



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

Appeal Reference: EA/2017/0028

Heard at Magistrates' Court, Milton Keynes.

On 8th. June, 2017

Before

David Farrer Q.C.

Judge

and

Anne Chafer and Michael Hake

Tribunal Members

Between

Charles Adams

and

Appellant

The Information Commissioner (“The ICO”)

Respondent

Representation:

Mr. Adams appeared in person

The Information Commissioner was not represented.

The Tribunal dismisses this appeal. West Sussex County Council is not required to take any action.

Decision and Reasons

1. Section 35 of the Civil Aviation Act, 1982 requires airports to provide adequate facilities for consultation with airport users, local authorities and other organisations representing the concerns of the local community, as to the running of the airport in so far as it affects any of their interests. The Gatwick Airport Consultative Committee (“GATCOM”) was set up for this purpose by Gatwick Airport Limits (“GAL”).
2. GATCOM has twenty - eight members representing the full range of such interests. It holds public meetings as to which it publishes agendas and minutes on its website. The Passenger Advisory Group (“the PAG”) is a sub - group of GATCOM and is concerned with the comfort, care, safety and security of passengers. Its meetings are held in private and its agendas and minutes are not publicly available. It reports to GATCOM meetings on its work and makes recommendations to GATCOM as to the provision of passenger facilities. West Sussex County Council (“the Council”) is a member of GATCOM and is therefore represented at its meetings. It is not a member of, nor is it represented on, the PAG.

3. The Council provides secretarial services to GATCOM and to the PAG. Consequently, it holds copies of PAG minutes and agendas, whether permanently or from time to time, in some recorded form.

4. On 17th. June, 2016 Mr. Adams submitted the following FOIA request to the Council -

“Please supply a copy of the agenda for the last meeting of the Passenger Advisory Group (PAG) held before the 20th. March, 2016, which is in the possession of West Sussex County Council or any of its employees or members.”

5. The Council responded on 22nd. June, 2016. It refused the request, stating that it held the information on behalf of GATCOM, not for any purposes of its own. It provided only secretarial services to GATCOM. It maintained that position following an internal review.

6. Mr. Adams complained to the ICO on 25th. August, 2016.

7. When responding to the ICO’s investigation, the Council repeated its claim as to its limited role in relation to GATCOM and the PAG for which it was paid by GAL. It referred to its representation on GATCOM and indicated that members of GATCOM did not receive copies of the minutes or agendas of the PAG, only its reports to GATCOM. So access to the requested information by any Council officer would be simply as an employee of a contractor engaged by GAL.

8. The Decision Notice (“the DN”) upheld the Council’s claim that it did not hold the information for the purposes of FOIA because it held it on behalf of GATCOM. It included an examination of the question whether GATCOM

was itself a public authority, although that could be relevant only to a FOIA request made to GATCOM. The DN did not consider exemptions which might apply if the Council held the information on its own account. Mr. Adams appealed.

9. His case may be summarised as follows -

- The Council, like all the other local authorities represented on GATCOM should have an interest in the work of the PAG.
- The secretarial service is provided to GAL and GATCOM at cost, which indicates service provided as a member of GATCOM and (presumably) the PAG.
- The Council should have access to all the minutes and agendas of both GATCOM and the PAG, since it is an important stakeholder in Gatwick operation. It cannot perform its proper function without such access.
- The Department of Transport Guidelines for Airport Consultative Committees support the contention that the provision of secretarial services involves the Council in every facet of the Committees' functions.
- The DN simply adopted the Council's response, which was wrong.

10. The ICO argued that her analysis in the DN of the Council's relationship with the disputed information was correct.

Our Decision

11. The Council is a public authority within Section 3(1)(a)(i) of FOIA by virtue of Schedule 1, Part 2, Paragraph 7.

12. Section 3(2) provides that it holds information if "*(a) it is held by (the Council), otherwise than on behalf of another person*".

13. There is, therefore, one straightforward issue, namely, whether the Council held the agenda and minutes, to any extent, for its own purposes or exclusively on behalf of GATCOM (or GAL).
14. Such an issue is one of fact. Decisions of other First Tier Tribunals on other appeals are therefore of limited relevance.
15. We are concerned with the position as it is, not as it should be. Whether GATCOM should be designated a public authority by the exercise of powers contained in s. 4 or 5, is a matter for the Secretary of State, not the Tribunal.
16. The Council is not a member of the PAG. The unchallenged evidence is that, as a member of GATCOM it receives reports from the PAG but not its agendas or minutes. There is no obvious reason why a member of GATCOM should have access to the agendas or minutes of the PAG meetings, given that it receives the reports which emerge from them. The Council provides secretarial services to GATCOM, which is an adequate explanation for its physical possession of or electronic access to such records. Whether it does so at a profit is of no consequence.
17. As already indicated, the fact that GATCOM is not a public authority is plainly immaterial to the application of s.3(2) because that refers to “another person”.
18. The Tribunal has no doubt that the Council holds the disputed information solely in the capacity of independent contractor to GATCOM, which owns it, either directly or through the PAG as its agent.
19. This appeal therefore fails.

20. This decision is unanimous.

David Farrer Q.C.,
Tribunal Judge,

Date Promulgated: 18 July 2017

6th. July, 2017