



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

Appeal No: EA/2016/0043

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50586468
Dated: 25 January 2016**

Appellant: Andy Dossett

Respondent: The Information Commissioner

Heard at: Pontypridd County Court

Date of Hearing: 27 June 2016

Before

Chris Hughes

Judge

and

Gareth Jones and Dave Sivers

Tribunal Members

Date of Decision: 4 July 2016

Date Decision Promulgated: 14 July 2016

Attendances:

For the Appellant: in person

For the Respondent: did not appear

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 25 January 2016 and dismisses the appeal.

REASONS FOR DECISION

1. In the hearing Mr Dossett explained that at the end of 2014 as part of its austerity programme Rhondda Cynon Taff County Borough Council (“the Council”) was proposing to make substantial changes to early years/nursery provision. This would potentially affect his daughter. Earlier in 2014 there had been a judicial review of proposals to change these services which the Council had lost. The information provided in this new consultation was scant on detail and two very similar options appeared to have very different costs. He wrote to the Council on 8 January 2015 and asked for:-

“1) Details of how the potential savings have been calculated in each of the options presented in the current consultation paper on nursery provision, including full calculations and details of any assumptions made.

2) Details of the costs incurred so far of the consultation process regarding cuts to services in RCT. Please include figures for both the initial and current consultation and provide a full breakdown of how the costs have been calculated.”

2. The Council responded providing information on 11 March. Mr Dossett was dissatisfied with the level of detail in the response and responded immediately stating:-

“In terms of the costs of the various options you have not provided the details requested or assumptions used.

In terms of the costs of consultations you have inexplicably provided only details of external costs rather than all costs as requested.”

3. The Council in a response of 18 March confirmed that it had provided details of all the external costs it had incurred.
4. On 19 March he provided further clarification explaining that he wanted:-

“Full calculations as to how each of the figures stated in the discussion document have been arrived at and details of assumptions used i.e. the workings behind your figures i.e the estimated number of pupils and the estimated saving in each cost centre

and how this has been arrived at. I also note that your very brief summary ...does not include the costs of any staff redundancies or any provision for the reduced council tax revenue as a number of households in the borough have reduced household incomes and qualify for benefits.

- In terms of costs incurred by the Council, this is a very clear request which you appear to be ignoring. For the avoidance of doubt it should include but not be limited to the following:

- Internal staff costs devoted to the review

- External staff costs devoted to the review

- Legal costs including court costs of both the original failed consultation, implementation and judicial review.

- Legal costs pertaining the current consultation in terms of both internal staff costs and legal fees

- Print costs for all the documentation produced in respect of this matter

All other costs.”

5. The Council provided information in response to the requests including external legal costs in relation to the service changes up to a February 2015 cabinet meeting, costs of the judicial review proceedings relating to the 2014 decision making and that there were no external costs with respect to the review apart from for legal advice. It explained on 24 April that the 2015 judicial review had still not been decided (bundle page 42 , 24 April 2015) and that it did not hold information in respect of (decision notice paragraph 9):-

“Internal staff costs relating to the service change process

External agency/consultancy/staff costs

The current judicial review

Print costs”

6. The Council explained that to meet the whole of his request would take the Council over the 18 hour cost threshold. It maintained its reliance on s12 FOIA on review when on 14 July it explained in some detail the underlying method for carrying out the calculations underlying the options and the time it would take (bundle page 35).

7. Mr Dossett complained to the Information Commissioner. During the course of the investigation the Council explained to him the process for generating the options which were presented to Councillors for consideration (bundle pages 56 and 57). The Council relied on s12; setting out the process and scale of work needed to generate each option using the school funding formula and applying it to 111 schools and the 25243 pupils the Council was responsible for:-

“The process takes approximately 2 hours per option without the final checking/validation which would be approximately another half an hour so two and a half hours in total.

There were 10 options in total....therefore to do this would take approximately 25 hours.

These records were not saved when the options were calculated as the Council’s cabinet were concerned with the total saving per option rather than savings at an individual school level therefore these records were not needed. Exporting and saving both the pupil records and the school budget formula database for each option was unnecessary work.”

8. In response to this the Information Commissioner queried the position with the Council (bundle page 69):-

“This suggests that although you held the information at the time of the original exercise, that you did not hold it at the time of Mr Dossett’s request. If my understanding is correct, it is possible that you did not therefore need to rely on section 12 of the FOIA to refuse the request, as you no longer held the information and therefore complied with your obligations under section 1(1) of the FOIA”

9. The Council confirmed that understanding. In the light of this the Information Commissioner concluded on the balance of probabilities that the information Mr Dossett sought was not held by the Council when he made his request.

10. In his notice of appeal Mr Dossett argued that the explanation was not credible that the Council would not propose significant cuts to the education budget “without maintaining a copy of the calculations that it had made to reach the potential savings on which it was consulting.” He argued that “a number of the figures requested related to expenses already incurred by the council which audit and HMRC regulations require this information to be maintained.”

11. In his reply the Information Commissioner argued that the Council had given a coherent account of why only the output of the calculations had been retained. With respect to the second argument he had no evidence as to the lawfulness or otherwise of not keeping such records and no reason to doubt what he had been told by the Council.
12. In his oral argument Mr Dossett felt that the Information Commissioner had only taken a cursory view of the issue, the Council had initially given him the wrong explanation and information had been “slowly revealed outwith the timescales”.
13. The tribunal considered that it would have been helpful if the explanations given by the Council In July had been given earlier and further if the correct analysis of the position carried out by the Information Commissioner, which concluded that the information was not held, had been given by the Council at that stage.
14. It was clear from the material before the tribunal that considerable computing power underlay the relatively simple information contained in the options. This computing power relied on information about many thousands of pupils and the calculations would need to be carried out again with the latest information when the Council came to choose between options and allocate budgets to 111 schools. There was no need to retain the underlying detailed calculations used to generate the options.
15. Similarly Mr Dossett did not produce any evidence as to specific numbers he had not been given or why records needed to be retained in a specific form for audit purposes. The Council confirmed to him the information it held on 24 April and the tribunal has no grounds for concluding that it has suppressed information or misled the Information Commissioner in its responses.
16. The tribunal therefore is satisfied that the Information Commissioner’s decision is correct based on a proper analysis of the factual position. The appeal is dismissed.
17. Our decision is unanimous.

Judge Hughes

Date: 4 July 2016