



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

Appeal No: EA/2017/0112

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50643694
Dated: 2 May 2017

Appellant: David Burrows

Respondent: The Information Commissioner
Heard on the papers at: Liverpool Civil and Family Court
Date of Hearing: 14 September 2017

Before

Chris Hughes

Judge

and

Anne Chafer & Paul Taylor

Tribunal Members

Date of Decision: 20 September 2017

Subject matter:

Environmental Information Regulations 2004/Freedom of Information Act 2000

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 2 May 2017 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant has been concerned for some years about the operation of a crematorium near his home since North Somerset Council (“the Council”) awarded the contract to run the premises to a company called Dignity in 2009. This concern has covered a number of interlinked issues including the grant of retrospective planning permission for works carried out there, the access to the site along narrow roads by HGV vehicles and other related matters.
2. Over the years he has made representations to the Council with respect to these issues as well as making 10 requests for information under FOIA, making complaints under the Council’s complaints policy on four occasions, once pursuing the complaint to the Local Government Ombudsman.

The requests for information

3. On 14 January 2016 The Appellant asked:-

“It does appear relevant, from the what has occurred, that a request should be made under the Freedom of Information Act for details of all internal communications between Council personnel, Council personnel and Councillors, including meetings and documents associated with meetings, together with details of all communications between the Council, Dignity and those acting for or on behalf of Dignity, together with details of meetings, associated documents and all site visits by Officers and Councillors, whether paid for by way of Council Expenses or hospitality and by whom. This relates to all documentation not previously released. To be specific the above relates to the Council Contract with Dignity and management of the contract relative to the existing Grounds and new development(s) and all aspects relating to Planning Applications made and on behalf of Dignity and all aspects of the consideration of those applications.”

4. On 4 May 2016 he submitted a further detailed request relating to a planning meeting in December 2014 *“for the notes taken and records of all Council Officers whether they be for record purposes, file notes or diary records be supplied in respect of the Committee meeting and Application 14/P/2274/F”*. He continued *“In view of the apparent discrepancy/interpretation of the Committee decision in February 2015”* he sought records of that meeting. He also stated *“the Council’s solicitor advised that*

your Council does not keep accurate formal minutes of meetings” and therefore requested all audio recordings of meetings relating to that planning application. The requests were accompanied by a detailed document (bundle pages 115-149) detailing previous information requests, the Council’s response to those requests, raising various issues with respect to those responses and asking for further information triggered by the responses to those earlier requests.

5. On the same day (4 May 2016) he submitted a further three part request which comprised information requests from the schedule to the other 4 May request. He followed on with a request on 13 June 2016:-

“The original Crematorium planning approval granted to Woodspring District Council, as referred to in the Weston Town Council Planning Meeting by Cllr Fred Parsons (who we were informed was on the Planning Committee at the time the application was considered) and it would appear that the whole approval document and particularly the restrictions placed upon the Council in that Planning Approval regarding access to the Crematorium are of relevance.”

6. The Council provided information and stated that the Appellant had now received all information within scope of the requests. The Appellant was dissatisfied and escalated his concerns. The ICT Client Manager on 29 July sent him a nine page letter addressing his concerns and explaining how the Council had handled his request. In its conclusions it stated:-

“The council has disclosed the records it holds that satisfy the scope of the request. I find it difficult to comment other than to say that the council appears to have handled the request in accordance with the requirements of the Freedom of Information Act.

...As part of my internal review I have been unable to find any evidence of records deliberately withheld by the council. I am of the opinion that the council conducts far less of its business using written records than you expect. As I have said previously, whilst you suggest that this constitutes poor governance of council business, this is not a matter to be addressed in this internal review...

I have found this internal review particularly hard to complete. Whilst the document schedule is helpful at one level, it has made it particularly difficult to differentiate between the boundary of one request and that of another.

I believe that you are unlikely to be satisfied by the outcome of my internal review of your four requests and I think it therefore probable that you will be seeking to escalate this to the Information commissioner. I have to say that I would welcome the involvement of the Information Commissioner's Office in this case."

7. On 25 August he sent a further note, as he had stated in his previous response that he would investigate further, resolving "item 31" from the schedule.

The complaint to the Information Commissioner

8. The Appellant complained to the Information Commissioner ("the ICO"). In her decision notice she set out the background history with respect to the crematorium and considered the arguments raised by the Appellant, i.e. that an insufficient number of contract monitoring forms (whether quarterly or annual) were supplied and that:-
*"details of meetings and minutes under the contract and associated works have not been supplied and the information that was supplied appears to fall short in that it does not provide full details of who undertook the "contract monitoring" on behalf of the council and with whom on Dignity's side it was undertaken. Some of the forms were not dated, and they were not signed by those undertaking the reviews
... he considers it inconceivable that the council has disclosed all the information under the requests he has made to it"*
9. The ICO went on to consider whether further information was held with respect to these requests. She concluded that the requests fell to be considered under the Environmental Information Regulations rather than FOIA, but it was of no practical significance since the issue was whether further information was held. She noted the Council's approach which, since many of the requests were wide and imprecise, was to disclose every piece of information it held with respect to the crematorium so as to ensure that anything within scope of the request was disclosed. Financial pressures on the Council meant that processes had been streamlined and much information which used to be recorded was no longer recorded. Practical issues with Dignity were raised at regular site meetings relating to Dignity's duties where they were the main concern of the Council and Dignity:-
"These meetings overrode the requirements for minuting quarterly contract meetings, as there was never anything to minute at these meetings in terms of non-conformance

and matters for improvement. It clarified that where there are meeting notes, these have been disclosed to the complainant in response to previous requests.”

10. The decision notice gave details of the extensive physical and electronic searches which had been conducted and why those searches were considered by the Council to be appropriate.
11. In her conclusion the ICO discussed the basis upon which she made her findings, this was on the balance of probabilities (paragraph 39). She noted the burden, complexity and opacity of the requests (paragraph 40), the fact that the council had not relied on statutory provisions to refuse to answer the requests but had struggled to find information, had conducted internal reviews even when the request for this was out of time, had not sought to apply exemptions and had admitted when it had misunderstood requests and conducted further searches (paragraphs 41-44). She concluded that the council had provided all information within scope of the requests.

The appeal to the Tribunal

12. The notice of appeal was brief. It expressed scepticism at the ICO's conclusions. It argued that the requests were clear and *“I am not aware of any changes to the requirements to keep contractual information, albeit archived electronically, for the duration of a contract and a specified period thereafter.”* It referred to a redacted communication where he wished to see the whole document. The outcome he wished to see to the appeal was:-

“The release of the information that should have existed or confirmation by the Council, in writing, that records were never kept in compliance with “good governance”.

13. The ICO resisted the appeal noting that the issue was whether or not information was held, not whether it should be held and adhering to the analysis she had made of the issues in her decision notice which had concluded that the Council had made proper searches. She was entitled to accept the assurances of the Council that it had carried out those searches and found nothing more. She remained satisfied that no further information was held. With respect to the redacted communication, she noted that when it had been sent to the Appellant on 11 February 2016 he had been advised that the Council had redacted information not within the scope of the request. She had

considered the redaction and was satisfied that the material redacted was not within the scope of the requests.

14. The Appellant submitted a reply on 10 July 2017 which emphasised that:- *... residents had expected that there would be records within the Council, as part of the supervision of the Contract, regarding approving the works and phasing of the works together with the operational effects it would have on the Crematorium Operations and safety issues regarding public access whilst the works were in progress*". The reply asked the tribunal to conclude that all information had not been released.

15. On 4 August the Appellant submitted a "final submission" this was nine pages in length and accompanied by further documents. This explored at length questions concerning the works carried out and a critique of the Council's perceived inaction and failure to disclose documents which the appellant is convinced do exist, criticising the Council for describing his approach as "scattergun" and seeking to draw a range of conclusions of various issues from the documents. However he helpfully, in the penultimate paragraph, stated his basic position:-

"The request made because residents were looking for information as to what the Council knew, when they knew it, what was approved under and associated with the Crematorium Contract and works and when it was approved by way of Diary Notes, Minutes of Meetings, Audits, Officers Official Diary Notes and the follow up after the Planning Committee meetings on 11 February 2015. There has been a shortfall in the information and documentation supplied."

16. Unfortunately even this was not the last submission from the Appellant, who on 6 August made a further submission which related to reports of errors made by staff employed by Dignity which had recently come to public notice. They are of no relevance to the issues relating whether or not information is held and indicate the Appellant's lack of understanding of the purpose of information rights.

Consideration

17. The simple question for the tribunal is whether or not more information within the scope of the requests is held by the Council. It is clear that the Appellant has been concerned about the crematorium and the impact of various construction works carried on there for many years.

18. In his appeal he makes a point with respect to one redacted document. The tribunal is satisfied that the redaction was properly made since the material was not within scope.
19. The substantial burden of his case is that certain records should have been kept and therefore they were kept and have not been disclosed. He has nowhere demonstrated that his assertions with respect to the existence of specific duties to keep the particular records he seeks are grounded in contractual or statutory provisions. In his statement of what he is seeking he implicitly acknowledged this when he asked for:- *“The release of the information that should have existed or confirmation by the Council, in writing, that records were never kept in compliance with “good governance””*. He has been wholly unable to point to any deficiency in the search terms used to seek documents in computer records or point to deficiencies in the search for paper records. He has failed to acknowledge the force of the explanation repeatedly given (for example as quoted in paragraph 6 above) that the Council does not conduct its business in the way the Appellant wishes because of the cost burden of doing so. The view of the Council is clearly that to do so would be to use scarce resources with little benefit when those resources could more usefully be deployed elsewhere.
20. The Council has throughout this behaved with transparency and provided all the information that it could. Indeed it could be argued that in striving to satisfy the Appellants voracious appetite for information of dubious value it has gone too far and should have considered the various exemptions with respect to information provision (notably the Data Protection Act in relation to the personal data of a member of the public and provisions intended to protect public authorities from devoting disproportionate efforts in order to satisfy manifestly unreasonable requests of little value).
21. The Appellant has failed to demonstrate that the ICO erred. This appeal is entirely without merit and is dismissed.
22. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 20/9/2017

Promulgated: 28/09/17