

**FOIA s.1(1)** – Duty to confirm or deny

**FOIA s.10(1)** – Time for compliance

## ***Richard Reed v IC & Astley Abbotts Parish Council***

**EA/2006/0018**

**29<sup>th</sup> December 2006**

### **Cases:**

### **Facts**

The Appellant and his wife owned a pub and applied for planning permission to change it into residential use. The Parish Council rejected the planning permission. A public meeting was then called to discuss the planning permission. The Appellant then wrote a letter protesting about the on-goings in the meeting. The Parish Council replied by denying that it had organised the meeting. The Appellant requested information about the meetings and subsequent letters under the FOIA. The Parish refused to offer any comment regarding the Appellant's inquiry.

The IC was satisfied that the meeting was not convened by the Parish Council. However, the IC held that the Parish did not respond appropriately to the Appellant's questions. The response should have stated that no information was held in connection with those questions, therefore the Council had failed to comply with s.10(1) of the FOIA. However, the Parish did subsequently send a reply within the time limit making this assertion. The IC also held that the Parish had not breached their duty under s.1(1) to confirm or deny whether the information requested was held as he was satisfied that they did not withhold information from the response. The Commissioner concluded by finding that no action was required by the Council despite their failure to comply with the requirements of s.10 of the Act, since they had now complied with the request in full.

### **Findings**

The Tribunal found on the facts that the meeting held was, in fact a Parish meeting called by the Parish Council. Therefore, the Tribunal held that the IC made an incorrect finding of fact on that basis.

However, the Chairman of the Parish Council stated that the notes taken at the meeting would not have contained the answers to the Appellant's questions, which seemed to the Tribunal on the balance of probability, more likely than not to be true as the questions were about the form and structure of the meeting, about who authorised and called it, rather than about what was said at it. There was no reason to suppose that any notes taken at the meeting would record the answers to the questions posed.

Therefore, despite the Tribunal's findings on the status of the meeting, the Parish Council were still correct to reply to the Appellant's request for information by stating that they held no recorded information.

### **Conclusion**

The Tribunal substituted the decision notice in part.

### **Observations**

The Parish Council indicated that they would like to claim for the costs incurred in responding to the appeal. However, the Tribunal saw no basis under the Rules for making such an award in their favour as the costs of the appeal had been largely incurred by the Council's stubborn refusal to accept any responsibility for the meeting.