



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

**Appeal Reference: EA-2022-0145
Neutral Citation number: [2022] UKFTT 00462 (GRC)**

INFORMATION RIGHTS

Before

**DISTRICT JUDGE REBECCA WORTH
(sitting as a Judge of the First-tier Tribunal)
TRIBUNAL MEMBER RAZ EDWARDS
TRIBUNAL MEMBER PAUL TAYLOR**

Between

PETER WEBB

and

INFORMATION COMMISSIONER

Appellant

Respondent

Decided on the papers, 08 December 2022

DECISION

1. The appeal is dismissed.

REASONS

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 176 pages and additional documents provided by the Appellant as submissions – 10

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documents in total. We have had regard to all the documents provided, even if we do not mention all of them specifically.

Background

4. On 23 July 2020 the Appellant wrote to Lydd Town Council asking for “a copy of the council’s current and in date Covid-19 Risk Assessment for the Rype Play Park”. It appears that this request was complied with (see page A16 of the Bundle). On 26 January 2021 the Appellant wrote to the Council and asked for:

A copy of the Council’s revised and in-date Covid-19 Risk Assessment for the Rype Play Park

A copy of the register identifying when the Play Park was cleaned, dating back to 4th July 2020

5. It is the request made on 26 January 2021 which is the subject of this appeal and the exact terms of the request are found in the Bundle at page B105.
6. The Council responded on 04 February 2021, attaching some of the information and stating that other information was not available “due to a member of staff shielding” (see page B106 of the Bundle). After the Information Commissioner’s Office became involved, the Council sent the Appellant the inspection sheets which had been requested and not previously disclosed to him.

Decision, appeal and response

7. On 09 May 2022 the Information Commissioner’s Office issued Decision Notice reference IC-98164-F7D4. The decision was that Lydd Town Council (“the Council”) had complied with its obligations under regulation 5(1) of the Environmental Information Regulations 2004 (SI 2004/3391) (now referred to as “the EIR”). The Commissioner did not require Lydd Town Council to take any steps.
8. The Appellant lodged an appeal with this Tribunal which was received on 09 June 2022; this was 3 days late and a Tribunal Registrar decided to accept the appeal out of time. The Grounds of Appeal (see pages A8-A9 of the Bundle) challenges “items” 12-15 of the Decision (we take this to mean those paragraph numbers). It seems to us fair to summarise the Grounds of Appeal as:
 - 8.1 The information which has been provided are “copies of copies”.
 - 8.2 The Appellant lives near the play park in question; he did not see any cleaning taking place and therefore, he does not believe the contents of the documents that have been provided.

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- 8.3 The documents do not refer to Covid cleansing of the play park equipment.
- 8.4 He feels misled by the Council because “despite the investigator stating that the Council has now provided all the information it holds in respect of the request we know cleaning was not witnessed as having taken place.”.
9. The outcome that the Appellant seeks is:
- 9.1 The Council to clarify why they claim, on legal documents (Risk Assessment) and letter signed by the council’s executive officer (04 February 2020), that they carried out Covid cleansing on this play park, with the seriousness towards public safety of this period of time, they claim they did, but are unable to evidence so.
10. The Information Commissioner’s Response to the appeal is found at pages A87 to A100 and can be summarised as follows:
- 10.1 Further questions have been asked of the Council about the Appellant’s queries.
- 10.2 The Appellant’s concern about “copies of copies” are merely suspicion or supposition. The incompleteness of documentation is understandable, given the various restrictions about working which were in force during the period for which information was requested.
- 10.3 The cleaning may have taken place when the Appellant was not observing the area.

The Law

11. Regulation 5(1) of the EIR (so far as is relevant to this appeal) provides:
- 5(1) a public authority that holds environmental information shall make it available on request.
12. The Freedom of Information Act 2000 provides:
- 57 (1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.
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- 58 (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

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(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. This appeal is brought by the Appellant; it is for him to persuade us that the Decision Notice is wrong in law. Proof of any factual matters is to the balance of probabilities. The Tribunal will place the appropriate weight on the decision made by the Information Commissioner's Office as it is that entity which Parliament has chosen to regulate the compliance of public authorities with their duties under the EIR.

Discussion and conclusion

14. The purpose of the EIR is to allow the public to see information affecting the environment which is held by public authorities. The EIR is not about the veracity of that information or the contents of that information. Therefore, this Tribunal's sole concern in this appeal is whether the Council probably has, or probably has not provided the information requested by the Appellant on 26 January 2021.
15. When investigating the Appellant's complaint, the ICO asked appropriate questions of the Council and ensured that the information held within the second part of the request (originally not provided) was provided to the Appellant. When they received the Appeal, the ICO asked further questions of the Council and have, within their response, given suggestions as to why the information does not contain all that the Appellant believes it should. This is perhaps going further than the EIR requires, but was helpful as it could have reassured the Appellant that all the information which the Council holds has now been provided to him.
16. Looking specifically at the grounds of appeal as we have identified them, we find as follows:
- 16.1 The information which has been provided are "copies of copies":
- 16.1.1. This does not indicate that there may be further information held by the Council. The format of the information is not a matter on which we consider we should be involved as the Tribunal whose task as set out in sections 57 and 58 of FOIA is to determine whether the Decision Notice is, or is not, wrong in law.

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- 16.2 The Appellant lives near the play park in question; he did not see any cleaning taking place and therefore, he does not believe the contents of the documents that have been provided:
- 16.2.1. The content of the information is not for this Tribunal. This Tribunal's task is to determine whether the Decision Notice was wrong in its conclusion that the information sought has been provided.
- 16.3 The documents do not refer to Covid cleansing of the play park equipment:
- 16.3.1. As it is the Appellant's case that there was no Covid cleansing of the play park equipment, it is unclear why he also believes that the Council would hold information showing that there was Covid cleansing.
- 16.4 He feels misled by the Council because "despite the investigator stating that the Council has now provided all the information it holds in respect of the request we know cleaning was not witnessed as having taken place.":
- 16.4.1. This is not an issue which can be resolved by use of the EIR.
17. As an investigative Tribunal we need to look further than just at the Grounds of Appeal, and we have done so. The question for this Tribunal is whether the Decision Notice was wrong in law. The Decision Notice did not consider any exceptions under the EIR as the Council's position was that they were not withholding any information from the Appellant. Therefore, the only matter on which the Decision Notice could be wrong would be in its conclusion that the Council had complied with the EIR, in other words, that they have provided to the Appellant all the information they hold in respect of his requests of 26 January 2021.
18. On considering all the information provided in the bundle and in the Appellant's reply documents, we conclude that it is more likely than not that the Council has now provided to the Appellant all the information it holds in respect of the requests made on 26 January 2021. The Decision Notice quite properly recorded the initial non-compliance (i.e. not providing some information as it was not immediately available due to a person shielding); however by the time the Decision Notice was issued, the Appellant had been provided all the information that the Council held and that means that the Council had met their EIR obligations.
19. For all the above reasons, the appeal is dismissed.

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Signed *DJ Worth*

District Judge Worth, assigned to sit as a Tribunal Judge in the First-tier Tribunal General Regulatory Chamber

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Promulgated : 12 December 2022