



IN THE FIRST-TIER TRIBUNAL

Case No. EA/2011/0262

GENERAL REGULATORY CHAMBER INFORMATION RIGHTS

ON APPEAL FROM:

Information Commissioner's Decision Notice No: FS50402007

Dated: 6th October 2011

BETWEEN

WORCESTER CITY COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decided on the papers on 10th February 2012

BEFORE:

Fiona Henderson (Judge)

Andrew Whetnall

and

Narendra Makanji

Subject matter: FOIA – 1(1)(a) right to be informed whether the information is held

- 8 valid request

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

Case No. EA/2011/0262

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal refuses the appeal for the reasons set out in main body of the Decision but amends the Decision Notice FS50402007 dated 6th October 2011 as it is agreed that it contains an incomplete record of the information request.

SUBSTITUTED DECISION NOTICE

Dated: 10th February 2012
Public authority: Worcester City Council
Address of Public Authority: Guildhall, Worcester, Worcestershire, WR1 2EY
Name of Complainant: Mr Robert Chadwick Bowley

The Substituted Decision:

1. For the reasons set out in the Tribunal's determination, the Commissioner's decision notice is upheld save that it should be amended to read:

“The first part of the complainant's request is as follows –

‘Your target response date of 16th December 2010 has been substantially overrun which is surprising as it must have been clear to you within a few days of receiving my letter that the information was not readily available?

Is there a valid reason for not complying with the ‘response time’ requirements of the Freedom of Information Act?’

Action Required:

2. The Public Authority must within 35 days of this Notice confirm or deny whether it holds any recorded information falling within the scope of the first part of the complainant's request and, if such information is held, to disclose it to the complainant or issue a refusal notice under section 17 FOIA.”

Signed

Fiona Henderson (Judge)

REASONS FOR DECISION

The request for information

1. The complainant requested information from Worcester City Council (the Council) on 16 November 2010 relating to the issue of a penalty charge notice. The Council did not reply until 5 January 2011 which was substantially outside the 20 day working limit provided for in s10 FOIA. In consequence the complainant sent another letter to the Council on 17th January 2011 containing questions in relation to 3 issues the first of which related to the delay. The latter 2 of these questions were treated as information requests and the complainant was provided with a substantive response on 25th January 2011¹.

2. The first request in the letter of 17th January 2011 asked –

“Your target response date of 16 December 2010 has been substantially overrun which is surprising as it must have been clear to you within a few days of receiving my letter that the information was not readily available?

Is there a valid reason for not complying with the ‘response time’ requirements of the Freedom of Information Act?”²

3. This was not treated as a request for information by the Council who issued an apology for the delay in their letter of 19th January 2011. From subsequent correspondence it became explicit that the complainant considered it to be an information request and required an answer.

4. In their letter of 5th April 2011 the Council said:

“Regarding paragraph three of your letter dated 17 January 2011, we wrote to you on 19th January 2011 with our apology for the delay in responding to your request....

We have nothing further to add.”

¹ The complainant was unhappy with the information that he received and there was additional correspondence between the parties. This is not the subject of this appeal and is not dealt with further here.

² For ease of reference this will be called “the first question” by the Tribunal in this Decision Notice.

5. The correspondence was closed by the Council in a letter dated 24th May 2011 in which they said:

“In view of the exchange of e-mails regarding your request, the Council’s civil Enforcement Team Leader... has tried on several occasions to contact you by telephone but has received no response. Therefore as we have nothing more to add we are closing the request”.

The Complaint to the Commissioner

6. The complainant complained to the Commissioner, from his form it is apparent that he is requesting that the Commissioner consider the issue of the response to “the first question”. The Tribunal accepts that the Commissioner was therefore under a duty within the terms of s50(3)FOIA to issue a Decision Notice on this point.
7. It is accepted by the Commissioner that in his correspondence to the Council he made no explicit reference to the letter of 17th January 2011. The Tribunal accepts that the Council did not realize that this request was in fact the subject of the investigation and that in consequence the Council did not send the letters of 8th April and 24th May 2011 to the Commissioner. The argument that these letters constituted performance of the duty to confirm or deny set out in s1(1) FOIA was therefore not before the Commissioner.
8. The Commissioner held in his decision notice that the first question was an information request and the Council had not provided a response pursuant to s1(1)(a) FOIA confirming whether they held the information or not. They were ordered to provide such a response within 35 days of the date of the Decision.

The Appeal

9. The Council appealed on the grounds that the “first question” of the complainant’s request, as described at paragraph 6 of the Decision notice, was not a valid information request but is simply a comment on the delay in the Council’s response to the earlier request.

10. In his reply the Commissioner conceded that the quotation at paragraph 6 was incomplete and did not include the sentence:

“Is there a valid reason for not complying with the ‘response time’ requirements of the Freedom of Information Act?””

11. In light of this omission, the Council was given leave to amend their grounds of appeal to include:

“The Commissioner erred in holding that there was a breach of s 1(1) FOIA because in response to the request: “Is there a valid reason for not complying with the ‘response time’ requirements of the Freedom of Information Act?” the Council had informed the complainant that it held no further information by way of letter dated 24th May 2011.”

Issues and analysis

12. The Tribunal is satisfied that there are 2 questions for it to determine:

- i) Whether *“Is there a valid reason for not complying with the ‘response time’ requirements of the Freedom of Information Act?”* was an information request within the terms of s8 FOIA.
- ii) Whether the letter of 24th May 2011 was a notice that the information was not held within the terms of the Act pursuant to s1(1) FOIA?

The request:

13. S.8(1) FOIA defines a request for information as a request which:

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

On an objective construction of the sentence, the Tribunal does not accept that it is just a comment, and agrees with the Commissioner’s assessment that the request was for *“any information which would explain why the council’s response to his first request was not provided within 20 working days required by the Act”*. Consequently we are satisfied that the request complies with s8(1) and required a response pursuant to s1(1) FOIA.

The response:

14. S1(1) FOIA provides that:

*(1) Any person making a request for information to a public authority is entitled—
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.*

15. The Council argue that they complied with this through their letters of 8th April and 24th May 2011 in both of which they stated that they had “nothing further to add”.

16. The Tribunal notes that this is in the context of a correspondence debating whether the sentence was in fact an information request and is satisfied that these letters are recording that the Council having apologized, have nothing to add to the issue of whether this is a valid request which should be answered. There is no explicit acknowledgment that this is being treated as an information request. Consequently the Tribunal is satisfied that these were not notices confirming that the terms of the information request had been considered and the Council held no information within scope. These letters do not comply with s1(1) FOIA and there has therefore been a breach.

Conclusion

17. For the reasons set out above the Tribunal refuses the Appellant’s grounds of appeal but amends the Decision Notice to reflect the incomplete reference to the information request in paragraph 6.

18. The Tribunal’s decision is unanimous.

Dated this 13th day of February 2012

Fiona Henderson

Judge