle contains little documentation from them.

19. We know from THC that THA's *'membership is precisely coterminous with the set of alumni of the college, details of whom are maintained by the "Alumni Office of the college.'* THA's rules include that its purpose is to keep its members in touch

² We understand that JANUS is a single point of networked access to catalogues of archives and manuscript collections held throughout Cambridge.

with the college, and to ensure that THC's members' views are heard in matters connected with the welfare of the College. All THC members who matriculate are automatically members of the Association, without payment. It has a committee with an elected president, secretary and finance officer. A representative of the alumni/development office is to attend all committee meetings, save in relation to any reserved business of the committee. Otherwise the committee is to regulate its affairs as it deems fit.

20. In a letter dated 6 February 2014 to the ICO, THC stated that THA is a separately constituted and independently financed and run alumni association. Two members of the alumni office are invited to attend THA committee meetings but they are not members of the committee. However, the letter does not explain who are the other members of the committee and their relationship to the college. Further, the Appellant noted that for some time the association was wholly funded by the college. We brought the issue of funding to the attention of THC and invited them to be joined as a party to this appeal. We ensured that they received the Appellant's submissions, such that if they considered her asserted facts to be incorrect, they had a chance to rectify errors. They declined to be joined, and instead invited us to ask any questions that we may have. We do not consider this to be our role in this appeal, as the THC would have had the opportunity to be legally represented and make its own case as they saw fit. We consider that we must therefore take the Appellant's stated facts as correct.
21. When we look at the combined factors of all matriculated members of THC being automatically members of THA, and the points made by the Appellant summarised above, it seems clear that this alumni association is serving a function of the college's alumni office and is highly interconnected with it. For this reason, it seems to us that THA is very much part of THC, and part of the public authority.
22. On that basis, we consider that any information held by THA, is also held by THC. This would be the case regardless of whether THA itself holds the information or has deposited such that it is located elsewhere, but held by another entity on its behalf.
23. We note that the ICO maintained that the Appellant seeking further clarification as to the location and status of information including correspondence which may be held by THA, were not questions for the Commissioner or, in turn, this Tribunal. We find their conclusion somewhat unhelpful. It would have been far better for the ICO during its investigation or thereafter to have clarified what information is held and exists, in case it or a court were to find that THA were part of THC or were holding information on behalf of the college. It would also have been better for the college and or association to have made these details clear to the ICO and Tribunal, as we clearly indicated when inviting the college to join this appeal.

Our Findings on Question 2: minutes and correspondence

24. In paragraph 19 of the Decision Notice, the ICO stated that THC had explained that minutes to which the request refers from 2003 to 2008 were published within its annual newsletter which were available online. Since the college confirmed

that it did not hold THA correspondence and none had been submitted to archive, the ICO argued that it had dealt fully with the request.

25. The Appellant has stated that the association held meetings other than annual general meetings, and we accept that the ICO has not dealt with this. Additionally, the Appellant has stated that she cannot find the AGM minutes available on the college's website.
26. It is clear to us that the Appellant requested all minutes and correspondence, and she has not contested the ICO's summary that the scope relates to those dated between 2003 and 2008. If, as the Appellant asserts, there should be minutes of meetings other than annual general meetings for that time period, we do not think that the ICO fully and clearly considered these in its decision.
27. It seems to us that THC failed to comply s.10 FOIA as well as with section 1, and this was not covered by the Decision Notice. It is unclear to us whether it complied with s.17 FOIA, as we were unable to find the College's refusal of request of 19 June 2014 within the bundle.

Other Matters

28. We found it of some concern that the College did not perform an internal review, and additionally instead of treating the Appellant's request as a Freedom of Information request informed her that they would not be responding to any further correspondence by her.
29. We would strongly request that the ICO gives more attention to the bundles submitted in the future. The index to the bundle did not provide any proper description of the documents included, such that our task was made more difficult and the panel needed to spend considerable time trying to find correspondence and work out its meaning and significance. We could not find documents we would have expected to be in the bundle, for instance those confirming the agreed scope of request identified in paragraph 6 of the Decision Notice and THC's response to the request of 19 June 2013. Additionally, those responsible for compiling the bundle should please ensure an appellant provides properly indexed documents. Some documents presented did not fully explain who they were to or from, without which, it is difficult to know what was the significance of the document. For instance they might have (1) a proper name but no explanation of who that person was or worked for, or alternatively (2) a rather cryptic email address and nothing more.
30. Given the Tribunal's duty to deal with the case proportionately and avoid delay, within the meaning of rule 2 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ('the Rules'), we did not seek to the documents set out in paragraph 29, or a list of documents that THA hold in relation to the request, (*See paragraph 23*), as (1) we have found in favour of the Appellant in any event such that all documents held should be handed to her within the terms set out above (*See Steps to be taken on page 1*); (2) it is clear from her submissions that the Appellant read paragraph 6 of the Decision Notice and did not dispute the time period (and we note that paragraph 6 was not confusing or difficult to follow); and (3) to do so would have meant reconstituting

the panel to consider the new information after the hearing. However, it was a matter we considered carefully, because it seems to us suboptimal for them not to have been before us at the hearing.

31. We note that after the hearing, having read the material before us, we gave THC an opportunity to be joined as a party and the relevant papers were sent to them. We gave examples of where the Appellant's perspective on the facts differed to THC. They declined to be joined but said that they would be happy to assist the Tribunal by providing a response to the matters we had highlighted. The matters we had highlighted were examples, but it was for the college to decide whether and how it would want to present its case. It is not a lay person without access to legal advice, and it was for them to consider whether they wished to be joined and make a case. We made clear the only way we would receive input was to be joined and gave the college one more opportunity to be joined, to be sure they had understood our decision on this point.
32. During this short period, the Commissioner invited us to consider our powers under rule 33(2)(b) of the Rules, stating that the Tribunal would be very much assisted by hearing from THC, and the Appellant sought to ask further questions.
33. The college then confirmed again that it did not wish to be represented as a party in this appeal. It asked for guidance on the emails received from the Commissioner and Appellant about, stating again that they would be willing to try to respond to specific questions. Our position had not changed, and bearing in mind rule 2 of the Rules, and that the hearing had been held, we proceeded with a decision.
34. We did not consider it appropriate for the college to give submissions outside the framework of being joined as a party to the appeal, and not proportionate within rule 2 of the Rules to proceed on this basis if the college had declined to be joined. It was made clear to the college that for them to give input in this case, we would require them to be joined. Being a party to an appeal carries with it the requirements to comply with the Rules including assisting the Tribunal within the meaning of Rule 2(4). The Commissioner's invitation came at a late stage, after the hearing. In its duty to assist the Tribunal, if it considers that the Tribunal would be assisted by material from the college then the material should be before the Tribunal in time for the hearing. For instance, in other cases, it has recommended joining a party before the hearing.
35. Our decision is unanimous.

Date of decision: 8 October 2014