



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2011/0125

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50347299

Dated: 10 May 2011

Appellant: Mr Charles Morland
Respondent: Information Commissioner
Second Respondent: Norfolk County Council
Considered on paper: 27 September 2011
Date of decision: 17 October 2011

Before

Robin Callender Smith
Judge

and

Roger Creedon
Richard Fox
Tribunal Members

Representation

For the Appellant: Mr Charles Morland in person
For the Respondent: Mr Adam Sowerbutts, Solicitor, Information Commissioner
For the Additional Party: Mr Mike Garwood, Solicitor, Norfolk County Council

Subject matter:

Freedom of Information Act 2000

Qualified exemption: Law enforcement, s.31.

Cases:

John Connor Press Associates Ltd v Information Commissioner (EA/2005/0005).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 10 May 2011.

SUBSTITUTED DECISION NOTICE

Dated 17 October 2011

Public authority: Norfolk County Council

**Address of Public authority: Nplaw
County Hall
Martineau Lane
Norwich
Norfolk
NR1 2DH**

Name of Complainant: Mr C Morland

The Substituted Decision

For the reasons set out in the Tribunal's determination the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 10 May 2011

Action Required

The disclosure of the requested information – namely the criteria used to score online applications for Disabled Blue Badges – within 35 days.

17 October 2011

Robin Callender Smith

Judge

REASONS FOR DECISION

Introduction

1. Mr Charles Morland ("the Appellant") wanted to know the objective criteria used by Norfolk County Council ("the Second Respondent") to assess applications for the award of Blue Badges for the disabled.
2. He made his request on 21 June 2010 seeking:

".... a copy of the objective criteria against which the County Council assesses applications for the award of Blue Badges and the details of which of these criteria the application submitted by my wife did not meet and why it did not meet them."
3. The County Council responded on 20 July 2010 when it issued two separate letters to Mr Morland. In the first he received the requested information on a confidential basis outside the provisions of FOIA. The second letter responded to his request advising him that the County Council considered the information to be exempt from disclosure by virtue of s. 31 (1) (a) FOIA as disclosure would be likely to prejudice the prevention or detection of crime.
4. In that sense this appeal is unusual because the Appellant – having received the requested information in confidence – has been able to address the detail of the criteria used by the County Council in his own submissions in respect of the closed bundle.

The complaint to the Information Commissioner

5. Mr Morland, having requested an internal review of the County Council's decision on 30 July 2010 and having learned that the County Council upheld its original decision on 18 August 2010, appealed to the Information Commissioner ("IC") on 26 August 2010.

6. Mr Morland then made it clear that, although the requested information had been released to him on a confidential basis, he wanted the disclosure to be both to the public and in order to assist him with his own personal complaint against Norfolk County Council in respect of its decision to refuse his wife a Blue Badge.
7. The disputed information is in a "decision tree" which includes scores allocated to specific questions and answers during the online application process for a Blue Badge. The disputed information also contains details of the exact scores that are required in order to secure an automatic on-line acceptance of an application for a Blue Badge, the score required for an automatic refusal and the score that means there is a referral to the County Council staff for a decision to be made on the facts.
8. Norfolk County Council argued that because disclosure under FOIA is also disclosure to the world at large, placing the disputed information into the public domain would allow people wishing to apply for a Blue Badge to obtain one under false pretences. It could increase the number of fraudulently obtained Blue Badges in circulation and would provide criminally-minded members of the public with the tools required to commit that kind of fraud. Such effects would not be conducive to the "prevention of crime".
9. A false application for a Blue Badge is an offence under s2 of Fraud Act 2006. The County Council was obliged to take appropriate steps to prevent such offences and had argued that one such step was the non-disclosure of the scoring system applied to its assessment criteria.
10. The IC accepted that argument and further accepted that, based on the specific answers entered, the County Council's automated application system would automatically approve or refuse an application for a Blue Badge or inform the applicant that the application would require more detailed consideration by Council staff before a decision was made.

11. The County Council argued that if the assessment criteria and the scores awarded to each answer were released into the public domain then an applicant would know in advance how to answer each question correctly in order to secure a Blue Badge. It also confirmed to the IC that it would be possible for an Applicant to make multiple applications via the automated system. On that basis the County Council argued that disclosure of the disputed information would be likely to increase the number of fraudulently obtained Blue Badges in circulation and that the disclosure would be likely to prejudice the prevention of such offences.
12. The IC was satisfied that the disclosure of the disputed information would in all probability result in an increase in the number of fraudulent Blue Badges in circulation in the UK and would therefore be likely to prejudice the prevention of such crime.
13. In terms of the public interest balance the IC recognised the issues faced by the disabled community and had considered the public interest, as expressed by the Appellant, in transparency concerning the appropriateness (or otherwise) of the criteria used by the County Council in its automated system for applying for Blue Badges. The Appellant's specific concerns needed to be balanced against the wider public interest in the prevention of crime and the particular crime which was likely to occur in this particular case which would impact on the disabled community.
14. The IC recognised, also, that there were very significant benefits to the public at large and the disabled community specifically which were associated with the correct operation of the Blue Badge scheme itself. In addition to those benefits there were considerable savings to the public purse which crime prevention in relation to that scheme – as opposed to simple detection and prosecution – created.

15. The IC also considered that any increase in the fraudulent use of Blue Badges would result in an increase in the demand for the disabled facilities, something which would inevitably result in those individuals who genuinely qualified for badges finding parking more difficult. Those consequences would be unfair on individuals genuinely requiring a Blue Badge and, because of that, would be contrary to the public interest.
16. Parking fees from publicly-owned car parks and facilities provided an important source of revenue for public authorities. An increase in the number of fraudulent Blue Badges in circulation would result in a reduction in revenues from car parks. The County Council, in its response, explained that it developed an online system for assessment of eligibility for a Blue Badge on publicly available Department of Transport (DfT) guidance.
17. The system developed by the Council involved a series of questions based on DfT guidance and eligibility criteria. There was a difference between the publicly available guidance giving the eligibility criteria for a Blue Badge and a confidential scoring system adopted by the Council in its online system. While the former was publicly available the latter was withheld information. While the questions were based on the DfT guidance, the weighted scores to be applied were not given in the guidance. They were developed locally. The online system was regularly reviewed to ensure it remained accurate and reflected amendments to the DfT eligibility and Blue Badge guidelines. Using the online system, applicants found out whether they had qualified or failed to qualify for a Blue Badge or whether the Council required further information before it could reach a decision.
18. If the online system concluded that the applicant was successful they were still required to supply documentary evidence to support the answers given before they received a badge.

19. If the applicant was not successful in the online application that did not mean the refusal of the badge. Unsuccessful applicants might receive a score indicating more information was needed before a decision could be made and they were told what was needed so that their application could be further considered. Low scoring applicants were told that they were not eligible. Every applicant had a right to seek a review of their application and the online system notified applicants of this. The appeal panel in respect of refusals included a current Blue Badge holder as well as Council staff.

20. The online system provided considerable advantages in terms of speed compared with the former, manual application process. That ensured that access to services was maximised. The Council was the issuing authority for badges. Enforcement and prosecution of Blue Badge fraud was the responsibility of the Police Authority with whom the Council work closely.

21. The Council believed there had only been six cases of fraud relating to badges issued by it since 2004. On that basis it considered its online Blue Badge system dealt effectively with the prevention of fraudulently issued Blue Badges. Of the six cases of which it was aware, two related to using Blue Badges after the expiration date and one was in relation to a driver using a Blue Badge without the badge holder being present. Those three cases did not relate to fraudulently issued Blue Badges. The Council believed that its low level of identified fraud indicated that its system worked well.

22. If the information requested was disclosed to the public it would compromise the ability of the Council to operate an online system because of the risk of fraud. If the Council – or other relevant public authorities – were unable to use an online system for this process it would lengthen waiting times, reduce accessibility for its customers and incur extra costs to the public purse by having to go back to a manual

version. At the time of extreme public sector budget and staff cuts, that was not appropriate.

The questions for the Tribunal

23. Whether disclosure of the disputed information would engage s. 31 (1) (a) FOIA?

24. Whether the balance of the public interest in maintaining the exemption outweighed the public interest in disclosure of the disputed information?

Evidence

25. The Tribunal, the Appellant and the first and second Respondents have all seen the disputed information in terms of the scoring system that underpins the decisions made in respect of the awarding of Blue Badges by way of online applications made to Norfolk County Council.

26. That information was provided on a closed basis to the Tribunal and on a confidential basis to the Appellant.

Conclusion and remedy

27. The Tribunal has set out in the greatest possible permissible detail, at this stage of the appeal, the arguments advanced by both the first and the second Respondents. It recognises that these arguments have force and that s.31 (1) (a) FOIA is engaged.

28. At issue is whether it is in the public interest to allow the County Council's online Blue Badge criteria to come into the public domain.

29. The Appellant accepts that, even though it might create a risk of criminally-minded individuals seeking dishonestly to acquire Blue

Badges by misusing the public authority's award criteria, that is a "sad but inescapable fact of modern life" and is not such a sufficiently weighty factor as to merit withholding the information.

30. In terms of the public interest balancing exercise there is a significant sub-group of disabled people as part of the general public estimated – as the Appellant identifies from Government figures – at around 16% of the UK population.

31. The Tribunal agrees that for disabled people anything, however small, which increases their mobility can have a disproportionately beneficial effect on their quality-of-life and also that of their carers. Anything which adversely unfairly decreases or restricts their mobility can have a disproportionately adverse effect.

32. One of the things that can significantly improve the quality-of-life of disabled people is the obtaining of a Blue Badge. Disabled people are entitled to expect that the assessment process for this will be fair and equitable and will not adversely discriminate against particular applicants or types of disability. Transparency in this aspect allows the process to be open to scrutiny. In essence, the scoring criteria for online Blue Badge applications are designed to make life more straightforward for the Council and not for the disabled applicant. There appears to be a starting position that those making such online applications will be doing so on the basis that they are seeking to cheat the system.

33. The reality is that, even if dishonest applicants successfully cheat the online system by scoring enough points to qualify, those same applicants still need to provide documentary evidence before the Blue Badge is issued. That, in itself, is a check that prevents the issuing of Blue Badges to those who cannot show that they qualify properly for them and allows for consideration to be given to the prosecution of those individuals who are trying to play the system.

34. Apart from the legislation quoted by the IC (mistakenly) and the second Respondent about making false applications for Blue Badges, a false application of this kind would also fall to be considered for prosecution on the basis that the individual was seeking to obtain a pecuniary advantage by deception, an offence which can be dealt with by both a fine and imprisonment.

35. It is possible for local authorities to run “name and shame” publication lists on their websites and to high-light prosecutions and convictions – by way of press releases – for the fraudulent application for or use of Blue Badges. That is a common-sense remedy. That is the kind of thing that can be highlighted – as a warning to fraudsters – during the course of any online process. That is a more proportionate response than denying access to the criteria to those disabled individuals who are making quite legitimate applications for Blue Badges.

36. For all of these reasons, and because of the lack of transparency in the scoring system adopted by the second Respondent, the Appellant’s appeal succeeds. The Tribunal finds that, on the balance of probabilities, the public interest in disclosing the criteria, particularly to those who have genuine grounds for obtaining a blue badge, outweighs the potential prejudice in terms of the prevention or detection of crime identified in s.31(a).

37. Our decision is unanimous.

38. There is no order as to costs.

Robin Callender Smith

Judge

17 October 2011