



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

Appeal No. EA/2012/0154

BETWEEN:

DAVID BLUNDELL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

RULING

Following a telephone hearing on 13 September 2012 during which I heard submissions from the Appellant in person and from Mr Bailey on behalf of the Commissioner I rule that this appeal has no reasonable prospect of success and I accordingly strike it out under rule 8(3)(c) of the Tribunal's rules of procedure.

REASONS

1. The Appellant is chairman of the Bradford & Bingley Action Group, which consists of former individual shareholders in the B & B. The B & B was effectively nationalised on 29 September 2008 and the Action Group believes that the government's decision was flawed and made in haste for political reasons and that they have thereby suffered financially. They also believe that the well known BBC journalist Robert Peston was being briefed by a senior official at the Treasury before the nationalisation about the government's "rescue plan" and that statements on his blog themselves contributed to the problems which led to the decision to nationalise.

2. On 1 September 2011 the Appellant made a request under the Freedom of Information Act 2000 for the Treasury to supply him with details of any contacts between Mr Peston and Mr Kingman, a senior civil servant at the Treasury, in the six months before the nationalisation. The Treasury responded that they did not hold any such information. The Appellant complained to the Information Commissioner who rejected his complaint in a decision notice dated 10 July 2012. He now appeals to the Tribunal against the Commissioner's decision notice.

3. The Commissioner directed himself correctly that in a case like this the test to be applied is whether, on the balance of probabilities, the public authority holds recorded information coming within the terms of the request. The Commissioner quite properly sought explanations from the Treasury about the searches they had carried out for the information requested. The Treasury informed him (a) that they had searched their "electronic document and record management system" (and they gave details of the search terms they had used); (b) that Mr Kingman had left the Treasury at the end of 2008 and that any information on his Treasury issued laptop or smart phone would long since have been cleared; (c) that it was Treasury policy that only their press office should speak to the media or that if, in exceptional circumstances, officials needed to speak to them it would be subject to the supervision of the press office who would keep a record of what was said; and (d) that Mr Kingman was not responsible for work relating to the B & B nationalisation. Based on those searches and explanations the Commissioner was satisfied on the balance of probabilities that the Treasury did not hold any information coming within the Appellant's request.

4. The Appellant has not raised any point of substance in relation to (a), (b) or (c) and he accepts that he has no way of providing evidence to prove conclusively that the Treasury are still holding the information he seeks. But he says that there is strong circumstantial evidence that Mr Peston was being supplied with information about B & B from inside the Treasury, that Mr Kingman was involved in the B & B nationalisation and that Mr Peston was close to Mr Kingman; he therefore believes that Mr Kingman must have been the source of the information being supplied to Mr Peston. Clearly I am not in a position to make any kind of finding about these allegations but it seems to me that, even if they were correct, they would not lead to a conclusion that the Treasury held the requested information for the simple reason that, if Mr Kingman was meeting Mr Peston and supplying him with information in the

way alleged, it is really most unlikely that details of this would have recorded on any kind of Treasury database. The Appellant fairly conceded that there was force in this point.

5. In those circumstances, I do not see that the Appellant has any reasonable prospect of showing that the Commissioner's conclusion was wrong and thus succeeding in his appeal and the appeal should therefore be struck out.

Signed:

HH Judge Shanks

Judge

Dated: 17 September 2012