



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2012/0058

B E T W E E N:-

VALERIE WRIGHT

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

APPLICATION BY THE RESPONDENT TO STRIKE OUT THE APPEAL

Decision:

Subject to any representations the Appellant may wish to make under Rule 8 (4), the first-tier tribunal intends to strike out the Appellant's application to Appeal the Decision Notice of the Information Commissioner, under rule 8(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the 2009 Rules").

Reasons:

Introduction

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA"). The appeal is against the

decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“the Decision Notice”) dated 6th March 2012 (reference FS50427267).

Factual Background to this Appeal:

2. On 4 November 2011, the Appellant requested information from Land Registry about the initial and subsequent sales of flats in a specified housing development dating from 1991, together with sales completion dates.
3. The Respondent advised and wrote to the Appellant informing her that this information and copies of relevant documents were available for a specified fee, and available to order online for a reduced fee.
4. The Appellant has complained that the Land Registry had not issued a refusal notice in dealing with her request. Therefore the issue which the Commissioner was concerned with, was whether the information is reasonably accessible to the Appellant by other means.

The Commissioner’s Decision:

5. The Commissioner served the Decision Notice dated 6th March 2012. The Commissioner found that: Section 21(1) of the FOIA can be applied when all the relevant requested information is reasonably accessible to the applicant; and that, it is an absolute exemption and so there is no public interest test.
6. Under the Commissioner’s guidance, section 21 explains that charges may be made in circumstances where there is a statutory scheme under which information is provided for a fee, or where the information is provided under the public authority’s publication scheme and the scheme indicates that a charge may be made.

7. The Commissioner agrees with the Appellant, in that the Land Registry breached the FOIA in not handling the request under the FOIA and in not issuing a refusal notice. However, the Commissioner was satisfied that the Land Registry would normally respond to such requests in accordance with FOIA and has noted its explanation as to why this did not happen on this occasion.
8. The Land Registry corresponded with the Commissioner, explaining that, where the land in question is registered, it will usually hold scanned copies of the transfers or leases of the land which will include the price paid and the completion dates. In this case the Land Registry confirmed that the information requested is available under section 66 of the Land Registration Act 2002 and also the Land Registration Rules 2003. Under said section 66, any person may inspect and make copies of or any part of registers, title plans and any documents which are referred to in the register or any other document kept by the registrar relating to an application. Land Registry specifies the forms individuals should use and said that in this case, a form OC2 should be used accompanied by the appropriate fee (stating £12 is payable for each copy of a document of letter).
9. Land Registry advised the Information Commissioner that it would normally inform applicants that information such as had been requested in this case is exempt by virtue of section 21 of the FOIA, outline their right to complain to the Commissioner and refer to the applicable section within the Land Registration Act 2002. It acceded that it should have responded in accordance with the requirements of the FOIA in this case, and explained that on this occasion the complainant's correspondence had not been forwarded the Freedom of Information Officer at Head Office before reply.
10. The commissioner noted that the Land Registry also detailed how such information can be accessed in its publication scheme and public guides

available on its website, both of which make it clear as to the fees which will be charged.

11. The Commissioner concluded that the information the complainant requested is reasonably accessible via other means. The requested information can be obtained electronically or in hard copy on payment of a reasonable fee.

The Notice of Appeal:

12. The Appellant submitted a notice of appeal dated 12th March 2012. The Appellant also submitted revised grounds of appeal on 27 March 2012. The Tribunal considers the revised grounds of appeal in this matter:

Ground One

13. The Appellant argues that the requested information is not reasonably accessible to her for the following reasons:

“...I am a pensioner and cannot afford a large fee for two sheets of paper.

...I do not own a computer so am unable to obtain the information electronically or in hard copy for once again a fee.”

14. Section 21 of the FOIA provides as follows:

“21. – (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)-

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

15. The applicable section of the Land Registration Act 2002, section 66, states as follows:

“66 Inspection of the registers etc

(1) Any person may inspect and make copies of, or of any part of –

- (a) the register of title,
- (b) any document kept by the registrar which is referred to in the register of title,
- (c) any other document kept by the registrar which relates to an application to him, or
- (d) the register of cautions against first registration.

(2) The right under subsection (1) is subject to rules which may, in particular –

- (a) provide for exceptions to the right, and
- (b) impose conditions on its exercise, including conditions requiring the payment of fees.

16. The Land Registry explained the amount of these fees in its refusal notice and internal review response.
17. The Commissioner, in his decision notice, refers to the relevant wording of section 21(b), namely, that “*...information is to be taken to be reasonably accessible to the applicant if it is information which the public authority ... is obliged by or under any enactment to communicate ... to members of the public on request, whether free of charge or on payment*”
18. The commissioner found that as the Land Registry is obliged to communicate the requested information under the Land Registration Act, 2002, then that information is “*...to be taken to be reasonably accessible to the applicant.*” According, section 21 is engaged.
19. The Tribunal agrees with the Commissioners findings as above, and further agrees that s.21 of the FOIA is engaged, irrespective of the Appellant’s personal circumstances in either being unable to pay the full fee or to secure the reduced fees by ordering the information online in light of her lack of ownership of a computer. Therefore, the Tribunal agrees with the Commissioner in that this ground of appeal has no prospects of success.

Ground Two

20. The Appellant refers to the website “Zoopla” which does make the information she has requested available but only from 1995 onwards. The Appellant therefore argues that as her request seeks information which dates back to 1991; the use of s.21 is “*...flawed*”.
21. The Tribunal agrees with the Commissioner, in that the Appellant has an incorrect understanding of the basis upon which s.21 is engaged. It is not engaged because some of the requested information requested is available on the “Zoopla” website, but for the reasons set out at paragraphs 14 to 20 of the Decision Notice of 6th March 2012.

22. Therefore the Tribunal accepts the Commissioners submissions that this ground of appeal has no prospects of success.

Ground Three

23. The Appellant states as follows:

“The decision is pedantic. I request the official confirmation from the Land Registry for wider use. The information requested is not ‘state secrets’. (A simple two pages of details would have sufficed instead of this excessive bureaucracy).”

24. The Tribunal accepts the Commissioners submission, which states as follows:

“...s.21 is an absolute exemption which means that it is not subject to a public interest test. As such, the nature of the information or the purpose for which the information is required is irrelevant insofar as determining whether s.21 is engaged.”

25. Accordingly, the Tribunal adopts the Commissioners view that this ground of appeal has no prospects of success.

Reasons & Analysis

26. On the evidence before this Tribunal and in particular the Grounds of Appeal as submitted by the Appellant, we are satisfied that the requested Information is reasonably accessible to the Appellant for the reasons and in the circumstances outlined above.

Conclusion

27. In light of the foregoing, and subject to hearing any representations the Appellant wishes to make under Rule 8(4), the Tribunal intends to Strike Out this Appeal under Rule 8(3)(c) of the 2009 Rules, on the grounds that it has no reasonable prospect of success.

Judge Brian Kennedy QC
7th June 2012.

28. The Appellant having confirmed that she has no further representations to make, the Tribunal now accedes to the Respondents application to Strike Out this appeal.

Judge Brian Kennedy QC
11th June 2012.