



FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER

Appellant: Sir William O'Brien	Tribunal Ref EA/2011/0290
Respondent: The Information Commissioner	

DECISION NOTICE

1. This is an appeal against a decision of the Information Commissioner dated 23 November 2011. Although the appellant is correct to refer to a factual error in the decision notice; and although the appellant is understandably concerned about receiving apparently conflicting statements from his local authority, I have reached the conclusion that the appeal must fail and that therefore it must be struck out.
2. In October 2008 a 14 year old girl fell down a man hole which was on a grass verge in Pontefract. The manhole cover was defective. The man hole served a local pub, the Old Church Tavern, and it was the responsibility of the pub to maintain it. Following the accident, Wakefield MDC sent out an inspector; then two men fitted a new cover to the man hole; and another inspection followed. There were conflicting accounts as to whether it was council workmen who fitted the new cover or whether they carried out only a temporary repair with the pub later arranging for the replacement. I need not resolve that. It is obvious, for the purpose of these proceedings, that council workmen were engaged in making safe a man hole which was a private responsibility.
3. The appellant took the view that the Local Authority should charge the pub for this work and took this issue up with them. He was given the following explanation under the Freedom of Information Act:-

“We are advised by finance that the cost of raising an invoice is £30. Consequently, they advise that we should not wherever possible raise an invoice for £30 or less as this would effectively mean that it cost the council more money than the claim is worth”.
4. A few days later he wrote back with a further request. The relevant part of it challenged before the commissioner reads:-

“...would you please extend the information as to why it does cost £30, please supply details why and how the £30 is made up”
5. In response Wakefield MDC say they do not hold the information requested. They have no policy not to raise invoices for less than £30 and an officer from the

Decision Notice Continued**Appellant:**

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highways department was not advised by the finance department that the cost of raising an invoice was over £30.

6. The appellant's exasperation is understandable and it is scarcely surprising that he asked the Information Commissioner to investigate. The Commissioner has done so and has formed the view that the first reply on 11 November 2009 "unhelpfully caused confusion". Wakefield MDC has explained that it can identify a unit cost for the invoicing team of £7 per invoice but that this does not take account of "service area administration which will vary in each case". This apparently means that invoices automated through advanced booking arrangements are cheaper and more efficient than manual invoices.
7. The first question facing the Tribunal is whether the Local Authority holds information as to why it costs £30 to send out an invoice. Having reviewed the evidence, I have reached the conclusion that the tribunal will inevitably agree with the Information Commissioner that such information does not exist. The Local Authority denies that it exists and has produced the other information to which I have referred about the costs of raising invoices. The only information to the contrary is in the Local Authority letter dated 11 November 2009. It seems to me inevitable that the tribunal will conclude that, for whatever reason, that information was wrong. Indeed the appellant himself has always suspected it was wrong and has referred to enforcement policies in other areas of the Council's activities which cast doubt on it.
8. I accept, as the appellant points out, that the Commissioner's decision notice is wrong to suggest that the Council was unclear as to who was responsible for the manhole cover. There is some lack of clarity as to who actually put the new manhole cover in but it is quite plain that the Old Church Tavern had the duty of maintaining the cover. This error, however, is not material to the commissioner's conclusions. To use the language of the statute, his decision is not based on it.
9. I conclude that there is no prospect of the appellant establishing that the requested information is held by Wakefield MDC and that the Tribunal would therefore inevitably dismiss the appeal. Having regard to Rule 2, and having given the appellant an opportunity to comment, I therefore strike-out the appeal under Rule 8(3)(c).

Signed:	NJ Warren	Date:	09 February 2012
	Chamber President		