



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

Case No. EA/2011/0066

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50314583
Dated: 17 February 2011**

Appellant: Colin Parker
Respondents: Information Commissioner
The National Patient Safety Agency

Heard at: Field House, London

Date of consideration: 17 August 2011

Date of decision: 26 August 2011

Before

Christopher Hughes OBE

Judge

and

Michael Hake

Alison Lowton

Attendances: This hearing was conducted on the papers.

Subject matter: Freedom of Information Act 2000

Section 1: whether information held

Cases considered:

Linda Bromley and others v Information Commissioner and Environment Agency
[EA/2006/0072]

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal rejects the appeal for the reasons stated.

Signed:

Christopher Hughes

Judge

Dated this 26th day of August 2011

REASONS FOR DECISION

Background facts

1. Mr Parker was a member of his local research ethics committee (REC) to which he was appointed by his local Strategic Health Authority (SHA). That SHA decided not to renew his appointment to this unpaid role at the end of his five year term. The Appellant was dissatisfied by this decision and appealed against it to the SHA.

2. Appointments and re-appointments to RECs are the responsibility of the SHA. In making its decision the SHA received the advice of the National Research Ethics Service (NRES) a group within the National Patient Safety Agency which, among other areas of activity, provides advice and support to SHAs in relation to RECs. The NRES advice to the SHA was that it would not recommend a re-appointment of the Appellant for a second five year term. The Appellant was aware of what this advice would be and the process and reasoning behind it had been the subject of earlier correspondence between the Appellant and NRES.

The Request for Information and the Commissioners' decision notice

3. On 14 April 2010 the Appellant wrote to the Director of the NRES with a five part request for information. :-
 - The information you used to demonstrate that NRES acted reasonably in reaching its decision.
 - The NHS guidance or regulation with their relevant contents referred to in arriving at the decision and in guiding NRES in its collaboration with the SHA.
 - The full transcript for the training for the chairing skills course.
 - The powers of the REC chair over the last five years.
 - A synopsis of the annual training undertaken by REC members as experts or as lay over the last five years.

4. There was correspondence between the Appellant and the Second Respondent during which information was provided, guidance given as to where to access some of the information, indicated that some material was subject to copyright and that the cost of all the provision would be excessive. The Appellant made further requests for information, including what was subsequently labelled request 6:-
 - the name and address of the training consultant
5. On 17 May 2010 the Appellant contacted the First Respondent to complain about the handling of his request. After further correspondence in which the First Respondent explained his role the Appellant by a letter of 6 August 2010 the Appellant agreed the scope of the First Respondent's investigation whether:-
 - further relevant recorded information is held for requests one and two, and if so whether it can be provided under FOIA ("element 1");
 - the information covered in respect of request three is held, and if so, whether it should be provided under FOIA ("element 2");
 - the information covered in request 6 can be correctly withheld under section, or whether it can be provided to the public ("element 3").
6. On 7 September 2010 the name and address of the training consultant and the transcript of the training course were provided to the Appellant and accordingly only element 1 of the investigation remained to be resolved by the First Respondent.
7. On 27 September 2010 the Second Respondent provided a document "Research Governance Framework for Health and Social Care" to the Appellant. This document was a relevant document to request 2 contained within element 1 of the First Respondent's investigation.
8. In the light of these developments the scope of the investigation which the First Respondent conducted was whether the Second Respondent held further relevant recorded information that was relevant to the request for information contained within points 1 and 2 at paragraph 3 above. In doing so he correctly applied the test laid down in *Linda Bromley and others v Information Commissioner and Environment Agency* [EA/2006/0072] of whether, on the balance of probabilities, such information was held or not.

9. The essence of the case which the appellant presented to the first respondent was:-

"from the way the substantive matter between the NRES and me developed in the eight months period from July 2009 to March 2010 when my concern was raised through their administrative hierarchy it seems to me most unlikely that NRES correspondence with me reflect accurately the record of the internal dynamic."

10. The First Respondent carried out a detailed investigation and analysis. It asked very detailed and probing questions of the Second Respondent and received detailed submissions and explanations.
11. The First Respondent was satisfied that the Second Respondent had correctly understood the nature of the request for information contained in request 1. That was that it was a request for information that was considered in the review procedure that enabled the conclusion announced on 1 March 2010 to be reached. The Tribunal is satisfied that that is the correct interpretation of that part of the request.
12. The explanation of the Second Respondent for the amount of material it held was that the recorded information was contained in the Appellant's file and what was done during the review procedure was to consider that file. The Second Respondent indicated that it had provided everything within the file and did not conduct any further searches because the individual carrying out the review knew that nothing else existed. The appointment and re- appointment responsibility lay with the SHA and not with the Second Respondent. The relevant director of the NRES handled business substantially through telephone conversations and meetings with those members of her staff who reported directly to her. In carrying out her review the director was already aware of the challenges made by the appellant against the decision not to renew his appointment. The review of the recommendation (which was the information sought by request 1) therefore did not produce any further documents since the review consisted of a check of existing documents. It was not a matter which required extensive further review.

13. The First Respondent was satisfied that the Second Respondent in considering the information requested in the first component of request 2 was correct in concluding that what was sought was the guidelines the director used in making the decision of 1 March 2010. The Second Respondent had stated that the main guidelines used at the relevant time were the Governance Arrangements for NHSREC dated July 2001 and the NRES Standard Operating Procedures version 4 April 2009. It confirmed that the guidelines covered the situation that it was dealing with and it did not require any other information in respect of an issue which was a simple paper review. The decision of 1 March 2010 was made within its normal course of business and no further guidelines were needed to be searched for because they were not used in the decision. The First Respondent considered that the documents supplied provided a comprehensive working framework for the conducting of business.

14. The First Respondent considered the information requested in the second component of request to which concern the guidelines designate the relationship between the SHA and NRES and not simply guidelines that related to the handling of the original complaint. The First Respondent reviewed in some detail a number of documents analysing how they dealt with the relationship between the two organisations, he further considered how the standard operating procedures covered the matter and asked the Second Respondent to provide the Appellant with the "Research Governance Framework for Health and Social Care". The First Respondent noted that there was little direct information about cooperation between the two statutory bodies within the various sets of guidance. The Second Respondent explained that until the Appellant challenged the failure to renew his appointment, it was not aware of any previous challenge in this area. It had been in the process of developing criteria but this had been delayed by the General Election and the proposal to abolish all the relevant statutory bodies.

15. After detailed consideration the on the balance of probabilities the First Respondent concluded that there was no further relevant information held by the Second Respondent in the respect of this request for information. He did not consider that the Appellant's arguments to the contrary were supported by evidence. He noted that certain procedural requirements had not been properly satisfied by the Second Respondent.

The Appeal

16. The Appellant served a Notice of Appeal on 8 March 2011. He alleged that the First Respondent was "not impartial in his consideration of this case". He made detailed comments with respect to the Decision Notice and challenged the conclusions which the First Respondent had reached. The appeal was resisted by both the First and Second Respondents on broadly similar grounds.
17. Neither the Appellant nor the First Respondent submitted evidence to the Tribunal. The tribunal considered two extensive bundles of documents and a witness statement submitted on behalf of the Second Respondent.
18. In her witness statement Janet Wisely, the Director of the NRES provided an overview of the National Patient Safety Agency and the handling of the Appellant's concerns by her directorate within that Agency. It confirmed that she was already familiar with the issues that the Appellant had been raising through telephone conversations and discussions with her operational staff. She was familiar with the terms and conditions relating to the appointment of members of RECs. She requested a copy of the two relevant letters sent to the Appellant. That was the information that she considered and she did not have any other information on file about the Appellant since that was a matter for the SHA. On 1 March 2010 she wrote to the Appellant confirming that she had reviewed the correspondence and discussed the matter and that she considered that the matter had been appropriately managed.
19. In dealing with the request for information she provided a full and convincing account of how she understood the requests and the steps taken to comply with them. She confirmed that in making the decision she did not use any other guidance or regulations in making the decision and that during the course of the transactions with the Appellant the Agency provided documents to the Appellant in good faith and in the absence of any specific policy which would have been more directly linked to his requests.
20. The Tribunal noted that this evidence was entirely consistent with the detailed investigation findings of the First Respondent. The tribunal was satisfied that the evidence of Janet Wisely was a true full and fair statement of the position.

Consideration of the Appeal

21. The question before the Tribunal is laid down by S.58 FOIA and in these circumstances requires the Tribunal to consider whether the Decision Notice is in accordance with the law and the facts. In coming to its conclusions with respect to this the Tribunal has been greatly helped by the very detailed investigation which the First Respondent carried out in considering the original complaint. The Tribunal is satisfied that it was rigorous and thorough and appropriately identified issues for investigation. In seeking to challenge the findings of the Decision Notice the Appellant alleges bias and then seeks to undermine the conclusions of the Decision Notice.
22. The Tribunal notes that the Appellant while asserting bias did not produce any evidence to support that allegation. The Tribunal further notes that this is strenuously contested by the First Respondent. Accordingly there is no evidence or grounds upon which the Tribunal could set aside the findings of the Decision Notice on the grounds of bias since there is simply no evidence upon which to base such a conclusion.
23. The heart of the Appellant's challenge to the findings of the First Respondent is rooted in his dissatisfaction with the substantive outcome of his original engagement with the Second Respondent. The SHA failed to renew his appointment to the REC, the Second Respondent did not intervene on his behalf and he considers therefore that something is wrong. He has a fixed conviction that documents, procedures and records should exist which more directly and specifically address both the circumstances of his case and the case itself.
24. However the First Respondent carried out an exhaustive investigation and found no evidence for that. The Second Respondent has submitted evidence to the Tribunal supported by a statement of truth which confirms the relevant findings of the Decision Notice. There has been a thorough search, supported by a statement of truth in support of the findings of the Decision Notice, the Appellant has produced no evidence which detracts from that.
25. The Appellant has been given ample information about the procedures of the Second Respondent and the Tribunal trusts that this will help assuage his

concerns. However the question of whether further information was held by the Second Respondent at the time of the request must be answered in the negative. The Appellant may have concerns about the process followed and the merits of the decision-making but those are not relevant matters for this Tribunal. The Tribunal is therefore satisfied that the decision notice issued by the First Respondent is in accordance with law.

Judge Christopher Hughes

26th August 2011