



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice IC-50564-V4R1**

**Appeal Reference: EA/2020/0287**

**Heard on CVP  
9 April 2021**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**MALCOLM CLARKE & PIETER DE WAAL**

**Between**

**JITENDRA MAROO**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

**Representation  
Appellant: in person  
Respondent: did not appear**

**DECISION**

The appeal is dismissed

**REASONS**

1. This appeal arises out of a dispute about a traffic violation involving a bus-lane.

2. On 16 April 2019 Mr Maroo sought clarification of issues arising from a previous information request:-

1. *Please provide evidence of when the bus lane signage was "last" installed/repaired and modified in the Ripple Road Bus Lane or alternately confirm that it has never been repaired/modified since being installed when the TMO became effective.*

2. *Please also provide details of when the council became aware of signage missing that prompted the action as in point 1.*

3. *Please provide Camera "video" footage relating to above PCN as stated on PCN "Entitlement to View a Recording or Obtain Images" or provide a copy via post/email?*

*Please note the definition of "video footage" as "the recording, reproducing, or broadcasting of moving visual images". Unfortunately the link to pictures was sent (not video) as part of your response which was not what was requested previously.*

4. *Please provide identifying detail of the camera used in the above alleged infringement that evidences compliance with the approval.*

5. *Please provide reasons why the council will not release the video footage without a FOI request whilst issuing PCN despite the entitlement?"*

3. On 15 May the Borough replied providing links and explanations in relation to requests 3-5 and with respect to the first two requests:-

1. *"The signage was erected when the Traffic Management Order became effective and has been in place since.*

2. *We have no reports of signage being missing at this location.*

4. Mr Maroo sought a review of the replies and during the course of that review explained that he had video evidence from his car showing signs missing from the bus lane on Ripple Road, Barking on 15.02.19. He concluded that the missing signage was 'fixed some time thereafter' and therefore the response to part 1 was incorrect.

5. On 27 July the Borough replied:-

*"The signage was erected when the Traffic Management Order became effective and has been in place since. In addition to this although we do not have any written records, we are aware that additional signage was erected opposite Thatched House Public House between June 2017 and March 2018. In accordance with the TSRGD only one sign is required for the bus lane due to its length, and this is at the start of the bus lane, however we introduced a repeater sign but this is not a legal requirement.*

*We have no reports of signage being missing at this location."*

6. Mr Maroo complained to the Information Commissioner who following correspondence investigated whether the Borough was entitled to conclude that it did not hold any recorded information within the scope of items 1 and 2 of the request.
7. The Borough explained to the Information Commissioner that when Mr Maroo's original request was received they had established that an extra sign had been placed in the middle of the bus lane after the bus lane had been in force for some time "as a courtesy to drivers." This information had not been recorded but was a recollection of a staff member and was believed to have been done in 2017/2018. The Parking and Environmental Design Service was responsible for any modifications to bus lane signage and a search conducted in the service did not produce any relevant records. The Borough explained that its retention policy did not require it to keep copies of any paperwork relating to modifications or repairs of such signage. Such records would not be held centrally.
8. The Information Commissioner concluded that:-

*"22....The fact that there is no requirement to retain records of modifications or repairs of bus lane signage within the Borough meant there was a very small chance of finding any relevant records.*

*23 The Commissioner is therefore satisfied that on the balance of probabilities, the public authority does not hold recorded information within the scope of item 1 of the request.*

*24. An additional sign was placed in the middle of the bus lane as a courtesy to drivers rather than as a replacement for missing signage. In item 2 of his request, the complainant asked for details of when the public authority discovered that signage was missing which led to a replacement or modification. However, the only known modification to the bus lane signage since the TMO became effective was adding a sign in the middle of the bus lane as a courtesy to drivers. Therefore, the only possible finding in respect of item 2 of the request is that the public authority does not hold recorded information matching the request.*

9. In his appeal Mr Maroo argued that the Information Commissioner was wrong to find on the balance of probabilities that no information was held. He argued that under the requirements of the Traffic Management Act 2004 and the local Traffic regulation orders the Borough was required to maintain the signage and to keep relevant records in order to carry out enforcement actions.
10. In oral argument he explained that he had pursued the case because he had received a demand from the Borough "when they didn't have the evidence". He stated that he knew the area well and had frequently seen that the sign was missing. He claimed that the Council was "making demands for payments when it

*is illegal*". He explained that in his case there had been no adjudication and he had paid the penalty.

11. He did not accept that there were no records and he was convinced they were held because as he formulated it "*the Council is unlikely to be carrying out illegal enforcement*".

### Consideration

12. The Borough explained to the Information Commissioner why it did not hold the information requested and provided clear explanations which she found credible. Mr Maroo does not accept this and argues that information must be held based on his interpretation of what he recalls seeing and his view of the record keeping requirements of the Borough for it to be able to enforce traffic penalties. The way to test the argument about any penalty would have been through challenging the penalty notice and so determining whether the Borough could properly demonstrate that it was properly enforcing a charge. However Mr Maroo did not do that and this tribunal is not the means of revisiting the lawfulness of a penalty charge. It is however clear from the material before the tribunal that Mr Maroo and the Borough differ as to what the actual requirements for signage are at this location.
13. The issue for this tribunal is whether on the balance of probabilities the Information Commissioner came to the correct conclusion. The Commissioner is a regulator with considerable expertise in resolving questions of whether public authorities hold information and if so whether it should be disclosed. She has concluded that no further information relevant to the request is held. Against this the key argument Mr Maroo has advanced is that it is unlikely that the Council is carrying out illegal enforcement so there must be records – with the clear implication that the borough is deliberately misleading the Information Commissioner. The difficulty with this argument is that if so, then the Borough would be acting illegally with respect to the Information Commissioner by committing an offence under s77 FOIA; with the paradoxical result that the Borough would be committing an offence under FOIA by falsely indicating that it is breaking another law. It is difficult to see a justification for such conduct which is consistent with Mr. Maroo's view that the Council would not act in breach of another law. A far more likely explanation is that the position is as the Borough has stated, there are no written records within the scope of the request.
14. The tribunal is satisfied that the Borough has provided a credible explanation why it does not hold the information requested and that there is no basis to disturb the Information Commissioner's findings.

Signed Hughes

Judge of the First-tier Tribunal

Date: 21 April 2021