



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

Appeal No.: EA/2011/0284

BETWEEN:

Darbari Rachpaul Bedi

Appellant

And

Information Commissioner

Respondent

And

Mrs P K Bedi

Second Respondent

RULING STRIKING OUT THE APPELLANT AND SECOND RESPONDENT'S CASES

**in relation to the Information Commissioner's Decision Notice No: FS50380704 Dated
31st October 2011**

1. The Information Commissioner in his response dated 23rd December 2011 to the Notice of Appeal dated 20th November 2011 as adopted by the second Respondent, 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. The Appellant and Second Respondent were given the opportunity to make representations against the proposed strike out under rule 8(4) and the Tribunal has taken into consideration their response of 17th January 2012 and their representations of 25th January, 30th January and 16th February 2012 in making this ruling.
4. A copy of the original request is not before the Tribunal but from Hounslow Homes Ltd’s reply to the request and the Commissioner’s decision Notice I am satisfied that the request dated 12th August 2010 was made to Hounslow Homes Ltd and was for a:
“... List of properties available to rent between February 1995 to December 1996 inclusive”.
5. The Appellant and his wife were allocated housing by Hounslow Borough Council (the Council) in 1996. The Council set up Hounslow Homes Ltd an Arms Length Management Organisation (ALMO) to administer their housing in 2002. The Bedis have been in correspondence with both Hounslow Homes and the Council since 1999 seeking to establish whether there were other more suitable properties available at the time that they could have been but were not offered.

The Commissioner’s Decision Notice

6. In response to the request Hounslow Homes Ltd provided some information relating to the latter end of 1996, but said that they did not hold any information for the earlier time period; the Commissioner commenced his investigation.
7. The evidence before the Commissioner was that the London Borough of Hounslow moved the housing information from the old mainframe to the new system at the beginning of April 1996. When the data was transferred from the old to the new system only the latest status for each property and the date of that status was

8. The Commissioner found that the information on properties available prior to April 1996 were never transferred across to the current system which was what was eventually transferred to Hounslow Homes Ltd when it was set up in 2002. It was therefore never held by them.

The notice of appeal

9. The Appellant appeals by way of a Notice and grounds of Appeal in which he is supported by his wife the second respondent. These grounds have been amplified in their response and submissions. I am satisfied that they can be summarized as:
 - i. The Commissioner was not “careful” when considering this case and consequently his decision is unsound.
 - ii. The Commissioner’s decision is wrong in law and based on insufficient evidence/investigation.
 - iii. The issues raised are in the public interest,
 - iv. The balance of the public interest favours the Bedis,
 - v. Hounslow Homes and their controllers are institutionally racist.
 - vi. Failure to investigate institutional racism is a breach of Article 3.
 - vii. The Council “lost” the data sought (asserting that it was held by Hounslow Homes and remains recoverable technically even if deleted).
 - viii. Data can never be deleted and therefore remains held,
 - ix. The fact that the data for the period of interest to the Bedis is said to have been destroyed but not later data does not stand up to scrutiny.
 - x. This information request is the latest of a series which should be considered here.
 - xi. In the knowledge of the dispute since 1999, any planned destructions of data should have been suspended.

Taking these issues in turn:

Grounds i and ii.

10. The carelessness highlighted in the pleadings and correspondence is administrative and not material to the facts of the case. The Commissioner has to be satisfied in relation to the facts on a balance of probabilities. The Commissioner has received an explanation from Hounslow Homes Ltd which is consistent with the timing and known facts. None of the Bedis' arguments undermine the facts as set out by Hounslow Homes on this point. These grounds must therefore fail.

Ground iii-iv

11. These grounds are misconceived. The Tribunal's jurisdiction is limited by s50, 57 and 58 FOIA. The reasoning behind the allocation of housing in 1996 is not a matter over which the Tribunal has any jurisdiction. The public interest is only material in relation to considering the applicability of certain exemptions. Hounslow Homes Ltd have not raised any exemptions to the disclosure of information, their case is that it has never been held by them. These grounds must therefore fail.

Grounds vii-ix

12. S50 FOIA empowers the Commissioner to make:

"...a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I."

Consequently the decision is limited to a particular request and a specified public authority. The right of appeal is similarly limited as it follows on from the power to make the Decision.

13. These grounds confuse the Council and Hounslow Homes Ltd. Pursuant to s3(1)(b) and 6(1)(b) FOIA Hounslow Homes Ltd is a public authority in its own right, consequently it has a separate identity from the Council. The request that is the subject of this Decision Notice was made to Hounslow Homes Ltd. Consequently neither the Commissioner in his Decision Notice nor this Tribunal have the jurisdiction to consider whether the Council hold the information. The Commissioner

14. Similarly on the evidence the information was not “lost” by Hounslow Homes because it was never transferred to the system that they eventually took over, and they were not responsible for the transfer. The Bedis provide no arguments that undermine or address the Commissioner’s findings that because the disputed information was never transferred onto the current software used by Hounslow Homes, **Hounslow Homes** have never held the information. These grounds must therefore fail.

Grounds x and xi

15. S50 FOIA limits the Decision to consideration of the specified request. The Commissioner and the Tribunal are limited to consideration of the particular request that is before them, they have no jurisdiction in these proceedings to consider other requests made to the same public authority (Hounslow Homes Ltd) or another (the Council). The question of the circumstances of the deletion of the information relates to the Council who are not the public authority against whom the Decision Notice has been made. It is therefore outside the remit of this appeal.

16. For these reasons I find that the Appellant and second respondent have no reasonable prospect of succeeding before this Tribunal and I strike out the appeal and the second respondent’s case.

Dated this 12th day of March 2012

Fiona Henderson

Judge