



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0078

B E T W E E N:-

DAVID HICKS

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

RULING

**RULING in relation to the Information Commissioner's Decision Notice No:
FS50239091 Dated: 24th February 2011**

1. The Information Commissioner in his response dated 20th April 2011 to the Notice of Appeal dated 21st March 2011 applies for the appeal to be struck out because, in his view, it has no reasonable prospect of success.
2. Under rule 8(3) of the *Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009*:
“the Tribunal may strike out the whole or part of the proceedings if
...(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.” .

3. Pursuant to rule 8(4):
*“the Tribunal may not strike out the whole or part of the proceedings under paragraph ...
(c) without first giving the appellant an opportunity to make representations in relation to the proposed strike out.”*
4. The Tribunal indicated that it was of the preliminary view that the application had merit and the Appellant was given the opportunity to make representations in reply to the Response pursuant to rule 8(4) which he did on 31st May 2011.
5. The background to the appeal is set out in detail in the Response, it is not challenged by the Appellant and it is summarized below.
6. In 2003-2004, whilst the Appellant was a full time student at Peterborough Regional College, he undertook a work placement as an Administration Assistant in its “Foundation Programme Area”, he applied for the post of part-time administrative assistant at the College but was unsuccessful and a former colleague was in fact appointed.
7. The Appellant subsequently brought legal proceedings in a variety of Courts relating to this appointment, all of which have been ultimately unsuccessful.
8. In October 2008 the Appellant commenced a correspondence with the College asking for information centring upon the title of the department where the Appellant had formerly been employed, *“which is currently known as Inclusive Learning”*.
9. On 29th January 2009 the Appellant wrote again to the College enclosing a witness statement from one of the legal cases he had brought, made by the named employee who had been successfully appointed. The Appellant explained that the

witness had been his colleague when he was on work placement “*in the section which was known as the ‘Foundation Programme’ in the academic year 2003-04*”. The Appellant also enclosed a copy of this employee’s CV from the same proceedings, which indicated that she had been employed by the College in its ‘Inclusive Learning Department’ in the year 2003-04. The Appellant went on to ask for -

“.. details regarding the job title and the name of the section in which [named employee] has been working in from the academic year 2003-04 to the present.

I would be obliged if you could clarify whether or not the section was known as the ‘Foundation Programme’ or ‘Inclusive Learning’ for each of the academic years from 2003-04 to the present”.

10. It is this request for information with which the Commissioner’s Decision Notice, and this appeal, is concerned with.

11. In a letter dated 9th February 2009 the College replied inter alia that despite a trawl through historical committee minutes and prospectuses and having spoken to members of College staff they could not be sure of the name at any particular time because:

- the information related to historical organisational and departmental structures in the College records of which they were not obliged to keep.
- Staff informally and in documentation used titles beyond their ‘shelf life’.
- The College sometimes altered its titles to accommodate the government’s educational agenda and Ofsted requirements.

- Any changes were likely to be implemented at the start of the academic year but when the changes were made was not recorded.

They then provided a table showing the date and name for the department, and an explanation for the naming at Curriculum Team Level, and confirmation that the “Foundation Programme” never changed its name to “Inclusive Learning” at department level.

12. Initially the College refused to provide the job title of the named employee relying on s40(2) FOIA (personal information). Following an internal review which upheld this decision, the Appellant complained to the Commissioner on 7th March 2009. The Commissioner took the view that the information requested about the named colleague was not exempt under section 40(2) FOIA.

13. By letter dated 18th June 2009, the College wrote to the Appellant confirming that—

“...we can provide you with the job title for [the named employee] which is ‘Administrative Assistant’”.

14. By letter dated 7th July 2009 the Appellant indicated that he wished the Commissioner to issue a decision Notice because:

- a. the job title was incorrect as he understood she was employed as a “Student Support Administrator”,
- b. he had not been informed of the named employee’s job title “from the academic year 2003-04 to the present”, and
- c. he had not been informed of the names of the section in which she worked.

15. The Commissioner spoke to the College to clarify matters and then replied to the Appellant on 14 July 2009 stating:

- The named employee is an ‘Administration Assistant’ and has been so since 2004. The public authority does not hold her job title before that date.
- The named employee’s job title was not ‘Student Support Administrator’, nor does it appear on her job description, but the internal telephone directory lists her as ‘Student Support Administrator’ to act as an explanatory title for internal clarification of her role
- the public authority had informed the Appellant of the names of the section in which she worked in its letter of 9 February 2009, providing a a chronological breakdown of the name changes of the section detailed in your request. This information is also relevant to the name of the section in which [the named employee] is employed.

The Commissioner’s Decision Notice

16. The Commissioner issued a Decision Notice dated 24 February 2011 finding (insofar as it is material to this appeal) that the Appellant had been provided with the information requested in his letter dated 29 January 2009.

The notice of appeal

17. The Appellant appeals by way of a Notice of Appeal dated 21 March 2011. His grounds of appeal are that the Commissioner is wrong in fact to find that he was provided with
- (i) details of the named employee’s job title from the academic year 2003-04 to the time of his request and
 - (ii) the name of the section the named employee worked in from the academic year 2003-04 to the time of his request.

18. In his reply the Appellant states that:

- he has no written correspondence from the College identifying the section or department that the named employee worked in from 2003-4,
- he has not been given the dates regarding the job title that the named employee holds at present or during the past.

19. The Tribunal notes the terms of the information request which was for “details” regarding the name of the section in which the named employee worked from 2003-4 to the date of the information request. The Tribunal notes that the information request was accompanied by the named employee’s witness statement and CV which identified the department in which she worked as the ‘Inclusive Learning Department’ in the year 2003-04. The evidence before the Commissioner confirms that this was and remains the department in which the named employee worked and the details regarding the name of the section have been provided to the Appellant by the College in the letter of 9th February 2009.

20. Additionally the request was for the job title of the named employee from 2003-4 to the present. The information has been provided as “Administrative Assistant”. On the basis of the evidence before the Commissioner, that was and remained at the date of the request the job title of the named employee, there is no need therefore to send a response indicating that in 2003-4, 2004-5 etc. the job title was “Administrative Assistant”. The answer must be seen in the context of the question asked and if as in this case a single job title has covered that period, a single answer is sufficient.

21. The Appellant relies upon the response dated 14th April 2011, to another FOIA request to the College as providing additional (but not complete) information which he argues he ought to have (but didn’t receive) in response to the information request which is the subject of this appeal. The details from the letter of 14th April 2011 correspond with the information provided to the Commissioner during his investigation which was relayed to the Appellant and referred to in the

decision notice. The Appellant appears to be bringing this appeal in order to seek information which he already possesses (from the letters of 9th February and 18th June 2009) to be provided to him in a different format. His entitlement under FOIA is to the information, not the way in which it is presented.

22. In his reply the Appellant argues that he has not been provided with any information as to the named employee's job title prior to February 2004. The Appellant does not point to any evidence that the named employee was employed by the College prior to February 2004. The Tribunal notes that:

- a) the parameters of the request began at the academic year 2003-4.
- b) February 2004 falls within that time period.
- c) The responses were given by the College to a time specific request.
- d) The evidence before the Commissioner was that the named employee's job title is “ ‘Administration Assistant’ and has been so since 2004. **The public authority does not hold her job title before that date.**¹”

23. For these reasons I find that the Appellant has no reasonable prospect of succeeding before this Tribunal and I strike out the appeal.

Dated this 16th day of June 2011

Fiona Henderson
Judge

¹ Emphasis added