



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

Appeal Reference: EA/2018/0105

**Heard at Wigan & Leigh Magistrates Court
On: 10th October 2018**

Before

JUDGE KAREN BOOTH

Between

MARTIN ADEDEJI

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

DECISION AND REASONS

DECISION

1. The decision notice issued by the Respondent on 17/1/18 (reference: FS50687983) is not in accordance with the law and the appeal is allowed. The following decision notice is substituted in its place.

“The Council interpreted the request for information too narrowly and therefore contravened section 1(1) of the Freedom of Information Act 2000 (“FOIA”). Read objectively, the request was for information about how the Council handles complaints relating to adult services *and, in particular, how it handles complaints made by vulnerable adults*. On the balance of probabilities, further information is held by the Council.

The Council contravened section 10(1) of FOIA because it failed to provide its substantive response within the statutory timescale.

The Council must take the following steps within 35 days:

- Inform the Appellant whether it holds the following further information: (a) the safeguarding procedures referred to in paragraph 24(i) below; and (b) current training materials that cover the handling by Council officers of complaints made against the Council by vulnerable adults and any additional internal or legal requirements that may apply when handling such complaints.
- Communicate that information to the Appellant or give a refusal notice complying with section 17 of FOIA.”

(NB: References below to page numbers are to the numbered pages in the bundle of evidence that was produced for this appeal.)

REASONS

Background to the appeal

2. For many years the Appellant, Mr Adedeji, has been pursuing his concerns about the way he was treated during a consultation at his GP practice during a consultation in 2009. He received an apology, but he has sought to pursue the matter by various means and he has made several requests for related information under the Freedom of Information Act 2000 (“FOIA”).

The request for information and the response

3. On 9 January 2017 the Appellant wrote to Wigan Council (“the Council”) via the ‘whatdotheyknow’ website and requested information in the following terms (page 38):

“Please inform me whether or not you hold the information specified below. If you do hold the requested information please send me a copy.

Regarding the formal complaint that you responded to in your 09/12/16 email copied below. Please send me a copy of all the recorded information you hold in respect of how you handle such a complaint. In particular I wish to receive a copy of all information stating:-

* All that you must do and are legally obliged to do in respect of how you handle such a complaint.

* What rights the complainant has to have the opportunity to discuss with you the matters they are complaining about.

To remind you the 09/12/16 emailed formal complaint you received was in respect of very serious matters such as, for example; your response to a vulnerable adult claiming they had been harmed by a healthcare professional and also failed by various public bodies.”

The formal complaint referred to was made by the Appellant on 8/12/16 (page 63). The complaint is about an alleged failure by the Council to take “appropriate action” regarding the event referred to in paragraph 3 above.

4. The Council responded on 31/1/17 with a link to its complaints webpage, explaining that copies of the Adult Social Care Complaints legislation and Wigan Council’s Adult Complaints Factsheet could be found there. The Council also explained what the Factsheet included. On 16/2/17 the Appellant contacted the Council to say that the link supplied was not working. The Council replied on the same day saying it believed that the link was working, but provided it again, and explained that the issue was one it had experienced previously with the ‘whatdotheyknow’ website. The Council did not consider the fault lay with the link, or its own website.
5. On 15/3/17 the Appellant requested a review of the Council’s response as he did not believe it had provided a copy of all the recorded information held in respect of the information requested (page 44). He did not explain why he held that view or what type of information he thought the Council held in addition to what had been provided. On 4/4/17 the Council responded, confirming that the link supplied provided access to information held within the scope of the request. However, the Council acknowledged that the link did not include access to the Adult Social Care Complaints Procedure, which it included in its response.

The complaint to the Information Commissioner

6. On 26/6/17 the Appellant complained to the Respondent about the Council’s response to his request. The Respondent investigated the complaint with the Council. The Council’s response to the queries raised is at page 76.

The Information Commissioner’s decision

7. On 17/4/18 the Respondent issued her decision (page 1). She decided that the Council had breached section 10(1) of FOIA by failing to provide the Appellant with all of the relevant information within 20 working days. She also decided,

however, that the Council had complied with section 1(1)(a) and (b) because the Council had confirmed that it held information of the description specified in the request and had communicated it to the Appellant by the time the internal review was completed.

The appeal to this Tribunal

8. The Appellant appealed to this Tribunal on 14/5/18. His grounds of appeal are set out on pages 9-12, which can be summarised as follows.

- He explained the purpose behind his request for information; that is, “to find out all the Council must and should have done in their handling of [his] 08 December 2016 complaint”.
- He asserted that it would benefit the Council for them to withhold information falling within the scope of his request.
- He considered that the Council should also have provided him with the following types of information:
 - “equalities information”, including information such as their document entitled “Meeting our equality duty” (page 225);
 - Information which is referred to in the 2011 document provided by the Council entitled “Department of Adult Services Complaint Procedures” (page 148 - “the Procedures”). In particular:
 - The Parliamentary and Health Service Ombudsman guidance (page 109) and the Department of Health guide, both of which are referred to on page 4 of the Procedures.
 - Relevant safeguarding procedures as referred to on page 21 of the Procedures.
 - Relevant training information as referred to on pages 28 and 38 of the Procedures.

9. The Respondent’s Response to the appeal is at pages 15-20, which included the following submissions.

- The appeal should be struck out on the basis that there was no reasonable prospect of it succeeding.
- The request was for all the recorded information held by the Council in respect of how it handles a complaint about Adult Social Services.
- The information provided directly met the terms of the request. The only reasonable interpretation of the request is for information that is itself about how the Council handles complaints in this area.
- The additional information referred to by the Appellant does not fall within the scope of the request because it is not information whose focus is how the Council handles a complaint.
- It would be in accordance with the overriding objective¹ to strike out the appeal by dealing with the appeal in a way which is proportionate to the importance of the case and the complexity of the issues. The particular

¹ This is a reference to rule 2(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended), which provides that the overriding objective of the Rules “is to enable the Tribunal to deal with cases fairly and justly”.

issue on the appeal is of very limited practical significance because the Appellant has located on public websites the information he is seeking.

- In the alternative, the appeal should be dismissed on the basis that, on the balance of probabilities, the Council does not hold any further information falling within the scope of the request. In any event, the information the Appellant is seeking is readily available to him by other means and so would engage section 21 of FOIA, which is an absolute exemption.

10. The Appellant made further lengthy submissions on 5/7/18, which can be summarised as follows.

- He objected to the application to strike out his appeal.
- He asserted that the request for information was specifically about his complaint of 8/12/16 and that the Council had interpreted it as such.
- He asserted that, on the balance of probabilities, the Council did hold further information that was relevant to his request.
- He considered it likely that the Council held additional relevant information, including the following.
 - information about ensuring that Council staff are aware of how to appropriately handle (and record) the access and communication needs of disabled people like himself, especially given their Equality Act 2010 duties;
 - complaints records;
 - information about how to record such complaints (with a reference to the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009) and related management and governance information;
 - instructions to complaints staff about the recording of information relating to “protected characteristics”.
- The issues in his 2015 reports and 2016 complaint are important and of significant public interest and concern.

11. On 10/7/18, the Tribunal's Registrar refused the application to strike out the appeal (page 36, paragraph 4).

The powers of the Tribunal

12. The task of the Tribunal is set out in section 58 of FOIA:

58 Determination of appeals

- (1) If on an appeal under section 57 the Tribunal considers—
 - (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

13. The Appellant requested an oral hearing, which he attended, alone, on 10/10/18. The Respondent elected not to attend the hearing. The evidence consisted of the evidence in the open hearing bundle (pages numbered 1-231) and the Appellant's oral evidence.

The issues

14. The issues I had to determine were as follows.

- **Issue (a)** – Did the Council correctly interpret the Appellant's request for information?
- **Issue (b)** – On the balance of probabilities, did the Council hold any further information that fell within the scope of the request?

Issue (a)

15. The Council interpreted the request as a request for generic information about how the Council handles complaints relating to adult services. As the Council stated in its letter of 13/3/18 (page 77), "*It was not considered the type of request which would necessitate a "search". The request was not in relation to a particular complaint and was regarding a Council procedure. The officer responding knew where to find the information which fell within the scope of the request and this was what was provided.*"

16. Until he submitted his appeal, the Appellant did not explain (either in his review request or in his initial complaint letter to the Respondent) why he considered that the Council had not provided all of the information falling within the scope of his request. In his email of 2/3/18 (page 61) he suggested (for the first time) that his request encompassed relevant information in the Council's training strategy and other training materials.

17. At the hearing, the Appellant explained that the intention behind his request had been to obtain the recorded information relating to *his* complaint of 8/12/16 and to ascertain what the Council should have done and what they were legally obliged to have done in relation to *that* specific complaint. When I asked him why that was not obvious from his request, he explained that this had been deliberate because he wished the request to remain anonymous on its face (he did not want others, including family members, to know that the request was about him personally). He also explained that he wished to avoid his request being categorised as a subject access request that would need to be dealt with under the Data Protection Act 1998.

18. As I explained to the Appellant, a public authority is (subject to what I say below) entitled to read a request for information at face value. A public

authority cannot be expected to second guess what a requestor “really” wants if this is not clear from the request itself. In any event, if the request had been interpreted as a request for information about the Appellant himself, the Council would have been entitled to refuse the request in reliance on section 40(1) of FOIA (any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject).

19. The Council, correctly, did not treat the request as a request for information about the Appellant’s complaint. However, the Appellant’s request was clearly made in the context of his own complaint and did specifically refer (on two occasions) to information relating to “such a complaint”. Read objectively, the request should, in my judgement, have been interpreted less restrictively and should have been interpreted as including any additional information held by the Council about complaints handling in relation to complaints made by vulnerable adults (see paragraph 2 of the Procedures – page 151).

Issue (b)

20. It was clear that the Department of Health guidance, the Parliamentary and Health Service Ombudsman guidance (page 109) and the Local Government Ombudsman guidance (page 231) fell outside the scope of the Appellant’s request. Those documents do not include information about how *the Council* handles complaints or about what the Council is legally required to do in relation to complaints handling. In any event, the Respondent correctly submitted that the section 21 exemption (information accessible to applicant by other means) would have applied to that information (clearly evidenced by the fact that the Appellant had accessed that information).
21. I was also satisfied that information about the Council’s training strategy fell outside the scope of the request, as such documentation would, in all probability, be too high level to include relevant information.
22. As regards the Appellant’s reference to missing “equalities information”, he explained at the hearing that he was seeking information about “reasonable adjustments” that should be considered/made when the Council is handling a complaint made by a vulnerable person. It seemed to me that although the Council may hold *generic* information about such matters, which would fall outside the scope of the request, it was improbable that the Council held specific information about reasonable adjustments in the specific context of complaints handling.
23. As regards information about the *recording* of complaints, this is covered on page 9 of the Procedures. It seemed to me that it would be improbable that there would be separate recording requirements in relation to complaints made by vulnerable adults (unless there are separate requirements under the procedures referred to in paragraph 26(i) below).

24. I was, however, persuaded by the Appellant's arguments that, on the balance of probabilities, additional information falling within the scope of the request is held by the Council in the following two areas.

(i) The Appellant drew my attention to paragraph 19.1 of the Procedures (page 168 of the bundle). This deals with a situation where a complaint concerns the safeguarding of adults and specifically refers to separate safeguarding investigation procedures.

(ii) With reference to paragraph (I) on page 28 of the Procedures, it seemed to me that it was likely that the Council holds current training materials aimed at managers and staff involved in the investigation of complaints. Given the reference to the strategy of "raising understanding of the cultural and special needs of individual complainants so that practice can be tailored to suit their needs" it is also probable, in my judgement, that information is held within such materials that covers the handling of complaints made by vulnerable people and any additional internal or legal requirements that may apply when handling such requests.

Conclusion

25. I was satisfied that although the Council handled the request in good faith, they interpreted it too narrowly and that, consequently, further information that falls within the scope of the request is, on the balance of probabilities, held by the Council.

Signed: Karen Booth
Judge of the First-tier Tribunal
Date: 3rd December 2018

Promulgated: 4th December 2018