



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2016/0152**

**Heard without a hearing  
On 30 November 2016**

**Before**

**MELANIE CARTER  
JUDGE**

**HENRY FITZHUGH  
NIGEL WATSON  
TRIBUNAL MEMBERS**

**Between**

**FRANK ELLIS**

**and**

**INFORMATION COMMISSIONER**

Appellant

Respondent

**DECISION AND REASONS**

1. This is an appeal under the Freedom of Information Act 2000 (“the Act”) by Frank Ellis against the decision of the

Information Commissioner (“the Commissioner”) in his Decision Notice of 12 May 2016 . The Tribunal has decided, for the reasons set out below, to uphold the appeal.

## **Background**

1. This appeal relates to a request for information made by Mr Ellis, the Appellant to Ryedale District Council (“the Council”) on 5 January 2016. It is not in dispute that this matter should be dealt with under the Environmental Information Regulations (“EIR2), rather than the Freedom of Information Act 2000.
2. The Appellant wrote on 5 January 2016 asking for the following information:

*“A pipe runs form the....development....across land adjacent to the site en route to a water course. The pipe is designed to remove waste surface water (rain). I require the name of the landowner(s) under whose land the pipe has been laid. For the avoidance of doubt I require the name/identity of the landowner(s) at the time [the Council] issued written approval to the developer authorising the start of the development, as stipulated in the Schedule of Conditions for Appeal”.*

3. The Council refused the request on the basis that the information was not held. The Appellant complained to the Commissioner who in turn rejected the complaint. The Appellant has now appealed on the basis that the information is held. The issue before the Tribunal is to decide on the balance of probabilities whether or not the Council did hold the requested information.
4. There had been two previous requests under FOIA, the refusals for which the Appellant had not pursued. Those two requests are strictly not part of this appeal, but form part of the factual backdrop to the issues before the Tribunal. Also relevant was a later FOIA request in May 2016 as the information disclosed further to that request was relevant as to the Council’s knowledge of the legal ownership of the land during 2015.

5. It was apparent from the Appellant's submissions and evidence that the Council had been corresponding with the person which the Council believed to be the owner of the relevant plot of land as late as November 2015. This aspect had not been considered by the Commissioner in the Decision Notice, referring there only to 'historic information' (that is information indicating ownership of the land held by the Council) dating back to between 2008-2011.
6. In light of the later evidence apparently held by the Council indicating knowledge of ownership as late as November 2015, the Tribunal directed the Commissioner to expand upon its arguments and to address this specific evidential point. The refusal of the request for information as to ownership was January 2016 (just two months later). The Tribunal stated in the Directions that:

*“Also relevant were the letters and email evidence adduced by Dr Ellis between 2014-2015, which Dr Ellis argued went to prove that the Council had been incorrect in asserting the information requested as to ownership of the land was not held.*

*5. The Tribunal has issued the following directions requiring the ICO to now assist in the analysis of whether:*

*a. The commissioner had been correct to accept the word of the Council, given the evidence in the bundle which Dr Ellis asserted indicated a knowledge of the ownership of the land post-dating 2011 (the latest of which may have been November 2015); “*

7. The Commissioner failed, in its response to the Directions, to deal with this point, despite the clear and careful directions from the Tribunal. The Commissioner stated as follows:

*“The Commissioner understands that, at various points in the past, the Council did hold information about the ownership of ‘site 160’. As set out at [DN para 22], the Commissioner considered whether or not the fact that the Council had known about the site ownership in the past meant that the Council also knew who owned the site at the relevant time set out in the*

*request (ie: at the time the Council issued written approval to the developer).*

*It was established that the relevant written approval was issued on 1 February 2016 (ie after the date of the January 2016 request). Having probed the matter with the Council, the Commissioner accepted that it did not have current ownership information, and noted that it had no business need to know such information (ie for the discharge of conditions). This led to the Commissioner's finding that the information was not held.*

*Accordingly, the Commissioner does not consider that the factual background was in this case determinative for the request that she considered. Given the precise terms of the request at issue, which refers to the 'name/identity of the landowner(s) at the [specific] time [the Council] issued written approval to the developer' rather than, for instance, more generally, the Commissioner stands by her interpretation of the request, and her DB. Accordingly, whilst it would have been open to the Council to give details of any historic information it held, It was not a failing under FOIA for it not to do so".*

8. The Council had also written to the Tribunal in response to the directions in a letter dated 25 November 2016.
  
9. The Tribunal took the view that the approach of both the Commissioner and before that, the Council, was both narrow and artificial. It was clear from the request that the Appellant was asking as to current ownership as at the date of the letter of request, given the written approval had presumably either just been given or was about to be given (which it was, within the month). The Tribunal accepted, first that the Council was not under any legal duty further to any planning function to hold up to date information as to legal ownership of land. In particular, planning officers on the explanation of the Council, did not need to concern themselves with land ownership and easements relating to offsite drains serving a development.

10. That did not however mean that it did not, as a matter of fact (rather than further to a duty) hold information as to ownership of land. The Tribunal accepted there would come a point when the Council would no longer have reasonable confidence the information was correct. However, it would be a question of fact and degree as to when that information became so old that it could not reliably be said to meet a request for information, in effect, as to current ownership. In these circumstances, the Tribunal would have accepted that just because it knew, historically, the name of the legal owner of the relevant plot of land, it could not respond with any accuracy to a request asking for current ownership. In this case however, it was clear that the Council had, certainly as late as April 2015 and perhaps as late as November 2015 (just two months previously) relied upon its own information to write out to the legal owner and/or to refer others to the name of the legal owner. The Council would only have done so if it still believed that the named individual was still the current owner just two months before, it was then claimed that this information was no longer valid. The Commissioner and the Council were given an opportunity to respond to this point in the Directions, but failed to do so.

11. It appears from the Council's letter that officers are (understandably) incensed at the Appellant's allegation that officers are lying to him. The Council's letter references the case of Paul Gadd v The Information Commissioner EA/2014/0211 and a quote with regard to "unfounded assaults on the integrity of members of the staff". That case however was with regard to whether a request was 'manifestly unreasonable' or in FOIA terms, a request was vexatious. This case concerns a straightforward analysis, on the evidence, and to the balance of probabilities, whether the information requested was held by the Council at the date of request.

12. Given the existence of the correspondence in this regard as late as November 2015 the Tribunal considers that it is more likely than not that the information as to the legal ownership of site 160 was held as at the date of the request in January 2016. This is specifically not a finding that the Council officers had been lying, rather that the approach of the Commissioner, given the

information that the Tribunal has found was held at the relevant time, was ill-conceived and not in accordance with law.

## **Conclusion**

13. In light of the above reasoning, the Tribunal upholds the appeal and finds that the Decision Notice is not in accordance with law. The Decision Notice is hereby amended to order that the name/identity of the landowner as at the date of the request be disclosed to the Appellant. This should be disclosed within 28 days of this decision.

Melanie Carter

Judge of the First-tier Tribunal  
11<sup>th</sup> December 2016

Promulgated  
12<sup>th</sup> December 2016