



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

Appeal No: EA/2012/0050

NEIL GILLIATT

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

STRIKE OUT

UPON READING the representations made by the parties, and all other documents lodged with the Tribunal:

1. **This appeal is struck out** under rule 8 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 No. 1976 states.
2. I have seen nothing in the representations made by the Appellant to alter the reasons given in the appendix.
3. The Appellant stated in his email of 23 April, as regards the Tribunal's previous question as to whether the Appellant was claiming that the Council did in fact provide a breakdown to the Magistrate's Court:

"I have not at any time put any argument forward that the council did send a breakdown. It is seems there has been too much importance put on the wording, which has no relevance as far as I can tell. I could have just as easily worded the request as follows:

Can you provide me with a copy of the breakdown which should have been supplied to the Magistrate's Court."

4. I reiterate, that the phrasing of the request is important to understanding what has been requested both for the authority and any appeal. The phrasing of the request showed no ambiguity, and clearly requested the breakdown provided to the court.
5. As regards the Appellant's other comments, the Court can only consider a case in accordance with the law as it stands, and not in a way he considers it should be. For the reasons explained, the Appellant might consider how best

to phrase any future requests. This should take account that the public body need only provide information that it has recorded.

6. In response to the Appellant's comments on paragraph 14 set out in the Appendix, his arguments regarding a business need can not be said to be relevant to Request A, because of the way it was phrased.
7. In cases where there are arguments as to whether a public body holds information, this is considered on the basis of whether on the balance of probability the information is held. Often, a party might argue that the information is on the balance of probability held because the body has a strong business reason why it would be held.
8. In this case, the Appellant accepts that the Council did not supply a breakdown to the court. Therefore, it cannot hold the 'breakdown as supplied'.
9. The Appellant asked whether there was another avenue in which to raise my concerns that would address more specifically what information the council should hold, rather than whether the information is held and provided. He noted that he had resigned himself to the fact that the tribunal was not the appropriate way to move my concerns forward. The Judge is unable to provide advice on this. It is open to him to seek legal advice on this point.
10. The Appellant states:

"Although it is unlikely this appeal will be productive as far as having the council held to account, the issues have been identified and brought to the attention of the Tribunal and as such, should be raised with the powers most suitable to investigate, be that the Police, LGO or the Serious Fraud Office. I believe these concerns can not simply be ignored just because they fall outside the powers of the Tribunal."

11. This is not something the Tribunal can get involved in. It is open to the Appellant to consider whatever other avenues he thinks appropriate.

Signed:

Judge Taylor

Dated: 27 April 2012

APPENDIX



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

Appeal No: EA/2012/0050

NEIL GILLIATT

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DIRECTIONS

UPON READING the Notice of Appeal, Decision Notice, Information Commissioner's Response, bundle and all other correspondence lodged with the Tribunal:

I propose to strike out this appeal. This is on the basis that it does not seem from what I have seen so far that there is any reasonable prospect of the appellant's case, or any part of it, succeeding.

1. The Appellant and Commissioner may make representations in relation to the proposed strike out, by 10 May 2012. (If a party needs more time, they should request for the direction to be varied providing reasons.)
2. The parties are requested to notify the Tribunal within 5 working days as to whether they will be making any such representations.
3. To assist the Appellant, I set out the relevant rule and provided the reasons below for my assessment of the situation based on what I have seen so far.

Rule 8 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 No. 1976 states:

“(3) The Tribunal may strike out the whole or a part of the proceedings if...(c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings under paragraph [(3)(c)] without first giving the appellant

an opportunity to make representations in relation to the proposed striking out."

Reasons

Background

1. By letter dated 2 May 2011, the Appellant made a request of North East Lincolnshire Council, which is referred to below as request A and request B with my own headings inserted.

Request A

"Can you provide me with a copy of the breakdown as supplied to the Magistrate's Court to support your latest request for a Council Tax Summons fee increase of almost 120%, which takes the previous cost of £32 to the current £70?"

Request B:

"Can justification be given to why, in a Council document listing proposed savings, i.e. "Increase summons cost" - projected savings of £188,000 for each of the following 4 years is forecasted when such fees are to cover Council Tax recovery, not constitute savings by way of income generation?"

2. On 10 May 2011, the Council responded:

Request A: Court Breakdown

"There has not been a 'breakdown' supplied to the Magistrates Court so we cannot supply you with a copy of this. The Magistrates Court were informed by letter of our intention to increase summons costs (there are no longer costs for a liability order)."

Request B: Use of Funds

"The costs raised are to cover the cost of Council Tax collection and recovery. This includes the technological systems in place and employment of staff. Costs collected also cover monies paid to Her Majesty's Court Service for the use of their facilities. The monies raised from costs are not greater than the cost of the service. The increase in summons costs does not represent 'income generation' but a saving that can be made in the cost of the delivery of the service, that would otherwise ultimately be passed on to the Council Tax payers of North East Lincolnshire. "

3. It gave further information on 26 May 2011 following an internal review:

Request B:

"We refer you to the Council Tax Administration and Enforcement regulations 1992, which state that the Council may add costs reasonably incurred by the authority in connection with the application. The Council Tax Administration & Enforcement regulations do not require the Council to justify the amount charged to each individual, only that the costs have been reasonably incurred by the authority in connection with the application up to the time of payment

or tender. The annual budget for all activity associated with recovery of Council Tax and Business rates amounts to approximately £1.1 million.

The costs collected cover the charge made by the Magistrates Court as well as other costs incurred by the authority. If you have any questions regarding the legality of the court process you should direct them to HMCS."

4. Following a complaint to the Information Commissioner, a Decision Notice was issued concluding that the Council had complied with the Freedom of Information Act 2000 ('the Act'), and no further information was held. This was because on the balance of probabilities the Council had provided all of the information it held that fell within the scope of the information request, and:
 - a. The Information Commissioner considered the Council had explained why it did not hold more information falling within the scope of the request there was no business need for it to hold information in the detail and context requested.
 - b. Request A: The Council had explained that it had not supplied the Magistrates Court with a breakdown of the increased summons costs. It had explained that it did not hold a breakdown for the calculation of the £70.00 fee, as it was based on comparisons with the fees charged by neighbouring authorities (including Hull City Council and East Riding of Yorkshire Council) and then compared against national averages, and as previously identified checked to ensure that the monies raised from costs would not be greater than the cost of the service.
5. The Appellant appealed to the Tribunal by notice of 29 February 2012. The grounds were:
 - a. There as a business need for the Council to hold the requested information because it is required to justify that its costs are reasonably incurred, because it:

"is required to justify to the court the costs with respect to the authority laying a complaint with the Magistrates' court is an amount equal to the costs reasonably incurred by the authority in connection with the application. Therefore, for this to be done I consider the council should hold information in so much detail as is required to justify these costs".

(He quoted the "1993 Department of the Environment Council Tax Practice Note 9 as stating that:

"while it is likely that authorities will have discussed a scale of fees with the Clerk to Justices it should be recognised that the Court may wish to be satisfied that the amount claimed by way of costs in any individual case is no more than that reasonably incurred by the authority" (p.8).
 - b. The information provided is a smoke screen diverting attention from what was actually requested.
 - c. The Appellant was not satisfied with the Council's response because:
 - i. *"It stated that the cost of "council tax collection" is to be covered by costs raised through the summonses. Making those caught out with these fees, pay for the collection of council tax is unlawful as the Council Tax Regulations only*

allow for costs to be recovered which are incurred by the authority in connection with the application.”

- ii. *“It stated also that monies raised from costs are not greater than the cost of the service. The service it refers to however, is not council tax recovery, but council tax collection in general...”*
- iii. *“Costs collected also cover monies paid to Her Majesty’s Court Service for the use of their facilities. Therefore money paid to the court for this purpose, is for obtaining the liability order. More importantly though, this means debtors who get charged for being issued with a summons but settle their accounts prior to them going to court, are specifically being charged costs for obtaining a liability order, something that they should not incur and is completely unlawful.”*

He considered that local authorities needed to be held to account over this: *“By apparently not needing to hold detailed information of these cost, they get away with defrauding the public unchallenged.”*

6. In response, the Commissioner noted that Request B was phrased as a question. It regarded this as a valid request for information. It stated that *“based on the explanation put forward by the Council ... the Commissioner was entitled to find on the balance of probabilities that the Council does not hold information in relation to Request B.”* Regretfully, this was not elaborated upon, and its reasons were not clear.
7. The Appellant has assisted the Tribunal with prompt responses to my requests, clarifying that:

Request A: (In reply to the question: is the Appellant claiming that the council did in fact provide a breakdown?)

“I have not claimed that the council provided a breakdown. I requested a breakdown of costs on the understanding that the council would require this to justify them to the Magistrates’ court and to comply with the law and legislation set out in the Council Tax (Administration and Enforcement) Regulations 1992.”

Request B: *“the request was intended to ask for justification as to why amounts received in increasing summons costs would be used by the Council for purposes other than Council Tax recovery”.*

My Reasons

Request A:

8. The wording of the request clearly asks for a copy of the breakdown ‘as supplied to’ the Council to the Magistrates Court to support the increase in the fee for a Council Tax summons.
9. The Council has stated that it did not provide a breakdown and instead informed the Court of the proposed increase by letter. Preferably, the Council would provide the Appellant with that letter. However, the Appellant does not dispute these facts.
10. If the Council did not provide the Magistrates Court with a breakdown of the costs, then a copy of the breakdown *provided* to the court cannot exist or be held by the Council.

11. The Appellant now seems to ask for a breakdown that he asserts should have been provided. However, this would not seem to be within the scope of the original request.

Request B:

12. Request B was formulated as a question, asking for a justification for the Council's actions. The Commissioner has not explored or disputed what the parameters of information that a public authority can be said to 'hold' or 'record' within the meaning of the Act.¹

13. The request is drafted in such a way that it could have had more than one meaning. (For instance, the Appellant might have been asking whether in accounting terms increased summons costs could properly be described as income generation or savings.) However, the Appellant has made clear that he was questioning the proper use of the funds gained by the Council in increasing the summons cost. The Council interpreted the request in the same way and provided what it considered to be its justification of this. Given the drafting of the request, it is not readily apparent as to how it can be successfully argued that the information requested has not been supplied.

14. The Appellant argues that there is a business need for the Council to hold information so as to justify that its costs are reasonably incurred. This may be so. However, on a proper reading of request A, this is not what he requested. In relation to request B, he requested a justification, and was given one.

15. It is clear that the Appellant was not satisfied with what he was provided with. However, the arguments he made about this are not ones that the Tribunal can assist with. As has been explained during the case management process, the Tribunal's powers are limited to determining, in relation to this appeal, whether the requested information is held and whether it should be provided. It has no standing to determine what the council 'should' hold and how it should act. (That is unless that is evidence to support an argument that on the balance of probabilities the Council did in fact hold the information – which the Appellant has not argued, and it is difficult to see how he could argue in this case.)

Other Matters

16. The Appellant commented that "*By apparently not needing to hold detailed information of these cost, they get away with defrauding the public unchallenged.*" It might assist him to note that in this case, much falls on how he has phrased his request. There may be further information that he is interested in that the Council may hold and be able to supply. It is important that an information request is phrased carefully to ensure (a) it reflects the full scope of what is wanted; and (b) it is clear to understand. It is open to him to submit a further request to the Council.

Signed:

Judge Taylor

Dated: 19 April 2012

¹ See s.84, meaning of 'information'.