



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

Appeal No: EA/2014/0192

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50530641

Dated:

Appellant: Morgan Gillis

Respondent: The Information Commissioner

Heard on the papers: Fox Court, London

Date of Hearing: 10 November 2014

Before

Chris Hughes

Judge

and

Mike Jones and Darryl Stephenson

Tribunal Members

Date of Decision: 29 December 2014

REASONS FOR DECISION

Introduction

1. This case arises out of a request Mr Gillis made for the school travel plans of the London Borough of Richmond on Thames (LBRUT) which he wished to use in connection with a planning issue. LBRUT originally considered the request manifestly unreasonable on the grounds of the time necessary to check and redact personal information. Following clarification and internal consideration LBRUT provided the information subject to redactions on 27 September 2013. Mr Gillis complained to the Respondent in these proceedings, the ICO on 18 December. The ICO investigated whether LBRUT was correct to handle the request under the Environmental Information Regulations (EIR) and the delay in providing the information. In his decision notice FER0524908 the ICO found the request properly considered under EIR and that LBRUT was in breach of regulation 5(2) by reason of the delay in providing the information; and in breach of regulation 11 in failing to carry out an internal review. The ICO issued his decision notice in this case on 21 May 2014.
2. On 27 September 2013, having received travel plans from LBRUT he wrote to an officer at LBRUT asking for information to be provided to him within five days. The request was in four parts about how the request had been handled;-
 - why redactions were made,
 - what needed to be done with information in order to meet his information request,
 - why there had been delay, and
 - the identity of a senior transport planner involved in the process.
3. On 25 November 2013 Mr Gillis made a five part request repeating the previous questions and adding a fifth question asking for emails between named officers for the period 5 July 2013 to 25 November 2013 concerning the handling of his previous request for information.

4. Mr Gillis included a complaint about this request in his complaint of 18 December 2013. As Mr Gillis had not at that stage asked LBRUT to conduct an internal review of this the ICO referred the issue back to LBRUT who provided the results of it to Mr Gillis on 2 April 2014.
5. When the ICO came to consider the second request he concluded that the first three parts of the request had been addressed in his previous decision, Mr Gillis no longer sought the identity of the senior traffic planner and therefore in his investigation he only considered the fifth part of the request – the request for email traffic.
6. LBRUT were indicating that they considered the request manifestly unreasonable, however following the intervention of the ICO and in order to informally resolve the issue, LBRUT supplied the email traffic to Mr Gillis, subject to the redaction of personal information. By a letter dated 7 July 2014 Mr Gillis refused to accept an informal resolution in a detailed letter (bundle pages 174-182) asking the ICO to make a formal determination with respect to the “processing and timing of LBRUT’s fulfilment of parts 1,2,3 and 5 of the information request”.
7. In the decision notice which is the subject of this appeal the ICO stated (DN paragraph 11):-

“The Commissioner asked for the complainant’s views following the completion of the internal review. Having reviewed his comments about the processing and timing in relation to parts 1-3, the Commissioner is satisfied that the issues have already been considered as part of his earlier investigation which concluded in decision notice FER0524908. The Commissioner has therefore not given any further consideration to parts 1-3 of the request during this investigation. The subject of the timing of this request is covered in the “other matters” section of this notice.
8. The decision notice then considered whether the request for emails was EIR or FOIA and concluded that it was FOIA, he noted that since the emails had been provided part five of the request had been complied with.
9. Mr Gillis lodged his appeal on 22 July 2014. He argued that he had made a four part request for information on 27 September 2013 and the same request again on 25 November with the additional request (for the internal emails about the handling of the request). He had declined informal resolution because he wished the delays in handling his request should be brought into the public arena. He appealed against the

decision notice arguing that as a matter of law the case officer should have used 27 September as the date of the request and not 25 November and accordingly:-

“the decision notice should not state that LBRUT responded to the information request within the 20 day working limit because it was not until after 61 days on 20 December 2013 that LBRUT responded to points 1-4.”

10. In his reply the ICO pointed out that the scope of his decision notice clearly was restricted to the fifth request – the request first made on 25 November 2013. He therefore did not make findings with respect to parts 1-3 of the request.
11. The ICO further noted that in his dealings with the ICO Mr Gillis had repeatedly stated that the request which was the subject of the ICO’s investigation was *“initiated on 25 November”* ((bundle page 108). The ICO’s officer had questioned whether it would not be more correct to consider the request as being made on 27 September (bundle pages 113-114); however Mr Gillis had replied (bundle page 115) *“I must insist that the latter date of 25 November ... is used within the ICOs investigation.”* Mr Gillis has emphasised that he had legal advice and had *“re-examined all of the underlying matters with legal advice.”* The ICO therefore submitted that he could legitimately accept Mr Gillis distinction between his correspondence of 27 September and his exercise of a statutory right on 25 November and taking the second date as the date of the request.

Consideration

12. The Tribunal is satisfied that the position is clear. Before the second decision notice was issued all the relevant material had been disclosed. As a matter of fact the scope of the ICO’s second investigation did not include the first three parts of the request first formulated on 27 September, in his proper exercise of his functions he concluded that those issues had been considered in his previous report and no further point was served in revisiting them. As he made no decision with respect to the first three parts of the request no appeal lies against the decision notice in respect of those questions. The ICO was therefore correct in concluding that the material which was the subject of his investigation was the material requested on 25 November which had been disclosed within the statutory period of 20 days. In any event having asked the ICO to conduct the investigation on one basis, Mr Gillis cannot in law challenge the

decision of the ICO to conduct the investigation on that basis. He is estopped from doing so.

13. This appeal is an abuse of the process of the Tribunal and entirely without merit. The ICO's decision is correct in law and the appeal fails.

14. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 29 December 2014