



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

**Appeal No: EA/2014/0266**

**BETWEEN**

**ROBERT STURMER**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**Tribunal**

**Brian Kennedy QC  
Jean Nelson  
Nigel Watson**

**Hearing: 9 March 2015.**

**Location: Chesterfield Justice Centre, Chesterfield, Derbyshire.**

**Decision: Appeal Refused.**

**Subject Matter:** The Environmental Information Regulations 2004 (“the EIR”) and reliance on regulation 12(4)(a) by North East Derbyshire District Council (“the Public Authority”) or in the alternative the Freedom of Information Act 2000 (“FOIA”) and reliance by the Public Authority that no further information is held for purposes of section 1 of the FOIA.

Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold any relevant information falling within the scope of the request.

## **Introduction:**

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“the DN”) dated 23 July 2014 (reference FS50544381) which is a matter of public record.
2. A paper hearing took place on 9 March 2015 when the Tribunal deliberated on the issues in this appeal.

## **Background:**

3. The Appellant disputes that the information which he has been provided with details how the Public Authority has reached a figure of £200,000 for the sale of a piece of land at Mickley. The Appellant considers that in order for the Council to be able to justify that statement, further information must be held which can demonstrate it to be correct.
4. The Appellant made a request for more information by letter on 15 May 2014. In response the Public Authority, having dealt with numerous similar requests previously, stated that it had provided all the information it holds on the subject of the land sale and held no further information.
5. The Commissioner investigated a complaint from the Appellant and concluded that the information requested was environmental information within the definition of information provided in regulation 2(c) of the EIR and decided that, on the balance of probabilities, the Public Authority has provided the Appellant with all of the information it holds falling within the scope of the request. See paragraphs 44 and 45 of the DN at page 7 of the Open Bundle (“OB”) provided to this Tribunal.
6. The Tribunal agree with the Commissioners summary of the Appellants grounds of appeal in that the Appellant argues that the Commissioner erred in concluding, on the balance of probabilities, that the Public Authority did not hold any further information with the scope of the request than that previously disclosed on the following grounds:
  - (i) The Public Authority “*should*” be able to provide documented proof that the land was sold for £200,000 and that something as important as a sale of public assets should be fully documented.
  - (ii) Information was disclosed following an earlier appeal to the Tribunal (EA/2012/0152) suggesting that previous searches have been inadequate which, the Appellant suggests casts doubt on the nature of the searches carried out and on whether the Public Authority has disclosed all information it holds within the scope of the request.
7. The Appellant argues that there should be recorded information held in relation to a sale of a public asset and which should document the sale price of £200,000 and that the information provided to him to date only show a ale price of £80,000.

### **Issue for the Tribunal in this Appeal:**

8. This Tribunal accept that the question to be considered by us in this appeal is whether the Commissioner was correct to conclude that the Public Authority, does not, on the balance of probabilities, hold any further information in order to comply with its duty under regulation 5(1) EIR. The question for us is not whether the Public Authority *should* hold further information within the scope of the request.
9. The Appellant argues that the Public Authority have not carried out reasonable searches and cites in support his earlier appeal EA/2012/0052 (which also concerned a request for information relating to the sale price of the sale of the land in question) during which, in response to additional questions posed by that Tribunal, the Public Authority disclosed two documents which had, by mistake, not previously been provided to the Appellant or the Commissioner. That Tribunal found that these two documents fell within the scope of the request and should have been disclosed. This Tribunal agree with the Commissioner that that past mistake does not mean there is further information. We note and agree further with the Commissioner that the claim by the Public Authority that there is no further information within the scope of the request is supported by the earlier Tribunals finding that they were “*satisfied on the balance of probabilities that all relevant information retained is in the paper file and that now this has been adequately searched*” (para 18). See paragraph 23 of the Commissioners Response at page 23 of the OB herein.
10. This Tribunal have looked carefully at the reasoning of the Commissioner in his DN and we adopt and agree with it. We particularly accept as reasonable and correct the Commissioners conclusions at paragraphs 44 and 45 of the DN. We are not persuaded by the Appellant that there is any evidence to suggest that the Commissioner was wrong in his conclusion or that the Public Authority have any further information on the subject matter of the request.

### **REASONS**

11. We are further persuaded by the evidence before us in the OB which demonstrates how the Public Authority have carried out various checks to scrutinise the subject matter of the request. All the documents explaining the process and the investigation have been disclosed, have been sent to the original requestor and are in the OB pages 44 onward. In particular the report of the Director or Corporate Finance (Document J at pages 66 - 81 OB) deals in detail with the issues being raised by the Appellant. As the contents of this report were discussed in a public meeting, at which the Appellant was present, this would appear to deal with the issues he is raising. In particular we note on page 91, the Appellant was invited to ask a question on the report and he did receive a response, although not the one he had hoped for. Further the minutes of the scrutiny committee at pages 82 to 110 are relevant. All enquiries that the Public Authority is entitled to make have been carried out. Also the Police have investigated. It is clear to us from the evidence that there is probably no other documentation and certainly not in the form of spreadsheets or receipts which is what the Appellant appears to want. He seems to expect accounting similar to petty cash and this, we are of

the view, is not possible since most of the figures are notional rather than hard cash.

- 12.** While we accept that the Appellant may be correct in arguing that good practice would dictate that more should have been documented and therefore available, we also accept that if it does not exist then that is an end of the matter for this tribunal. Even if there may be further information that could be discovered by another exhaustive search by the Public Authority, which we doubt and which the evidence before us does not suggest, its value would not justify the time and effort involved.
- 13.** Accordingly we agree with the DN for the reasons given by him and for the reasons given above.

Brian Kennedy QC

8 April 2015.