



Neutral Citation Number:

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

Appeal No: EA/2016/0122

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50606156
Dated: 21 April 2016**

Appellant: Serge Yakovlev

Respondent: The Information Commissioner

2nd Respondent: London Fire and Emergency Planning Authority

Heard at: Fleetbank House

Date of Hearing: 26 September 2016

Date Promulgated: 5 October 2016

Before

Mr C Hughes

Judge

and

Ms A Lowton and Ms R Tatam

Tribunal Members

Date of Decision: 4 October 2016

Attendances:

For the Appellant: in person
For the Respondent: did not appear
For the 2nd Respondent: Damien Welfare

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 21 April 2016 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. On 9 June 2015 Mr Yakovlev made a 999 call. He asked for the police to attend at his flat because of a strong chemical smell and anti-social behaviour. He states that he specifically asked for the fire brigade not to be called. Since the call related to chemicals the police passed the alert to the operating arm managed by Second Respondent – the London Fire Brigade (“the brigade”) who mobilised 5 appliances and 23 personnel (22 attended the block of flats). On Mr Yakovlev’s account three fire brigade officers came to his flat. On his account they were “absolutely unhelpful, jeering, smiling and saying: “we know you” and then went away”.
2. The following day Mr Yakovlev complained to the brigade about the conduct of these fire fighters. The brigade responded promptly asking for the address of the premises, the officer responding stating:- “in order for me to look at this however I do need a location so I can identify where we can start to look into this matter”. Mr Yakovlev did not reply. On 20 July Mr Yakovlev made a request under FOIA:-
“1. Why I did not get any reply to my email in breach of LFB regulations, who is personally responsible for this breach(full name, I.D. number and position) and cover up for further complaints if necessary;

2. Full names, positions, I.D. numbers of the officers attended my call?

3. What FB station they belong to?

4. Full name, position, I.D. number and direct email address of the CEO of that FB station.

I look forward to your instant acknowledgement, ref. number and earliest reply”.

3. The brigade was able to link the two communications from Mr Yakovlev but still did not have an address. Following the intervention of the Respondent (the ICO) the brigade again wrote to Mr Yakovlev asking for his address on 17 September, he replied providing it on the same day and the fire brigade responded on 18 September providing certain information and relying on section 40 of FOIA (that supplying the information would breach the rights of individuals under the Data Protection Act). During the investigation by the ICO the brigade concluded that while from its records it could identify the personnel mobilised to attend the block of flats, it was unable from those records to identify the specific individuals who had visited Mr Yakovlev's flat; continuing to maintain that the identity of any such individuals would in any event be protected by s40.
4. The ICO investigated Mr Yakovlev's complaint and issued a decision notice. Having reviewed the evidence the ICO concluded on the balance of probabilities that the brigade did not hold the names of the staff who had visited the flat; it had no operational reason to record any such information in the circumstances such as this which were recorded as a false alarm (dn paragraph 24). He also criticised the brigade for failing to notify Mr Yakovlev of its review procedures and further he criticised the brigade for having requested the address in relation to the complaint of 10 June, failing to request Mr Yakovlev's address a second time and so delaying the substantive response to beyond the 20 day period laid down for compliance with a request by section 10. This latter finding of breach seems to the tribunal a harsh criticism, and the brigade responded the day after it received Mr Y's address. Mr Yakovlev for reasons of his own believed the brigade did not need to be given his address and was reluctant to provide the brigade with his address which would have enabled it to properly respond to his request in a timely fashion.
5. In his appeal against the ICO's decision Mr Yakovlev claimed a breach of his rights under FOIA, that the brigade had lied to the ICO, and that the ICO had “for some

strange reason” accepted the lies. The main way in which the brigade had misled was that *“having fully identified 23 officers mobilized by police instructions, was allegedly unable to identify 3 officers, who actually visited our floor and instead of proper investigation refused to act and left with offensive jeering and comments.* He criticised the conduct of the ICO’s investigation and claimed:- *“I believe that the proper investigation and decision on this case was delayed and practically sabotaged by not only the high management of ICO but the Commissioner’s Office, including Commissioner himself, as well his private secretary under pressure by LFB and police, which is wrong and unacceptable and must be investigated and addressed by the tribunal”.*

6. In her response the ICO maintained the stance of the decision notice. She confirmed that she had been informed by the brigade that “none of their systems say which fire fighters went to the flat”, had conducted an investigation and considered the explanations and records provided by the brigade. She noted that it was not surprising that the brigade record less information about false alarms than other call outs and that false alarms account for almost 50% of the 100,000 incidents the brigade attend each year. There was no requirement under FOIA to generate new recorded information, but the brigade had indicated to Mr Yakovlev on 21 April 2016 that if he submitted a complaint it would investigate the complaint. The Commissioner concluded that the decision notice disclosed no error of law or fact.
7. The brigade also resisted the appeal. The issue was whether the information was held (the brigade maintained that it was not) and in the alternative whether the protection of fire fighters’ personal data protected the names from disclosure. It denied that it had lied to the ICO, it did not hold the information identifying the three officers who, Mr Yakovlev claimed, had called at Mr Yakovlev’s flat at the time the request was made. It had not sought to delay or obstruct the ICO’s investigations.

Preliminary Matters

8. Mr Yakovlev has made a large number of applications for directions during the course of this appeal. He renewed a number of applications at the start of the oral proceedings and asked for the hearing to be “cancelled”.
9. The tribunal declined the application for the hearing to be recorded. It is not the usual practice of the tribunal and such recording would serve no useful purpose in assisting

the fair disposal of the case which was a straightforward and simple matter of whether information was held.

10. The tribunal declined to order the presence of the Information Commissioner, the former Information Commissioner and other officials from the ICO. They were not in a position to give evidence on the question of whether the information was held.
11. Mr Yakovlev applied for orders that senior officers from the brigade attend to give evidence. He told the tribunal that senior officers had sent fire fighters to his house and he wished to question them to “establish the names and positions of the three officers sent to my home.” The tribunal declined to order the presence of such individuals for this purpose. Mr Yakovlev appeared unable to accept that FOIA did not give the right to information in the memory of individual employees but only to recorded information. Nor could he accept that asking such a question would be an improper circumvention of the purpose of the hearing which was to establish whether the information was held in recorded form not to enable him to get the information by other means.
12. The tribunal, mindful of the overriding objective, declined to adjourn the hearing.

Background

13. During the course of the hearing Mr Yakovlev explained that over the past 10 years he had called 999 about twice a year because of a particularly strong chemical smell in his flat. During that time he had moved but he still experienced the smell. It affected the entire block of flats. He had first called in 2006. On this most recent occasion he had asked for the police to attend and not the brigade. He stated that he was on the receiving end of a 10 year vendetta by the City of London Police and housing officers of the City of London – his landlord was involved in this – that was why he had asked for the City of London Police to be joined to the proceedings. The calls were properly emergency calls because he could not live in his flat. Counsel for the brigade confirmed that it had in the last five years received a number of calls to attend Mr Yakovlev’s address and before that to attend another address in connection with reports of this nature.
14. Mr Yakovlev was firmly convinced that the brigade held the information he sought, he elided between his view of what ought to be the position “it is a rule of the [Fire Brigade] all information must be recorded on official log” and what the actual

position was. He could not identify any material in the open bundle which showed that the brigade knew who the three officers were.

15. The redactions revealed by an examination of all the information held by the brigade (the closed bundle) were of names and identifying material and there was nothing to distinguish any three or other number of the fire officers as having visited Mr Yakovlev's flat. The Tribunal disclosed this to Mr Yakolev.

Consideration

16. For a number of years Mr Yakovlev has felt considerable distress from his experience of a strong chemical smell. This has followed him from one flat to another. He has now come to the position that he believes there is a conspiracy against him involving the City of London (as his landlord), the City of London Police, the brigade and the ICO acting improperly under pressure.
17. Mr Yakovlev's belief in the chemical smell and its relation to a vendetta against him is held with exceptional conviction, it is not amenable to logic, and its absurdity is probably obvious to those around him (such as housing officers and others who have to deal with the consequences). Mr Yakovlev stated that he rang the police because he did not want to waste public money in calling the brigade, while to the tribunal it was clear that ringing the police with a report of toxic gas would inevitably result in the calling out of the brigade as the service equipped to deal with such hazards; he (possibly because of his beliefs in a conspiracy) considered that it was appropriate to call the police.
18. Because he holds his beliefs so strongly he is incapable of evaluating the evidence as to whether information requested – which he agreed was the names and ranks of three fire officers who came to his door – was recorded or not. The inflexibility of his thought means that since he has decided that the brigade “must” hold information which he considers important to him and his experiences; it is impossible that it does not.
19. There was no evidence upon which he could draw to cast doubt on the ICO's decision which clearly set out compelling evidence supporting the conclusion (in paragraph 24). The records of the incident were a coherent set of screen prints from the brigade's computer systems. There was no indication in those records of anyone

calling at his flat, no record of the reasoning behind the decision-making that it was a false alarm and no business reason why the brigade should record such information.

Conclusion

20. The decision of the ICO is correct in law and we dismiss the appeal.

21. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 4 October 2016

