

FOIA s.1 – right of access

Alan Wales v IC & Newcastle National Health Service Trust

EA/2005/0028

31st May 2006

Cases:

Facts

The Appellant made an enquiry to Newcastle upon Tyne NHS Trust with regard to vexatious complaints and a lay chairman. The Appellant was not satisfied with the response he received and complained to the IC. He argued that he had been given ‘misinformation’ with regard to the vexatious complaint enquiry. This arose out of a date appearing on a document that was not consistent with the public authority’s statement about the time when it had been created.

The IC dismissed the complaint and took the view that it was not for him to adjudicate on the accuracy of the information held and disclosed by the public authority.

Findings

The Tribunal considered that while, on the face of it, that was a correct interpretation of the relevant provisions of the FOIA, inconsistencies and apparent errors between, on the one hand, a statement made in response to a request for information and, on the other, material contemporaneous to a past event to which the statement refers, may point to a breach of the FOIA and may require to be investigated. A witness statement clarifying the apparent inconsistency was lodged with the Tribunal (it had not been available to the IC) and led to the Tribunal concluding that the public authority had complied with section 1.

The Appellant also complained that the Trust had stated that the Policy had been “formalised and approved” in April 2001 and had not therefore answered the Appellant’s enquiry as to the date when it had been “introduced”. The Tribunal established that there was little merit in this point. The evidence established that the Policy was introduced in April 2001. The Trust could be said to have adopted a helpful attitude towards the Appellant when it provided a little more information than was strictly necessary in explaining to him that the Policy had been introduced by being formalised and approved in that month. The Tribunal felt that it was over-analytical of the language used for the Appellant to assert that this constituted a breach of the FOIA.

The Tribunal further rejected the argument that the Trust breached the FOIA as it was required to inform the Appellant in writing whether or not it held the information requested and that its letter did not contain that information, it was merely confirmation. The Tribunal stated that it is correct that FOIA s.1 does create a right

for any person making a request for information to a public authority to be “informed in writing by the public authority” whether it holds the information. They held that the Trust complied with the FOIA in that it gave the Appellant the information he had requested and did so in writing. The fact that in doing so it used the word “confirm” was irrelevant.

Costs

The Tribunal did not consider the Appellant’s requests to be vexatious and therefore did not direct a costs order to be made.

Conclusion

The Tribunal dismissed the appeal.