



Neutral Citation Number:

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

Appeal No: EA/2016/0066

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FER0598820
Dated: 23 February 2016

Appellant: Paul Alphonso

Respondent: The Information Commissioner

Heard at: St Katherine House Northampton

Date of Hearing: 8 August 2016

Date of Promulgation 15th August 2016

Before

Chris Hughes

Judge

and

Anne Chafer and John Randall

Tribunal Members

Date of Decision: 13 August 2016

Attendances:

For the Appellant: in person

For the Respondent: did not attend

Subject matter:

Environmental Information Regulations 2004

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 23 February 2016 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings, Mr Alphonso, was convicted of a speeding offence alleged to have occurred on 2 February 2015. He does not consider that he should have been convicted and contacted the relevant highways authority (Buckinghamshire County Council, the "Council") about a change of speed limit and when the relevant signs were erected.
2. On 19 August he emailed the Council a request for specific information:
"Can you please tell me (1) the date when the red road sign that reads "new 30mph speed limit in force" was put up on the first lamppost after the Page Hill Avenue turning (please see attached pic) going out of Buckingham on the A422 Stratford Road. Also (2) the date the 40mph road sign was taken off that lamppost, and also (3) the contractor you used to do the work please."
3. The Council replied sending the text of an e-mail they had previously sent him from a Mr Wincup in the relevant council department on 1 May 2015. This email gave details of a Traffic Regulation Order (TRO) affecting a number of roads in the County including this one. The order came into effect on 18 September 2012. A copy of the TRO was included. The email stated:-
"Since our last telephone conversation I have obtained the Traffic Regulation order (TRO) which includes the speed limit change on A422 Stratford Road, Buckingham. I have attached this TRO for your information. This came into operation on 18th September 2012 and this order consolidates all speed limits in Buckingham and other villages in the surrounding area. Included in the TRO are two maps which show all roads within Buckingham subject to a 30mph speed limit. As you will see the 30mph speed limit extension from Page Hill Avenue junction to just west of the ring road is included.
This means that the old illuminated 30/40mph speed limit terminal signs at Page Hill Avenue junction would have been taken down on 18th September 2012, the date at which this TRO came into operation. The other remaining 40mph repeated signs erected on lighting columns and various sign posts along the length of road between

Page Hill Avenue and the ring road roundabout would have been removed. This change of speed limit clearly pre-dates your recent speeding offence in February 2015. The “New 30mph speed limit in force” signs were also erected at each end of the extended length of 30mph speed limit on 18th September 2012. In addition to the above I have also attached a site photo I took on 29th August 2014, I took this photo as part of a site survey for work I intend to do clearing out a roadside ditch. As you will see, in the background is Page Hill Avenue junction and to the right of the van you can see the lighting column with the red “New 30mph speed limit in force” sign, there are also no 30/40mph speed limit terminal signs. Again this clearly shows that this signage arrangement pre-dates your speeding offence.

If you have any doubt as to when the attached photo was taken, please right click on the image when opened up on your screen and select “Properties”, you will be able to see the date of when the image was taken.

I hope the above clearly demonstrates that there have been no 40mph speed limit signs in place on Stratford Road since before 18th September 2012.”

4. Mr Alphonso disputed this information by an e-mail dated 25 August:- *“I have asked for 3 pieces of information, not one of them you have answered...”* He repeated the questions.
5. On 24 September the council responded:- *“I am sorry but we have answered your questions in our various responses. It would appear, however, that you disagree with our responses.”* The response confirmed the answers to the three questions as 18th September 2012, 18th September 2012 and that the works were carried out by a sub-contractor for the Council’s contractor Ringway Jacobs.
6. Mr Alphonso complained to the respondent in these proceedings, the Information Commissioner (“ICO”).

The Decision Notice

7. In his decision the ICO noted that the Environmental Information Regulations only provides a right to recorded information and when a public body receives a request for information it must consider what information is held which would fall within the scope of the request. A dispute as to the accuracy of the information is outside the terms of EIR. The ICO considered his role as whether there is further information held that would fall within the scope of the request. The Council provided a copy of

the TRO and explained that when a new speed limit comes into effect the associated speed limit signs are changed on that day. The Council had confirmed that it had consulted the contractor who had agreed that those dates were accurate and the contractor had confirmed that it held no further information relevant to the request. The Council provided the photographic evidence referred to in paragraph 3. The Commissioner noted that there was no definitive recorded information stating the date of change and the Council's view was based on the TRO. There was no evidence to suggest that further recorded information was held and concluded:-

“The question of whether the date given in the TRO is different to the date on which the two signs were changed in reality falls outside the Commissioner's jurisdiction, which is limited to considering the extent of the information held only. On this basis the Commissioner must conclude that no further information is likely to be held”

Mr Alphonso's appeal and the ICO's response

8. In his notice of appeal Mr Alphonso advanced three substantive points:-
 - a) There would have been paper trails of purchase orders and payments between the Council and its contractor for when the work was carried out,
 - b) He stated that: “The date of the photo has more than likely been altered in an attempt to get me to drop my case. I drove past the same lamp post twice on 2nd February 2012 and the sign in the picture was not on that lamp post. The sign was put on the lamp post on the 3rd February 2012”
 - c) He reinforced his argument by noting that the relevant Department of Transport Traffic Signs Manual states that “the sign must be removed not later than six months after the day on which the new speed limit comes into force”. He argued “so therefore the sign could not have been put up in 2012 and also I am guessing the sign was taken down in August 2015 also proving I am correct”.
9. In his response (paragraph 18) the ICO noted the contractor had previously emailed Mr Alphonso saying that the “new 30 mph speed limit in force” signs “*have actually been in place far longer than the recommended period as stated in government legislation/guidance*”. The Council had confirmed to him (bundle page 58, email of 10 May 2016):-

“there would be no purchase order to change just one sign, this was part of a much larger schedule of works, which in turn was/is part of a much wider contract.

We have attached the signing schedule and the 30mph section commences at number 58, which can also be seen on the attached pdf plan. While this particular schedule is not dated (in terms of when the works were to be done), right clicking and viewing the properties shows that this document was created in July 2012.

As I understand it, following the date of the Traffic Regulation order/the works having been completed, a Transport for Buckinghamshire employee would have driven to these locations to ensure that the signing was correct – no recorded information is held on this point (although it is likely that if there had been any errors this, in fact, would have been recorded).

10. The email attached the Council report on the changes and the details of the public consultation. In the light of Mr Alphonso’s claim that the date of the photo contained in the “properties” of the photo had been changed the council had contacted Thames Valley Police for details of enforcement action at that place. The police had confirmed the site had been visited on 51 occasions between 15 August 2014 and 4 May 2016 *“and there have been no signage defects during this period”* (copy email correspondence with the police bundle pages 66-70). In their email to the ICO the Council noted (bundle page 49) *“The site was first enforced in August 2014 and the significant point is that there are no signing defects. If there was a 40mph sign still displayed the Police would not enforce at the location.”*
11. The ICO accepted that the Council did not hold a specific order or make a specific payment relating to the sign in question and remained satisfied that the Council had disclosed all information it held within the scope of the request.

Oral proceedings

12. In his submissions Mr Alphonso explained that following an adjournment of proceedings in the Magistrate’s Court his case had been heard in his absence and he had been fined and had three points placed on his driving licence for driving at 36 mph in a 30 mph zone on 2 February 2015. He was contesting the conviction and was seeking to overturn it on the basis that the zone had not been properly implemented, the signage was wrong, the signs indicating the new lower speed had not be put in place until 3 February 2015. Bailiffs had come to take his car, the debt

arising from the court proceedings had risen to about £900. His car had been clamped on his drive. He could not afford legal representation. He had been given a further 14 days to show that the signs had been wrong and was relying on the tribunal to do this.

13. He reiterated the arguments from his notice of appeal. No-one would do work without a purchase order to ensure that they were paid, therefore there must be a purchase order for the change to the signs.
14. He showed the tribunal a version of the photograph of the road junction and sign in which he had changed the date of the photograph to a date in 2016; on the basis of this he submitted that the photograph was not taken in 2014 as the Council had stated, but later and the Council had similarly edited the photograph date.
15. He had found on the internet a news story in the local press from 2012 of the police stating that they would start enforcing the new limit two weeks after the September 2012 of the TRO coming into effect. On that basis he argued that, since the police email to the ICO showed enforcement action starting in August 2014, the police were inconsistent and therefore the statement that there were no irregularities in the signage could not be trusted.
16. He had found on the internet minutes of a series of Buckingham Town Council meetings at which road signage irregularities (or the lack of them) were reported. In early 2015 there were no irregularities reported, irregularities were reported to the committee on 14 September 2015. Since the Department of Transport required signs announcing a change to be taken down after six months; this meant that the sign in question had only been erected in February 2015 on the day after he had been stopped for speeding.
17. He submitted that the Council's position was that the signs showing the speed limit was 40mph "would have been taken down" not "were taken down". They had no paperwork to show it so "how do they know when the signs went up?" He asserted "basically people have committed a fraud by altering a photograph."

Consideration

18. Under Regulation 5(1) of the EIR any person making a request for recorded information is entitled to have that information communicated to them. In this case two specific pieces of information are the subject of dispute (the first two parts of the

information request) the dates when one sign was put up and the date when another sign was taken down. The Council has, by consulting its written records, concluded that that would have been the date the TRO came into effect and notified Mr Alphonso accordingly. In support of this explanation it has supplied the TRO and the list of signing to be carried out. It has consulted the contractor responsible for this work. Both the Council and the contractor have confirmed that no further information is held. The ICO concluded that there is no definite recorded information stating the speed limit was changed on that date but that a proper implementation of the new arrangements meant that the change would happen on the implementation date. He further found that there is no evidence to suggest that there is recorded information; i.e. a document that suggests a different date as Mr Alphonso wished to establish, is held.

19. Mr Alphonso failed to directly address the issue of whether further information was held; rather he was concerned to establish that what he had been told was a falsehood. The difficulty is that that question is tangential to the issue of whether or not the Council holds further information.
20. In trying to convince Mr Alphonso of the accuracy of what it has told him the Council has taken further steps both with him and then with the ICO. After the appeal was lodged it provided further information to the ICO including approaching the Police to see what their records revealed. It has gone beyond its strict duty and has behaved in an exemplary manner.
21. If the date on which the signs were changed was the date of implementation of the TRO then the appeal fails. The information which was the subject of the requests was simply dates and nothing more; the dates were provided by the Council. Therefore in order to succeed in this appeal the main hurdle Mr Alphonso has to cross is to demonstrate on the balance of probabilities, that the signs were not changed in 12 September 2012.
22. In support of this contention Mr Alphonso states that when he drove past on 2 February 2015 (the journey giving rise to the conviction) he did not see any such new sign but did the following day. He gave an account of how the billing for work such as this would occur which meant that there would be a paper trail specific linking the removal and replacement of these two signs to a date and payment. He claimed that

the photograph showing a sign in 2014 had been falsified. He claimed that a police statement to the press in September 2012 as to their future plans for enforcement invalidated the retrospective summary of enforcement activity (and crucially confirmation of the correctness of signs on the date of the alleged offence) given nearly four years later. He treated comments which he stated he had read recorded in the minutes of Buckingham Town Council that there were no reported signage irregularities in early 2015 as proof that there were no such irregularities and therefore any sign showing a change of speed limit at the relevant place had only just been erected. After the hearing Mr Alphonso supplied copies of those minutes. They added nothing to the account which he had given at the hearing.

23. The tribunal found all of these claims unsatisfactory. In particular it is unconvincing that the Council, having let a large contract for works relating to highway signage, would then raise individual works orders for each individual sign. The tribunal could ascribe no weight to Mr Alphonso's argument that because the police announced to the press in September 2012 that they intended to enforce a range of new speed limits after allowing a fortnight for drivers to be accustomed to them, but in an email nearly four years later they stated that enforcement at one particular site had not started until the middle of 2014, the whole of the email was unreliable. The claims proceeded from a central claim that a sign warning of a new speed limit had been erected the day after his alleged offence, thus showing that the new limit was not in force on the day of the alleged offence. There is no convincing evidence to support this claim, which is simply not credible.
24. The information supplied by the Council and the Police is consistent, probable and entirely credible. A large contract administered by a contractor for a public body with a deadline would have been likely to be completed by the deadline and if it had not been any defects in performance would have been identified by the various checking mechanisms as incomplete and rectified. The contractor would have checked on its sub-contractors, the Council confirmed a visual inspection disclosed no irregularities. A council officer took a photograph two years later showing a new sign in place. There are no grounds for thinking this was tampered with. The police confirmed visual checks on 51 occasions showing no sign irregularities at the sight. The fact that temporary signs are left longer by the roadside than is necessary is familiar to every motorist.

25. Mr Alphonso didn't see the sign on 2 February 2015 and was charged. He did see it the following day.
26. The tribunal is satisfied that the ICO's decision is correct in law and the appeal is dismissed.
27. In his own best interests Mr Alphonso should now come to an agreement about the fine and collection costs he faces.
28. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 13 August 2016