

**FOIA s.17(1)** – Refusal of request

**FOIA s.50(4)** – Decision of commissioner

## ***Keith Edmunds v IC***

**EA/2007/0094**

**20<sup>th</sup> May 2008**

### **Cases:**

### **Facts**

The Appellant complained to the Local Government Ombudsman (“the Ombudsman”) about a planning application considered by Portsmouth City Council (“the Council”). Mr Edmunds requested information about the Ombudsman’s investigations. The Ombudsman relied on section 44 FOIA by virtue of the statutory prohibition in section 32(2) the Local Government Act 1974. This prohibits the Ombudsman from disclosing certain materials from its investigations. However, in the correspondence to the Ombudsman did not provide an explanation as to why s.44 was applicable.

The IC’s Decision Notice included an explanation of the statutory prohibition. A finding of a breach of s. 17 was made. However, the conclusion of the Decision Notice was that the Council was not obliged to take any further steps.

In the IC’s Reply he requested the Tribunal to strike out the three grounds of appeal as disclosing no reasonable ground of appeal.

### **Findings**

The question for the Tribunal was *‘Having established a breach of section 17(1)(c) FOIA was the Commissioner, as a matter of law, permitted to require “no steps” to be taken by the Ombudsman?’*

S.17(1)(c) creates an obligation on a public authority responding to a request for information to provide an explanation when an exemption is claimed, when that would not be otherwise apparent. Claiming the exemption in s.44 FOIA would seem to be a good example of where it would not be apparent why the exemption had been claimed. In this case the Ombudsman did not provide an explanation and the IC identified this as a breach of s.17 (1)(c).

There is no discretion within s.50(4) FOIA which states ‘the Decision Notice must specify the steps which must be taken by the authority for complying with that requirement...’ and that is clear by the use of the word “*must*”.

The Tribunal’s considered what the “requirement” (referred to in s.50(4)) is in s.17(1) (c) which has not been met. They concluded the requirement was for an explanation to be given and it was not part of the “requirement” in the context of this case for the

Ombudsman, as the public authority concerned, to provide the explanation. They further held that by other requirements in s.17 supports this interpretation. Having decided that the “requirement” of s.17(1)(c) had been met by the IC himself, the IC did not have anything to require the Ombudsman to do. Therefore, stating that “no steps” were required was correct.

### **Conclusion**

The Tribunal dismissed the appeal. The requirement of s.17(1)(c) had been met as the IC had provided the necessary explanation in the Decision Notice. Therefore, there was no obligation on the IC to require the Ombudsman to take any further steps.