Tribunals Service
Information Tribunal

Information Tribunal Appeal Number:EA/2009/0073
Information Commissioner's Ref: FS5029321

Heard on the papers
2 December 2009

Decision Promulgated
8 December 2009

BEFORE

CHAIRWOMAN

Melanie Carter

and

LAY MEMBERS

DAVE SIVERS
MICHAEL HAKE

Between

TONY WISE

Appellant

and

INFORMATION COMMISSIONER

Respondent

Subject matter: Request for information s.8

Cases:
Tanner v IC and the Commissioners for Revenue and Customs EA/2007/0016
Swain v Hillman [2001]1 ALL ER (CA)
Berend v Information Commissioner and London Borough of Richmond upon Thames EA/2006/0049

Decision

The Tribunal upholds the decision notice dated 17 August 2009 and dismisses the appeal.

Reasons for Decision

Introduction

1. This appeal arises from a request for information under the Freedom of Information Act 2000 (the Act) to the Independent Police Complaints Commission (IPCC) made by Mr Wise, the Appellant. He wrote to the IPCC on 5 May 2008, in the following terms:

   "*I make this request under the Freedom of Information Act 2000. & I have provided a direct quote below in bold from the Information Commissioners leaflet Its your information. Information sharing about you. You can also make a request under the Freedom of Information Act 2000 for the paperwork relating to a public body's information sharing, such as their policies and procedures. Please see our website for more information."*

   REQUEST UNDER THE FoIA 2000.

   Please provide me with all the IPCCs written procedures, protocols and policies in relation to information sharing with other public authorities.

   If the IPCC requires any further information in order to clarify my request please fell free to contact me as above or via email on this address."

2. The IPCC responded to the request on 2 June 2008 informing the Appellant that the information was exempt under section 21 of the Act. Section 21 is an absolute exemption which discharges a public authority from the obligation to provide information if it is reasonably accessible to the requester by another means. In this case, the IPCC provided Appellant with the relevant webpage link for some of the information, a list of the information to be found there and provided copies of documents to the Appellant that were not available on their website.

3. The Appellant disputed that his request had properly been complied with and sought an internal review on 3 June 2008. In particular, the Appellant sought to clarify his request and stated:

   "I made it quite clear exactly what I required via this request by taking the advice of the Information Commissioner by quoting directly from his leaflet Its your information. Information sharing about you. Therefore, it is quite clear via my request that I am concerned with personal data and data sharing about me with other agencies."

4. The IPCC internal review upheld its original response to the Appellant by way of letter dated 24 July 2008. The Appellant was dissatisfied with this decision and made a complaint to the ICO under section 50 of the Act.

The Decision Notice and complaint to the Information Commissioner

5. The Commissioner investigated the complaint and issued his Decision Notice on 17 August 2009, in which he determined:

   (a) the IPCC's reading of the request was the correct one on an objective reading,

   (b) the reading of the request as suggested by the Appellant was not an objective reading of the request,

   (c) the IPCC had responded in accordance with the Act when it provided the complainant with copies of its procedures, protocols and polices in relation to information sharing with other public authorities or advised where they could be found on the website,

   (d) the IPCC had treated the 3 June 2008 correspondence as a request for an internal review and provided a response,

   (e) the 3 June 2008 letter should have been treated as a new request, as the scope of the request is clearly different from the request dated 5 May 2008.

6. The IPCC have agreed to treat the letter of 3 June 2008 as a new request.

The appeal to the Tribunal

7. The appeal in this case is being heard under section 58 of the Act and rule 10(1) of the Enforcement Appeals) Rules 2005 (the Rules). Section 58 requires the Tribunal to allow an appeal where the decision notice of the ICO is not in accordance with law or to the extent that the notice involved an exercise of discretion of the Commissioner he ought to have exercised that discretion differently. In this case there is no exercise of a discretion relevant to this appeal such that the only issue is whether the decision notice is in accordance with law.

8. Rule 10 provides that where the Tribunal *"is of the opinion that the appeal is of such a nature that it can properly be determined by dismissing it forthwith it may, subject to the provisions of this rule so determine the appeal.".* The Tribunal, differently constituted, in the case of Tanner v IC and the Commissioners for Revenue and Customs EA/2007/0016 concluded that (at para 22) the appropriate test under rule 10 was analogous to the test under Part 24 of the Civil Procedure Rules 1998. This makes provision for a claim which has no real prospects of success to be summarily dismissed. Guidance on the meaning of this test was provided in Swain v Hillman [2001] 1 ALL ER (CA) by Lord Woolf MR. He said that the words no real prospect of succeeding did not need any amplification as they spoke for themselves. The court must decide whether there is a realistic, as opposed to fanciful, prospect of success.

The Grounds of Appeal

9. The Appellant claimed in his Notice of Appeal that there was only one reasonable interpretation of the original request and that it was clearly as regards only personal data sharing based on the ICO leaflet. The request for a review was quite obviously a clarification of the original request, as misunderstood by the IPCC and not a new request. He claimed that the IPCC had a duty to seek clarification from the requester in light of the request for review which was clear and unequivocal. This never happened and the requester was never contacted at any time by the IPCC (breach of section 16 of the Act and the Section 45 Code of Conduct).

10. The Appellant sought to supplement his grounds of appeal in his written submissions under the rule 10 procedure. The two new grounds of appeal, as the Tribunal understood them, were:

    a. that the weblink provided to the Appellant in response to his original request did not work and as such the information was not reasonably accessible under section 21 of the Act;

    b. that the Respondent failed to provide any relevant information in compliance with the original request even on the Respondent's own interpretation.

The questions for the Tribunal

11. First the Tribunal had to consider whether to allow the Appellant to raise new grounds of appeal not contained within his original Notice of Appeal. The Tribunal noted that the Appellant had not included reference to the failed weblink in his Notice of Appeal and had only sought to raise this in the later submissions. That said, he had made reference to this in his letter requesting a review on 3 June 2008, a matter which the ICO had not picked up and dealt with in the Decision Notice. In these circumstances, the Tribunal decided to allow a late amendment of the Notice of Appeal to incorporate this ground of appeal.

12. With regard to the second ground, this had not been raised by the Appellant at any stage of the process from the letter requesting review, through the ICO's investigation and decision notice to the Notice of Appeal. It was only in the submissions received just before this hearing that this ground had been raised. In these circumstances, and in the absence for any excuse for this, the Tribunal was disinclined to allow this ground to be admitted. It did note however that there was no evidence before it that the IPCC held any information that had not either been disclosed to the Appellant or that had not been contained in the list of documents provided to the Appellant and said to be accessible on the IPCC's website. It was unclear whether the Appellant believed other information actually existed or whether his point was that the IPCC was at fault in not having the type of policy and procedure dealing with personal data sharing that he thought they ought to have. Whilst the Tribunal understood that the Appellant may feel the IPCC ought to have certain policies and procedures over and above those of which he was made

aware, that was not a matter for this jurisdiction and could not form a basis for this appeal.

13. The Tribunal had next to consider whether any of the admitted grounds had a realistic, as opposed to fanciful, prospect of success of showing that the decision notice was not in accordance with law.

Ground of appeal: that the ICO had been incorrect in upholding the IPCC's interpretation of the request

14. The Act requires the public authority to read the request objectively. In Berend v Information Commissioner and London Borough of Richmond upon Thames (EA/2006/0049 and 0050) the Tribunal found that the request should be read objectively. The request is applicant blind and motive blind and as such the public authorities are not expected to go behind the phrasing of the request to consider the question of how one should objectively interpret the original request.

15. The Tribunal was of the view that the request, looked at objectively, could only be interpreted in one way. This was clear from both the plain English words used and the fact that the request quoted a section of the ICO's leaflet that referred to the "'paperwork' relating to a public body's information sharing, such as their policies and procedures". The previous paragraphs of the leaflet, by contrast, had concerned accessing one's own personal data such that looked in context, the request was clearly about general policies and procedures, not information about a particular individual.

16. The ICO had understood the Appellant's further letter, the one seeking a review, as seeking information as to how his own personal data had been handled or shared. The ICO was treating this letter as a new request. In the event, the Tribunal doubted whether this was what the Appellant had truly been seeking in that second letter. It accepted that the letter seeking review was an attempt to clarify the original request. It was quite clear to the Tribunal from his letter seeking a review and then his subsequent submissions that what he wanted was information on the general policies and procedures as to the sharing of personal data between agencies. Since however, the Tribunal had concluded that the IPCC had correctly

interpreted the original request, it mattered not that the ICO itself had taken a different view of the Appellant's letter seeking a review.

17. The IPCC's interpretation of the original request, with which the Tribunal agreed, would take in all the information that the Appellant was saying he was seeking. Thus, the Appellant had been arguing for an interpretation of the request that was seeking the practices and policies in relation to personal data sharing with other agencies. Clearly a request that was in relation to data sharing generally would incorporate his version of the request. Personal data was a subset of data generally. The Tribunal thought that in reality, the Appellant's concerns had been that the documents provided or to which he had been signposted did not seem to relate to personal data sharing and were more geared towards the sharing of data generally. As set out above, absent any evidence that the IPCC had particular policies and protocols on personal data sharing that it held and was not disclosing, this was not a matter for the Tribunal. The Appellant's argument that they ought to have such documents had no place in this appeal.

18. Given that, in the Tribunal's view, there was only one possible interpretation and that the IPCC had interpreted the request correctly, the duty to seek further clarification as to the request's meaning or scope did not arise (section 1(3)). For the same reasons, the duty under section 16 to provide advice and assistance also did not arise. Under paragraph 9 of the section 45 Code it is said that aim of providing assistance is to clarify the nature of the information sought. Again, in Berend, the Tribunal found the only obligation to initiate contact with the applicant under the Code relates to the situation that arises where the request requires clarification.

19. In all the circumstances, the Tribunal concluded that this ground of appeal had no realistic prospect of success.

<u>Ground of appeal: the information was not reasonably accessible and therefore the IPCC had been incorrect in relying upon section 21 of the Act</u>

20. Insofar as the IPCC provided a weblink to other information, the public authority was strictly going beyond what was required under section 1 of the Act, but might be said to have been proffering advice and assistance under section 16. Assuming

that it was correct that the weblink had failed (without further investigation the Tribunal could not make a finding of fact on this), it had to be taken into account that the IPCC had provided a written 'url' for the link and its own website address. The Appellant had in addition been provided with a list of the relevant documents on the website such that, in the Tribunal's view, it was reasonable to assume that he could, without too much difficulty have found these documents online. In these circumstances, the Tribunal did not consider that the ground of appeal in relation to section 21 had a realistic prospect of success.

Conclusion

21. The Tribunal concluded that as the grounds of appeal had no realistic prospect of success, the appeal must fail.

22. Our decision is unanimous.

Signed:

Melanie Carter
Deputy Chairwoman

Date: 8 December 2009