



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)

Date Promulgated: 23 December 2015

EA/2015/0167

B E T W E E N:-

BRIAN JOHNSON

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

Tribunal

Brian Kennedy QC
Roger Creedon
David Wilkinson

Hearing: 1st December 2015,
Location: Field House, London.
Decision: Appeal Refused.

Appearances:

Appellant as Litigant in person.

Subject Matter: Whether or not the Public Authority holds the information requested under Section 1(1)(a) of the Freedom of Information Act 2000.

Result: Appeal Refused.

Introduction:

1] This is an appeal against a Decision Notice (“the DN”) issued by the Information Commissioner (“the Commissioner”) dated 9 July 2015, (Reference FS50544316) involving London Borough of Merton Council (“the Council”). The DN related to a request for information made to the Council on 2 January 2014.

Background:

2] The background to the request is that on 2 January 2014, the Appellant made an information request to the Council for “ - - - *documentary evidence of the name of the contractor or contractors hired by Merton Council who erected and dismantled the red information sign and the date this was undertaken.*”. (See DN [2]). Further correspondence followed, as detailed at paragraphs 8 – 19 of the DN. In brief, the Council provided information relating to the removal of the sign but advised that they did not hold records relating to its installation (see page 53 OB).

3] On 10 November 2014, the Appellant contacted the Commissioner to complain about the way his request for information had been handled.

4] During his investigation, the Commissioner explained to the Appellant that he could only make a decision in relation to the Council’s response to his information request; it was, the Commissioner explained, beyond his jurisdiction to examine whether or not the Council’s policies or procedures on records management were appropriate or conformed with Local Government Association guidelines (DN [21]). The Commissioner explained that the scope of his investigation was to establish whether or not the Council held any further information falling within the scope of the Appellant’s request (DN [22]).

Grounds of Appeal:

5] Following that investigation, the Commissioner found that the Council did not hold any further information (DN paragraph 3). This finding is under appeal herein. The grounds of appeal are essentially that the Commissioner;

“hasn’t fully addressed the issue of my FPOIA request (six) Merton Council that they supply documentary evidence that they have and are currently adhering to the information and records management Society’s (IRMS) guidelines and standards ... for keeping a list of destroyed documents held in their archives.”

“ I request this documentary evidence - beyond MC’s hearsay that proof (sic) that they are implementing a proper functioning administrative process for keeping their archive records.”

“ The IC has refrained from fully addressing this issue in his decision ...”

6] The Appellant is of the view that: “... *if the IC can consider what information is held he can through reasonable deduction consider what information isn’t held and why*”. (the Commissioner’s emphasis).

7] The Appellant says that he believes the Commissioner has the power to insist that the Council provide him with the documentary evidence he seeks regarding its adherence to record management systems.

Response:

8] The Commissioner maintains that the appeal is misguided and that the Appellant is wrong in his understanding of the Commissioner’s functions under section 50 FOIA. The Commissioner argues that FOIA is about the right of access to recorded information held by a public authority and not about what information *should* be held, or about *how* a public authority holds that information and whether or not it implements a given record management system.

9] The Commissioner maintains that he has explained to the Appellant the limitations to his investigation whereby it is his role to determine whether or not a public authority holds any further information falling within the scope of a specified information request. The Commissioner maintains he has done that here and he has concluded that no further information, beyond that already disclosed to the Appellant, was held by the Council.

10] The Commissioner argues that it is beyond his jurisdiction to look at a public authority’s records management systems, much less to police the operation of any such systems. It is not the Commissioners’ function to ensure the Council’s compliance with a given records management standards or to demand that it provide documentary evidence regarding the application of those procedures.

The Issues:

11] This Tribunal accept the general thrust of the Commissioners’ argument in his response as summarised above. We must satisfy ourselves that the Commissioner has carried out a proper investigation and that on the balance of probabilities there is not further information, falling within the scope of the Appellant’s request, held by the Council that needs to be disclosed under FOIA.

Reasons:

12] The Commissioner has set out clearly in his DN how he investigated the Appellant’s complaint (see paragraphs 25 – 45 of the DN) and was satisfied with the reasons and explanation as to why the Council held no further information within the scope of the request. We accept this as being the correct position and that on the balance of probabilities there is not further relevant information held by the Council. The Appellant has failed to provide any further evidence or otherwise persuade this Tribunal that the

Commissioner was wrong in this fundamental issue. In fact, in a letter to the Commissioner the Appellant stated that; "... it can be understood that Merton Council may not now hold the archive records I have requested.." (see page 11 OB).

13] We have heard in some detail and with sympathy and understanding of the Appellant's genuine concerns, and have no reason to disregard those concerns but as we explained to him at the oral hearing herein, the Information Rights Tribunal is not the forum to seek specific redress for such complaints. The issue for us to decide is whether or not he has persuaded us that the Commissioner erred in coming to the conclusion he reached in his DN set out at pages 1 – 8 of the Open Bundle ("OB") before us.

14] Accordingly, we dismiss the Appeal and uphold the Commissioner's DN.

Brian Kennedy QC
22 December 2015.