



[Neutral Citation Number]

IN THE FIRST-TIER TRIBUNAL

Case No. EA/2010/ 0114

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

ON APPEAL FROM:

The Information Commissioner's

Decision Notice No: FS50207668

Dated: 24th. May, 2010

Appellant: Martin Brighton

Respondent: Information Commissioner

On the papers

Date of decision: 25th November, 2010

Before

D.J. Farrer Q.C.

(Judge)

and

Tony Stoller

and

Jean Nelson

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter: Whether public authority held requested information at the relevant time.

Case: *Bromley v The Information Commissioner (EA/2006/0072)*

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 24th. May, 2010 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. On 19th. November, 2007, Mr. Gordon Brown, then Prime Minister, made a speech in the House of Commons, of which the prepared text, as is common, had been published in advance. It concerned anti – terrorist measures.
2. The speech, as delivered, differed to some degree from the published version, specifically by omitting reference to certain organisations, including one entitled “Common Purpose”. Apparently, the text had been sent to the organisations concerned before the speech was delivered.
3. **The request for information**

By letter of 9th. June 2008 the Appellant wrote to the Cabinet Office making the following request for information:

“i) Why, who by and when was the speech changed? As part of your reply, will you please provide the documents that generated the changes in the text of your speech so as to exclude mention of Common Purpose’ (including all relevant recorded information).

ii). Why didn’t you issue the doctored version, which was read out in the Commons, to those who were sent the original version...As part of your reply, please provide copies of the correspondence between your office and Common Purpose informing them of your intention to include reference to them in your speech, and their replies to you. This will require the provision of the distribution list.

iii) What is this government's policy with respect to Common Purpose?

iv) Please...indicate what measures you took to ensure that MPs were in possession of the correct version i.e. the version excluding Common Purpose.

4. The Cabinet Office replied on 9th. July, 2008 stating that it held no information covered by the terms of the request and maintained that position following the Appellant's request for a review..

The complaint to the Information Commissioner

5. The Appellant complained to the Information Commissioner (" the IC ") on 8th. October, 2008. The IC approached the Cabinet Office in February, 2009 and there followed a regrettably protracted exchange, due largely to an acknowledged delay by the IC. Various issues were raised, including the question whether all the questions posed by the Appellant were requests for information. The Cabinet Office denied that it held any information matching the request or any "meta data" permitting it to track the possible transmission of such information around the time of the speech.
6. In due course the IC issued a Decision Notice in which he accepted that the Cabinet Office held no such information but ruled that it had breached s.1(1)(a) of FOIA by failing to inform the Appellant whether it held all of the requested information. Against that finding there is no appeal.

The appeal to the Tribunal

7. The Appellant appeals, arguing that information explaining the changes must exist within the Cabinet Office in electronic form, together with meta – data illustrating the course of changes. He further asserts that information in the form of documents must exist recording contacts

made with the organisations concerned and relating to the omission of references to them in the speech as delivered.

8. He further relies on a number of documents demonstrating that Common Purpose had received the original text and that questions had been asked in the House as to the funding of Common Purpose. He further exhibited an article that he had written regarding that organisation .

Conclusion

9. We agree with the Tribunal in *Bromley v The Information Commissioner (EA/2006/0072)* that the appropriate standard of proof when considering a denial by a public authority that it holds information as in almost all non – criminal matters, is the balance of probabilities, though that may be an academic consideration here.
10. Whatever Mr. Brown`s reasons for omitting references during his speech, whether they support the Appellant`s evident suspicions or are entirely unrelated to them, we see no reason to suppose that records of his reasons or related discussions are held by the Cabinet Office. Many speakers alter their notes shortly before speaking and many simply diverge from them on their feet. Any discussion is likely to have been with political advisers and unrecorded, save in the note used in the House.
11. Assuming for present purposes that requests (ii), (iii) and (iv) are requests within s.1 of FOIA (which seems debatable), we see no reason to question the Cabinet Office`s denial that it holds information responsive to the questions posed.
12. There is no reason why the government, certainly the Cabinet Office, should engage in, hence hold copies of correspondence with Common Purpose.

13. If there was no government policy on “Common Purpose” (and why should there be ?), no information is likely to be held by the Cabinet Office, whatever the position in other Departments.
14. We agree with the IC that it is inherently unlikely that organisations referred to in the original text would be contacted as to changes in the final version, given the “check against delivery” warning given to MPs and interested parties in receipt of the original text.,
15. Accordingly, we have no hesitation in dismissing this appeal which raises simple issues of fact on which, understandably, the Appellant can advance no relevant evidence nor plausibly invite inferences favourable to his case from the known circumstances.
16. Our decision is unanimous.

Signed

David Farrer Q.C.
Tribunal Judge

Dated: 25th November, 2010

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Between

Martin Brighton

Appellant

and

The Information Commissioner

Respondent

**Refusal of Permission to appeal to the Upper Chamber against a Decision
dated 23rd. November, 2010**

- 1 Mr. Gordon Brown made a speech on 19th. November, 2007 in the House of Commons, It concerned anti – terrorist measures. The speech, as delivered, diverged to some extent from the issued version, specifically by omitting reference to certain organisations, including one entitled “Common Purpose”.
- 2 This appeal involved a single issue: Did the Cabinet Office, at the date of the request giving rise to this appeal, namely 9th. June, 2008, hold any information as to the speech other than the text of the speech itself, as it

asserted to be the case. Mr. Brighton made a series of requests for information as to the divergence but, if the answer to that question was “No”, then this appeal failed.

- 3 Where, on the evidence, a public authority has conducted a proper search and concludes that it does not hold responsive information, then the ICO and the Tribunal are entitled to accept that it is probably right, unless there is good reason to infer that the denial is incorrect. This is a simple matter of evidence
- 4 There was no basis here for any contrary inference. The Tribunal concluded, as it was entitled to conclude, that the Cabinet Office was right. We considered the material presented by Mr. Brighton in support of the contrary conclusion, namely the documents referred to by the ICO in paragraph 6 of his written submissions but, like him, found it irrelevant to the identified issue.
- 5 As to the assertion that relevant meta data must have been held by the Cabinet Office, the Tribunal agreed with ICO that, even if they were, they would not fall within the terms of the four – part request.
- 6 As to paragraph 5 of the application, the reference to there being “no reason why the government, certainly the Cabinet Office, should engage in, hence hold copies of correspondence with Common Purpose” was of course, directed to correspondence specific to Mr. Brown`s change to the text of this particular speech. It was obvious that Common Purpose had corresponded more generally with Government departments.
- 7 We observe that the strength of this application is not increased by the use of discourteous terms such as “fatuous” and specious” whether directed at the Tribunal or any other party to an appeal. That said, they do not, of course, influence our view of the appeal.

- 8 For the reasons given in the Decision, we considered this appeal quite unsustainable. Nothing in the application for leave alters that view.
- 9 Permission is therefore refused.

David Farrer Q.C. Judge.

4th January, 2011