



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

Appeal Reference: EA/2019/0166

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Roger Creedon
and
David Sivers

**Determined, by consent, on written evidence and submissions.
Considered on the papers on 1 November 2019**

Between

Maria Rangel

Appellant

-and-

The Information Commissioner

Respondent

DECISION AND REASONS

THE REQUEST AND THE RESPONSE

1. The following description of the history of the request, the response to it and subsequent correspondence is based on the Commissioner's decision notice

of 1 May 2019, which sets out relevant information succinctly and accurately.

2. Thus on 17 June 2018, the Appellant wrote to West Sussex County Council (the Council) to request information of the following description: -

I would like to request information on media use by West Sussex County Council. I am interested in receiving information on any media activity involved in the areas of Crawley and Haywards Heath district on an ongoing basis since 2014. I would also like to receive information on data you share with media.

2. On 18 June 2018, the Council responded and asked the Appellant to clarify the information she was seeking. She responded later that day: -

Please inform me of any media that have presented themselves in West Sussex in Crawley and Haywards Heath specifically since 2014. I was informed that media were present in Handcross by MSDC [Mid Sussex District Council]. Please name the organisation, its purpose and location to include any children's data that you may have shared without parental consent.

3. The following day, on 19 June 2018, the Council returned to the Appellant asking her for further clarification. She replied on the same day, stating: -

I was informed by MSDC that reporting media were present in the area of Handcross and Crawley in 2014. [redacted] I was informed by MSDC that filming was not taking place. I was informed by WSCC to contact police in 2014. Therefore WSCC has recorded information of activity in Handcross from 2014 onwards that would be considered not usual local activity. If you have no records of media in the area then I will have to assume this was in fact illegal activity and the police advice [redacted] was accurate information.

4. On the basis of that, on 20 June 2018 the Council asked the Appellant for some further details. It enquired: -

Do you have copies of any of the communications that you mention from MDSC, WSCC or the police? Without those we would not be able to identify the information you are requesting.

5. Later on 20 June 2018 the Appellant replied: -

I requested any information that you have on media that was present in Haywards Heath Specifically Handcross and Crawley in 2014. This is a freedom of information request. If you have no knowledge of any media use in Handcross area since 2014 up until 2018 then I will assume criminal activity. I certainly do have police documents and documents from other government departments. I am awaiting an outcome of a DWP investigation also. It would be helpful if you could provide details of any activity such as media or charity so that other types of criminal activity can be identified clearly.

6. There was no further response from the Council, but on 3 December 2018, the Appellant wrote to the Council in the following terms: -

I am writing to you regarding the information request to supply information on media activity or SAR reports made involving Handcross Haywards Heath. Are you aware of any activity in the area since 2014 involving media, charity or other suspicious activity?

7. On 5 December 2018 the Council responded to the Appellant to advise her that:-

The Council has nothing to add to [previous] response[s] and will not correspond further on this matter unless you are able to supply the details which would make this possible.

8. On 6 December 2018 the Appellant provided further information in the following terms: -

I have been requesting information on any media that you have been aware of or any charity organisation in Handcross, Haywards Heath as I have reported substantial criminal activity in the area since 2014, any information you gave could have assisted any police investigation. The criminal activity has been ongoing and substantial and the police documents that were requested have now been sent to WSCC safeguarding in education department. I was concerned about media use in and around education and employment departments, I have an ongoing investigation with the DWP also as the Crawley department have not responded to the request and so are being investigated by the Independent Case Examiner.

I can certainly send copies of the documents from police to your department, however I have already mentioned that your staff were aware of unusual activity and did request I contact police in 2014. I am due to contact a solicitor about this communication next week so any information that you have would be helpful.

9. On the same day, an officer on behalf of the Council responded and stated: -

As I said in my email yesterday, there is no information I can identify without further information from you. I will therefore not respond further on this matter.”

10. The Appellant then requested an “internal review” on 6 December 2018, also stating: -

This is a general enquiry about any significant media presence in the area specified for a significant period of time.

11. The Council sent the Appellant the outcome of its “internal review” on 7 December 2018. It found that it had been unable to regard her requests as valid and actionable because: -

...insufficient information had been provided to allow an identification of the information requested enabling it to be located.

12. The Council also stated that it considered it had complied with its duty under section 16 of the FOIA to provide advice and assistance.

THE DECISION NOTICE

13. This then was the position when the Appellant contacted the Commissioner on 12 December 2018 to complain about the way her request had been handled by the Council.

14. The decision notice of 1 May 2019 first considered whether the Appellant had made a valid ‘request for information’ for the purposes of section 8(1) FOIA which requires that a request ‘describes the information requested’. The Commissioner concluded that as the Appellant was requesting information about the ‘media’ in the Council’s area in the December 2018 request, and ‘filming’ and ‘media presence’ in the earlier request in June 2018, this could be taken as a reference to information that the Council held about the presence

of 'broadcast media', and so satisfied the test in section 8 FOIA. On that basis the Commissioner decided that the Council had reasonably requested further information to assist it in locating and identifying the information sought.

15. Next, the Commissioner noted that s1(3) FOIA states that where a public authority 'reasonable requires further information in order to identify and locate the information requested' then if it is not supplied with the further information by the applicant, the public authority is not under an obligation to say whether it holds the requested information or communicate the information to the applicant (as otherwise required, subject to exemptions, by s1(1) FOIA).

16. The Commissioner formed the view that the wording of the Appellant's request was unclear and confusing and therefore the Council was acting reasonably in requiring further information from the Appellant.

17. The Commissioner also found that in making such a request of the Appellant, the duty under s16 FOIA to provide advice and assistance to the Appellant was triggered, and so the Commissioner went on to consider whether this duty had been discharged by the Council.

18. Section 16 of the FOIA states that:

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

19. The Commissioner considered the most recent Freedom of Information Code of Practice issued in May 2018 which states that 'there may... be occasions

when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the public authority can conduct a search for it. In these cases, public authorities may ask for more detail to enable them to identify the information sought’.

20. The Commissioner decided that it was reasonable for the Council’s response in December 2018 to refer back to the responses in the ‘closely related’ request in June 2018 (as set out above). The Commissioner referred to the fact that the Council had returned to the Appellant three times in June 2018 to set out the issues upon which it needed clarification. It was also noted that when the Appellant had stated that she had shared some information with the police and other agencies, the Council had asked to see copies to assist it in its task of identifying the requested information. As set out above the Appellant’s reply on 20 June 2018 was to note that she had the information, but she did not provide it to the Council. She repeated on 6 December 2018 that she could send documents from the police, but did not do so.
21. The Commissioner noted that the Council also searched records of previous contacts relating to the Appellant, but this had not identified any relevant material which might have guided the Appellant to further clarify her request.
22. The Commissioner concluded that: -
 - (a) The Appellant did not provide the clarification to enable the Council to identify a ‘single objective’ reading of the request.
 - (b) The Appellant may have confused things further by referring to matters such as the involvement of charities and suspicious activities.

(c) The Appellant did not attempt to define the use of the word 'media' or to refer to specific incidents.

(d) The Council had acted adequately and appropriately in its requests for clarification, and had discharged its duties under s16 FOIA to provide advice and assistance.

THE APPEAL

23. The Appellant's appeal is dated 9 May 2019. The Appellant's grounds are that the Council had not complied with its duty under s16 FOIA, and the Commissioner was wrong to find that it had. She argued that the information requested from her by the Council did not seem to be relevant, and the Commissioner had confirmed that this was the case. The Appellant said that she had provided additional information, but had been unable to recall or provide certain information. She said that she could not provide further information without causing further data protection breaches and risk to the public. The Appellant was of the view that the activity she had referred to would be significant enough to be identified.

24. In general terms, the appeal makes reference to safeguarding concerns, children's safety, urgency, suspicious activity, possible confidential information, concerns about fraudulent charity activity, and the involvement of the DWP. The Appellant says that some of the communications with other agencies has been by telephone which explains the absence of documentation. The appeal document throws no further light on the specific concerns of the Appellant, or the information she seeks.

DECISION AND REASONS

25. This appeal focuses on s16 FOIA and whether the requests for further clarification from the Council were appropriate.

26. In our view, and as the Commissioner found, the request made by the Appellant was not clear and in some respects had become confusing. On the face of it, it is not possible to discern to what the Appellant is referring when she mentions 'media activity'. Matters are confused when she also mentions criminal activity and the role of a charity in her correspondence. The Appellant did not provide the Council with a meaningful description of the incident, or series of incidents, that she is concerned about. The fact that the information sought goes back to 2014 emphasises the need for further clarification from the Appellant.

27. On that basis it is understandable and appropriate that the Council requested further information when trying to identify the information sought by the Appellant, and the form of the requests by the Council, as described above, appear to us to be properly set out so as to provide the Appellant, for the purposes of s16 FOIA, with reasonable advice and assistance in the form of guidance as to what was required in formulating the request. Having received that advice and assistance, it is difficult to understand why the Appellant was not willing to provide further documents, correspondence and information when she indicated that these were available.

28. The appeal asserts that the Commissioner had confirmed that the Council had not made relevant requests. The written response by the Commissioner denies that this is so, and there are no documents to show that this is the case. We note of course that the decision notice from the Commissioner decided that the Council had made appropriate and relevant requests, and it seems inconceivable that the Commissioner would have communicated the exact opposite opinion to the Appellant.

29. For these reasons, and those set out in the decision notice, we find that the Commissioner was correct to conclude that the Council had complied with the requirements of s16 FOIA, and on that basis the appeal is dismissed.

30. There is one postscript. On 22 July 2019 and 1 August 2019 the Appellant sent to the Tribunal documents from the Metropolitan police. A letter dated 28 May 2019 and a letter dated 3 July 2019 make reference to a FOI request to the police from the Appellant dated 29 April 2019 about terrorism investigations in West Sussex between 2014-2019. However, as the request referred to post-dates the request to the Council in the present case, these cannot be the documents referred to by the Appellant in correspondence with the Council. The documents now sent by the Appellant also post-date the decisions made by the Council in this case and the Commissioner's decision notice and so are not relevant to our determination.

Signed

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 12 November 2019

Promulgation: 13 November 2019