



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2011/0155

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice dated 22 May 2014
FS50540653**

Appellant: Bedford Free School

First Respondent: Information Commissioner

Second Respondent: Marg Harris

Considered on the papers

Before
John Angel
(Judge)
and
Henry Fitzhugh and Marion Saunders

Subject: sections 1(1) and 10(1) FOIA

Decision

The Tribunal upholds the Decision Notice and dismisses the appeal.

Reasons for Decision

1. On 2 March 2014 Ms Harris requested information from Bedford Free School in relation to the process for the appointment of co-opted governors for the School. The details of the request are set out on page 2 of the Decision Notice.
2. The School acknowledged receipt of the request on 17 March but failed to respond substantively to it.

3. On 11 May 2014 Ms Harris complained to the Commissioner who issued a Decision Notice on 22 May 2014 finding that the School were in breach of sections 1(1) and 10(1) of FOIA by not providing a substantive response within 20 days of receipt of the request and requiring the School to provide that response within 35 calendar days of the date of the Decision Notice.
4. The School appealed to the FTT on 23 June 2014 complaining that it had been in constant correspondence with Ms Harris and had not been contacted by the Commissioner prior to issuing the Decision Notice. These grounds were expanded upon by letter to the Tribunal dated 10 July 2014 to the effect that Ms Harris had already made several other FOI requests and these had been responded to plus there had been other ongoing correspondence and face to face meetings. Ms Harris did not seem to be satisfied despite the fact that the School considered it had provided her with the information available. The School did not provide any documentary evidence to show that the request had in effect been complied with prior to the complaint to the Commissioner.
5. On 24 June 2014 the School emailed to Ms Harris a detailed substantive response to the request.
6. Ms Harris applied to be joined as a party and this was granted by the Registrar on 10 July 2014. All parties agreed that the appeal could be dealt with on the papers and that no oral hearing was required.
7. The School argue that the Commissioner erred in law by not contacting the School following the complaint giving it a chance to respond before the issuing of the Decision Notice. The Commissioner says that it is up to him how he investigates complaints and that such matters are not within the FTT's jurisdiction. The Commissioner applied for the appeal to be struck out in its response to the appeal but this was not acted upon by the Chamber President who issued a case management note on 26 August 2014 suggesting that the School had an arguable case that it was entitled to complain that an unfair procedure had been adopted and that the necessary standards of fairness required by law of the ICO when conducting an investigations had not been observed. The School has provided no actual evidence that they had complied with the request before the Decision Notice was issued.
8. Following the email of 24 June Ms Harris complained to the Commissioner on 3 September 2014 that the School had not properly complied with her request and the Commissioner confirmed on 4 September that he had opened a new complaint case.
9. From the evidence before us we find there is no legal basis upon which the School can challenge the Decision Notice under our FOIA powers. We agree with the Commissioner that the way he investigates complaints is not a matter upon which we have jurisdiction. It is clear that the School had not complied with section 10(1). By issuing the Decision Notice it had the necessary affect.
10. Even if we are wrong and we do have power to review how the Commissioner investigates complaints, on the evidence in this case, we do not consider there has

been an error of law. Following the Decision Notice the School complied with the steps ordered to be taken and at the same time lodged an appeal to the FTT. There is no complaint that the Decision Notice is wrong because the School had complied with sections 1(1) and 10(1). Even if the Schools grounds of appeal could be interpreted as such, which we do not consider they do, no actual evidence was provided to us that they had actually made a substantive response until they did so on 24 June 2014. The complaint seems to us to relate the fact that the School were not given the chance to provide a substantive response before the Decision Notice was issued. In our view the School did not have to be given such a chance. The School was in breach of its statutory obligations and the Commissioner was entitled to deal with the complaint in the way he did.

11. We therefore uphold the Decision Notice and dismiss the appeal.

John Angel
Tribunal Judge
21st November 2014

Promulgated 24th November 2014