



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

Appeal Reference: EA/2021/0115P

Before
Judge Stephen Cragg Q.C.

Tribunal Members

Kate Grimley Evans
Emma Yates

**Determined, by consent, on written evidence and submissions
Considered on the papers on 23 September 2021.**

Between

Ian Belton

Appellant

-and-

The Information Commissioner

Respondent

DECISION AND REASONS

DECISION

1. The appeal is allowed.

MODE OF HEARING

2. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.
3. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 205.

BACKGROUND

4. On 25 June 2020, the complainant wrote to Bicester Town Council (the Council) and requested information in the following terms:-

I refer to my letter of 14th April 2020 to which I have neither received an acknowledgement or reply.

I particularly wish to understand the basis of the Council's contention that it can proceed along the lines of the Resolution to increase allotment rents, and its letter of 2nd March 2020. The Council have been formally asked various questions with respect to the contents of the letter, and a purported tenancy agreement, signed only by [name redacted], sent to me by the Council in December 2019, and to which the Council appears to rely. It is obliged to answer these questions but to date they have been ignored.

These questions are further listed below, and I will be grateful for your formal response. I also draw the council's attention to my email of 1st December 2019 which raises serious doubt into the legitimacy of the Resolution to increase allotment fees without the statutory notice, if at all. This email also remains unanswered, and in particular the direct request for information contained therein.

The council states that 'research indicates' that the average allotment rental is £50 per annum for a 10 rod allotment. Will you please let me know the source and detail of this research?

Your failure/refusal to answer these questions adds to my believe you are aware your case has no merit. This will be brought to the attention of any court should it become necessary. Those unanswered questions are as follows;

When was this purported Tenancy Agreement agreed by council and when did it become effective?

What record is held by Council of the agreement by council?

What notification and/or notice was given to tenants of this Tenancy Agreement, and when?

The following request was also made. I was told this was passed to the Chief Officer, Please let me have a copy of my current Tenancy Agreement signed by both parties.

In addition, with respect to the purported undated Tenancy Agreement supplied in December 2019 please advise

1. Whether the Council considers this document binding on me, and on what basis, and whether it contends that this document includes a right to revise rent without notice or notification? If so please supply the number(s) of the clause(s) which it considers allow for such revision.

2. A tenancy agreement is required to include the reserved rent. Where specifically in this purported agreement is the reserved rent payable by the tenant?

Your earliest reply will be appreciated, certainly within twenty working days. Alternatively please let me have your confirmation of the cancellation of the letter of 2nd March 2020 and the withdrawal of the threats therein. BTC may also wish to consider making arrangements to refund all tenants who have paid amounts in excess of what they are contracted to pay, as it did in its letter of 23rd March 2015. If for unavoidable reasons BTC should you not be able to respond within the time given, kindly respond giving those reasons and a date by which you will respond.

5. The Appellant contacted the Commissioner on 16 October 2020 to complain about the Council's failure to respond to his request.
6. The Commissioner contacted the Council on 4 November 2020 and asked it to provide a substantive response to the Appellant within 10 working days.
7. The Council responded to the Commissioner on 27 November 2020 and confirmed that it provided the complainant with a response to his request on 22 July 2020.
8. The Appellant contacted the Commissioner on 30 November 2020 to inform her that he did not consider the Council to have responded on 22 July 2020 as he had not received any correspondence from the Council on that date. The Commissioner contacted the Council on 30 November 2020 and asked the Council to provide

evidence of when its response to the Appellant's request was originally sent. The Council responded to the Commissioner on 17 December 2020 and provided evidence that the Commissioner accepted as being proof that it had responded to the Appellant's request on 22 July 2020. It also confirmed that the Council's response was sent to the Appellant's email address.

9. On the basis of that, the Commissioner issued a decision notice dated 22 February 2021 in which she found that:-

16. Section 10 of the FOIA states that responses to requests made under the Act must be provided, "promptly and in any event not later than the twentieth working day following the date of receipt."

17. The Commissioner recognises that the complainant does not consider the Council to have responded to his request within 20 working days.

18. However, the Council has provided sufficient evidence that a substantive response to the request was provided within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council complied with section 10 of the FOIA.

10. We also note that s17 FOIA requires a public authority, within the same time limit, to state whether the public authority is relying on a claim that the information is exempt from disclosure or that the 'neither confirm nor deny' provisions apply to the request.

THE APPEAL AND SUBSEQUENT DEVELOPMENTS

11. The Appellant filed an appeal dated 16 March 2021. His grounds of appeal were:-

The Respondent did not respond to his Freedom of Information Act ('FOIA') 2000 request of the 22 August 2020 (nor for the sake of clarity his request of the 25 June 2020 insofar as it could have been deemed such a request) within the required 20 days, or at all; and no reasonable decision maker could have concluded that it had.

The Information Commissioner's Office ('ICO') gave no, or no adequate, reasons for its decision.

The ICO failed to respond to the Appellant's arguments, in particular that the Respondent's evidence appears to have been fabricated.

12. At this point the case took an unexpected turn. The Response to the appeal from the Commissioner states that the Commissioner had invited the Council to provide further evidence that the response to the request had been sent on 22 July 2020. The reply from the Council now was that the meta data on the response letter indicated that the earliest it could have been sent to the Appellant was 27 November 2020 (in fact the date that the Council had responded to the Commissioner), and that there was no trace of the email believed to have been sent on 22 July 2020.
13. On that basis the Commissioner accepted that the prescribed periods in s10 and s17 FOIA had not been complied with, and the decision notice had been wrong to find otherwise.
14. The Commissioner's view was that the appeal should be allowed but no further steps are necessary because the request had been replied to, albeit over four months late.

DISCUSSION

15. It has not been explained to us how the state of affairs in this case has arisen. It does not appear that the Commissioner has taken steps to obtain an explanation as to how an email dated 22 July 2020 was only, in fact, sent four months later or, more importantly, why the Council claimed that it had been sent on 22 July 2020. The Council has not, of its own accord, proffered any further explanation. Inevitably, and somewhat incredulously, we are left with the strong impression that an officer of the Council has fabricated an account to the Commissioner that the response was sent on 22 July 2020 to avoid criticism that this was not, in fact, done.
16. It does not appear that the Commissioner has taken this matter any further with the Council, in circumstances where it seems to us that further scrutiny might be necessary. It is important for both the Commissioner and the Tribunal that the veracity of responses from public authorities in FOIA cases can be relied upon. Moreover, we note the sheer waste of resources in terms of time and money brought about by the Council's actions: for the Appellant, the Commissioner and the Tribunal.

17. However, our role is to decide on the appeal and not to investigate either the Council or the way in which the Commissioner reached the conclusions in the decision notice.
18. On the evidence now available, we agree with the Commissioner that this appeal should be allowed, and a decision notice substituted that finds that the Council has not complied with its duties under s10 and s17 FOIA because it did not respond to the request until 27 November 2020, well outside the prescribed time limits. However, as the Council has now replied to the request, there is nothing further which needs to be done in relation to the Appellant's request for information.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 24 September 2021.