



First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2015/0231

Decided without a hearing
On 24th March 2016 and 10th October 2016

Before

FIONA HENDERSON	JUDGE
MICHAEL JONES AND NIGEL WATSON	TRIBUNAL MEMBER TRIBUNAL MEMBER

Between

X ¹	<u>Appellant</u>
And	
The Information Commissioner	<u>Respondent</u>
And	
Hambleton District Council	<u>Second Respondent</u>

Redacted Closed Annex for promulgation

This is the redacted version of the closed decision which is disclosed by order of the Tribunal following the 2nd Respondent's compliance with the directed disclosure. The redacted paragraphs remain closed as they make direct reference to the content of information that has not been disclosed. It should be read in conjunction with the open decision

Sufficiency of search

1. Document 1 – is a handwritten note and photographs about the airfield by the Council officer. The note records what was seen during a site visit and refers to “with” named individuals. The Tribunal is satisfied that it therefore reflects what was seen during the meeting with the named individuals and is a record of contact between them. For this reason the Tribunal is satisfied that it and the photographs should be disclosed.

¹ Please see Tribunal Registrar's ruling in relation to the restriction upon identification of the Appellant

However, the identity of the person who was present at the meeting is not necessary for any of the stated legitimate interests and should be redacted.

2. Document 2

[REDACTED]

From this we are satisfied that it is not in scope as it does not represent contact.

3. There are reports of contact with the airfield set out in the information disclosed to the community which is not reflected in the closed material for example:
- The email of 27th March 2014 in OB3 contains direct quotations from the airfield. The complaint email was in the original closed bundle (CB31) but a substantive response was not.
 - The correspondence in OB3 refers to visits which are not reflected in the original closed material this may well constitute a record of contact (depending upon whether the visit was accompanied or not):
 - 4th August 2014 – *“I have visited the airfield today and recorded the details of the fuel tankers”*.
 - Email 5/8/14 – *“Neither of the units were plugged in to the mains at the time of my visit²”*P 24 CB refers to *“during one of your numerous visits to the airfield”*

Expectation

4. The Council have given direct quotations to the public in OB3 of information they now seek to withhold e.g:
- The substance of the letter at p16 CB was disclosed.
 - The fact that they were likely to issue an enforcement notice in respect of these breaches and are awaiting legal advice p 26 CB.
5. In none of the correspondence that we have seen in the open or closed material is there any expression of confidentiality suggesting that the airfield’s reply would not be passed on or restriction on the use or subsequent dissemination of the information e.g.
- P15 CB it is explicit that details of the correspondence are being passed on to the Parish Councils and representatives of Action4 Refusal.
 - P17-18 CB Letters specifically indicate that the information will be provided to others
 - P31 CB- A complaint is passed on, an explanation asked for with no suggestion of confidentiality for the response..

Third Parties

6. David Thelwall is a Consultant working for Prospect Management Services. He did advisory work in a professional capacity. His identity and the content of his work had already been disclosed by the Council in OB 3 we are satisfied that disclosure pursuant to this request would not be unfair.
7. In relation to employees, [REDACTED] Although this [REDACTED] [REDACTED] role we are satisfied that [REDACTED] would have a greater expectation of privacy as the ultimate responsibility for the way that the airfield is run lies with [REDACTED] employer. Although [REDACTED] and involvement in the airfield [REDACTED] well known locally, this is

² It is not clear if this refers to the same visit

disclosure to the world at large, and speculation is not the same as confirmation. We are satisfied therefore that disclosure of [REDACTED] and job title in the disputed information would be unfair and unwarranted. We are satisfied however, that the contact that [REDACTED] had in anonymised form should be disclosed for the reasons set out in the open decision.

8. [REDACTED]
[REDACTED] They do not appear to have had any input in the discussion about their activities. They would not expect views expressed about them to be disclosed in this context and their identity is not necessary to the legitimate aims as outlined in the open decision and should therefore be redacted.

Consequences of disclosure

9. P25-27 CB is candid and relates more to the relationship with the Council than the community, however, for the reasons set out in the open decision we are satisfied that disclosure would not be unfair or unwarranted in light of the pressing social need. We disagree that disclosure would make the data subject less forthcoming or make the Council's regulatory role harder. We note the public concern that there was an existing pattern of obstruction to frustrate enforcement efforts. Disclosure of the withheld information would inform public knowledge of how effectively these concerns were dealt with e.g. p25-7 and 33CB. The airfield has been advised to get formal approval which would put the matter in the public arena enabling public scrutiny and would ensure that any replacement is permitted and the situation thus resolved. The airfield have chosen not to and the disclosure informs the extent to which (if any) the Council have "allowed" the situation to persist.
10. The level of the data subject's co-operation as it appears from the material in the public domain does not reflect the level of co-operation apparent from the withheld material e.g. *"The owner has stated that a mobile fuel bowser will be acquired before 22 July 2014 and has been advised to submit details early so the need for planning permission can be assessed"*⁴
However, it is apparent that letters were not responded to and requests for information ignored. The Council made repeated requests for information about when the unit would arrive to enable it to be inspected and for replacement tanker details e.g. on 13th May, chased 19th June, 20th June, 9th July. From the Airfield's response of 9th July it was clear that a new type of tanker had been identified but the information requested still not provided.
11. The disputed information shows a hectoring tone and attempts to put restrictions on the Council's involvement e.g. p 24 CB *"– fact taking legal advice will come as a surprise to many rate payers in the area including of course myself"*. The airfield is trying to restrict the Council's activity p25-7 CB and the Council has had to resort to a clear statement that it can compel co-operation. Disclosure would:
- allow scrutiny of the Council's understanding of the legal position,
 - enable a judgment to be formed as to the extent of the co-operation of the airfield and
 - rebuild trust by demonstrating the Council's refusal to be intimidated.

⁴ Planning committee 29 May 2014

12. Disclosure would inform about the actual levels of co-operation, willingness to engage, progress made during negotiation and rigour with which the Council pursued the matter:
- OB3 27.6.14 – discussions have been held with airfield owner and he is proposing to collect and make available additional data. CB12 -it was agreed that logs would be posted periodically on the website (but that in fact this did not happen).
 - Request had been made for data on 17th July 2014, 26th September 2014 and 6th March 2015 for monitoring data⁵ yet none was provided.
 - P28CB continuing evidence of lax monitoring by the airfield.
 - Not apparent all complaints were passed on e.g. 25th April 2014.
 - Of concern is the consistency of record keeping (which the Tribunal observes may have impacted upon their ability to bring effective proceedings as there are gaps in the records and no notes of conversations).

Reg 12(5)(b)

13. P24CB implies that the airfield owner expected that the public would be aware that legal advice was being sought (despite this being prior to formal proceedings being launched).
14. The Tribunal repeats its observations about the level of actual co-operation apparent from the disputed information as set out above in concluding that disclosure would not have impacted negatively upon this or future investigations.

Signed Fiona Henderson

Judge of the First-tier Tribunal
Date: 21st December 2016

⁵ P45 OB1 Prior to the date of the operative refusal