



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

Appeal No: EA/2016/0215

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50602104
Dated: 8 September 2016**

Appellant: Lester Dibben

Respondent: The Information Commissioner

Heard on the papers: Alfred Place, London

Date of Hearing: 22 March 2017

Before

Chris Hughes

Judge

and

Steve Shaw and Dave Sivers

Tribunal Members

Date of Decision: 12 April 2017

Promulgation Date: 13 April 2017

Subject matter:

Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 8 September 2016 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings was formerly a councillor serving on Shaftesbury Town Council (“STC”). In 2012 concerns were expressed by staff as to his conduct and advice was sought from the HR department of the District Council for the area (North Dorset “NDDC”). A NDDC HR official (Bobbie Bragg) attended a meeting of the HR Committee of STC in 2012 at which the staff presented their complaint.
2. The Appellant has contested the various allegations made against him. Over time he became aware of the involvement of the NDDC official in this meeting and sought details of it from the Town Council and then from the District Council. Following correspondence he wrote to NDDC on 6 and 13 August 2015 (the two requests extend over two pages of the decision notice but for clarity are summarised in this decision). The first request asked for information about relevant meetings between STC and NDDC by reference to an email from a STC councillor (which was incorporated in the text of the request to NDDC and which advised him what to request from STC). The second contained much material which made complaints and sought advice or concerned STC rather than NDDC.
3. NDDC replied to the request of 6 August on 11 August stating its understanding of and response to the request:-

“... my understanding of the information you are seeking is as follows:-

A document relating to staff report to Bobbie Bragg relating to Lester Dibben 8 Oct 2012, that contains allegations of harassment;

Records of any meetings relating to such document;

Evidence provided by the Council in relation to that document;

Meeting notes of the Council’s Human Resources unit relating to a matter identified as “lovegrove report”

I am informed that none of the above notes, records or documents have been identified as being information within the Council's possession.

So far as I understand them, the other matters you refer to appear to seek opinions or explanations from the Council; as such they do not fall within the scope of a FOIA request”

4. On 13 August he specifically asked:-

“1. As I do not wish to bring NDDC officers into what appears to be the fabrication of evidence, distribution of my personal data held by STC, and promulgating attacks on my integrity without my knowledge or following the proper established procedures.

Q Did any NDDC officer attend the NDDC HR/STC meeting referred to by STC?

Q Did [name of officer redacted] or any other HR personnel from NDDC play any part in this matter.

2. There is no evidence NDDC actually were involved as it is reported below, they have no documents.

Q Please confirm STC are making false claims about NDDC involvement?

Q Have NDDC destroyed the records relating to the alleged meetings referred to?

Q If so why have documents referring to a criminal act and containing personal data on me, been destroyed?

.....

[name of correspondent redacted] it would be a lot easier if NDDC would make a clear statement on its involvement, either yes we were involved, or no we were not. I would then be able to concentrate on STC but while they continue to substantiate their claims based on what they say is NDDC advice that is not possible.”

5. On 13 August 2015 the Assistant Chief Executive of NDDC responded summarising that council's position:-

“This matter has been being addressed for some time through the FOI process, and from what you say, appears to have gone through the review process. If you remain dissatisfied about the response you have received, you will need to go to the ICO. Your FOI requests relate to Council records and proper responses have been given to your requests. To the extent that you want further information, replies, even if

possible, would require individual members of staff to attempt to recall events from some while ago. As this will inevitably be unreliable, even if people have any recollection; it would not be right to attempt this. It is, of course, not a requirement of the FOI Act in any event."

6. The Appellant complained to the ICO. After an exchange of emails the ICO confirmed (bundle page 98 email of 24 November 2015), that the scope of the ICO investigation was the information request of 6 August 2015 and whether NDDC were correct in responding that information was not held. In the course of the ICO's investigation a solicitor for NDDC interviewed Bobbie Bragg who confirmed that she had attended a meeting at the STC at the request of the STC Town Clerk. She had not prepared any report for that meeting, she had not prepared any report or notes of the meeting and "she has now confirmed that she does not hold any such documents at all (and even though it is now nearly four years ago she does not recall keeping any such documents even for a limited period of time)" (letter NDDC to ICO 7 July 2016 bundle page 121-122).
7. In his decision notice (DN) the ICO considered whether the information sought was held and considered the information provided by Ms Bragg (DN paragraphs 24-28) and noted that:-

"The issue was essentially an internal matter within Shaftesbury Town Council, and was an informal meeting and so there was no requirement for her to take notes or record the advice for the business purposes of the District Council."
8. The ICO (DN paragraphs 29 -30) concluded that the issue was a matter relating to STC, while Ms Bragg's expertise was relevant to the issue there was no reason for her to have retained any information given that it was not NDDC business. He concluded on the basis of the evidence and assurances he had received that no information within the scope of the request was held.
9. In his grounds of appeal the Appellant criticised delays by all three public bodies (STC, NDDC and the ICO) in dealing with his complaints and requests, the numbers of individuals involved in handling his complaints, the conduct of STC in not making a formal record of meetings when he had been informed that there were records of meetings, that the ICO had not received documents which the Appellant knew existed, in particular:-

“The Complaint, Three HR sets of minutes, the complete Bobby Bragg report, please note that there are a further 24 pages, this document was claimed to be confidential to NDDC by STC, it clearly was not if it is true NDDC did not have it”

10. He also criticised the failure of the ICO to criticise the public authorities, the failure of the ICO to recognise the harm done to him and his family by what had occurred.
11. In response the ICO maintained the position set out in the DN. The ICO maintained that it was more likely than not that no information was held. The ICO distinguished between issues relating to whether STC had properly prepared minutes of its meetings and whether NDDC held any such records of the STC meetings. The ICO reviewed the evidence of the NDDC officer concerning the meeting, the assurances from NDDC that no records were held and stated that the “facts upon which the Appellant relies in support of his appeal provide no or no adequate evidence that further documentation falling within the scope of the request is held by the Council” (paragraph 18 page 6). The ICO accepted the good faith of the Council in confirming the searches it had carried out and that it did not hold the information. The ICO noted that the appeal was against the DN relating to NDDC and there was no evidence that NDDC held the complaint by STC staff and minutes of the STC HR committee which were STC documents.
12. The ICO noted that the redacted report supplied by STC to the Appellant “Staff Report to Bobbie Bragg” which the Appellant relied upon to assert that NDDC held more material referred to the extensive notes of a STC HR committee with the Appellant (bundle page 131). It provided no evidence that NDDC held such notes.

Consideration

13. Throughout the history of this appeal there has been a conflation by the Appellant of documents which may be held by STC with those held by NDDC. He has been confused as to what documents are or should be held by NDDC. The situation is however clear. NDDC has very limited functions with respect to town councils in its areas. It is however not unusual for district councils to provide a modest amount of support to town councils when requested so to do. In this case STC was having difficulties between one of its councillors, the Appellant, and staff members. The only evidence of involvement in the issue is the involvement of Bobbie Bragg. Her recollection, some years after the event, was considered by the ICO in concluding that

NDDC did not hold the recorded information sought. She was clear that she had met the staff team at STC (NDDC internal email 25 June 2015 bundle page 136, letter NDDC to ICO bundle page 121-122) and had not kept notes of the meeting. The tribunal is satisfied that this is highly probable. She had been brought in as part of the informal support district councils give to town councils, she had no continuing role, it did not relate to her responsibilities to NDDC, she referred the staff to their council's own procedures (bundle page 136) and departed. There was no NDDC business reason for her to keep records of the meeting or keep or create any documents.

14. The Appellant has produced no evidence to support his argument that the ICO was incorrect. The tribunal is satisfied that the decision notice was correct in law and dismisses the appeal.

15. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 13 April 2017