



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Case No. EA/2010/0205

**ON APPEAL FROM:
Information Commissioner
Decision Notice ref FS50287970
Dated 30 November 2010**

Appellant: Roger John

Respondents: (1) Information Commissioner
(2) Haringey Council

Date of telephone hearing: 17 March 2011

Date of decision: 22 March 2011

Before

HH Judge Shanks

Decision

For the reasons set out below the appeal is allowed by consent and the following substituted decision notice is issued.

SUBSTITUTED DECISION NOTICE

Public Authority: **Haringey Council**

Name of Complainant: **Roger John**

- (1) The Public Authority failed to deal with the Complainant's request for information set out in paragraph 1 below in accordance with Part I of the Freedom of Information Act 2000 in that it should have communicated the information to him;
- (2) The Public Authority is now required to communicate that information to him by 1600 on 1 April 2011.

Dated 22 March 2011

Signed

HH Judge Shanks

Reasons for Decision

1. By a request initially made on 7 September 2009 the Appellant, Mr Roger John, requested the Second Respondent, Haringey Council, to supply him with the following information under the Freedom of Information Act 2000: (i) the winning priorities of the applicants who had been successful in their bids for properties for which he had also bid; (ii) the registration dates of the bids made by those applicants; and (iii) the total number of bids made with respect to each of those properties. The Council refused to supply that information in reliance on section 14 of the Act which entitles a public authority not to supply information if the request is vexatious.
2. Mr John complained to the Information Commissioner under section 50 of the Act and he issued a decision notice dated 30 November 2010. In that decision notice he rejected the Council's position on section 14 and found that the request was a reasonable one (see para 89). However, although the point had not previously been relied on, he went on to find that the Council had been entitled to refuse to supply the information requested on the basis of section 12 of the Act, which allows a public authority to refuse to supply information if it estimates that the cost of complying with it will exceed the appropriate limit (£450 in this case). That finding was based on evidence supplied by the Council to the effect that Mr John had bid for 64 relevant properties and that it would take approximately 20 minutes to obtain the information relating to each property.
3. Mr John appealed to this Tribunal against the Commissioner's decision notice under section 57 of the Act. I issued initial directions on 9 February 2011 joining the Council to the appeal as Second Respondent and providing for a telephone directions hearing. Just before that hearing was due to take place on 17 March 2011 the Council wrote to the Tribunal stating that they had reviewed the list of properties Mr John had bid for and that in its view there were in fact only 54 relevant bids. In the circumstances the Council accepted it could no longer rely on section 12 of the Act.

4. The telephone hearing went ahead and all parties agreed that the appeal should be allowed by consent and that I should issue a substituted decision notice accordingly. My substituted decision notice is set out above; it requires the information to be supplied to Mr John by 1600 on 1 April 2011.
5. In his notice of appeal and during the directions hearing Mr John made it clear that he objected strongly not only to the Commissioner's decision that the Council was entitled to rely on section 12 but also to the process by which he reached that decision (in particular his failure to allow Mr John to answer evidence being provided by the Council) and to the way in which the decision notice recited the evidence and expressed findings of fact. As I attempted to explain to him the process by which the Commissioner reaches a decision and the precise terms in which he expresses it are not matters within the jurisdiction of this Tribunal; the only issue for the Tribunal is whether the decision itself was "in accordance with the law". However, I note again that the Commissioner expressly found at paragraph 89 of his decision notice that Mr John's request was a reasonable one; I also repeat the observation I made during the hearing that it seems to me that on a fair reading of paragraph 63 of the decision notice the Commissioner was not suggesting that any frustration Mr John felt with the Council was unjustified. In this connection I would also draw to Mr John's attention that the normal practice of the Commissioner is to publish his decisions online without including the name of the complainant and, as far as I am aware, this is the practice he has followed in this case.
6. Since the hearing Mr John has emailed the Commissioner and the Council with a copy to the Tribunal raising the issue of costs. The relevant rules of procedure allow the Tribunal as a matter of discretion to make an award of costs if it considers that a party has acted unreasonably in defending or conducting an appeal. A person wishing to apply for such an award must make a written application to the Tribunal with reasons and with a schedule showing the costs and expenses claimed (this can of course be done electronically) and the person against whom the award is sought must be given an opportunity to make representations. I therefore direct: (1) that if Mr John wishes to apply for costs against the Commissioner and/or Council he must, by 1600 on 8 April 2011, make

a written application to the Tribunal including reasons and a schedule of the costs and expenses claimed with a copy to any party from whom he is claiming costs and (2) that such party may reply to the application in writing by 1600 on 29 April 2011. If an application is made in accordance with my direction, I will endeavour to issue a decision during the week starting 16 May 2011.

Signed

HH Judge Shanks

Dated 22 March 2011