



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
[INFORMATION RIGHTS]**

**EA/2011/0155**

**ON APPEAL FROM:**

**Information Commissioner's Decision Notice: FS50356035  
Dated: 27 June 2011**

**Appellant: KEVIN CROSS**

**Respondent: THE INFORMATION COMMISSIONER**

**Second Respondent: HAVANT BOROUGH COUNCIL**

**Date of hearing: 11 January 2012**

**Date of Decision: 25 January 2012**

**Before**

**Annabel Pilling (Judge)  
Paul Taylor  
and  
Nigel Watson**

**Subject matter:**

FOIA – Whether information held s.1  
FOIA – Time for compliance s.10

**Representation:**

|                            |                                      |
|----------------------------|--------------------------------------|
| For the Appellant:         | Kevin Cross                          |
| For the Respondent:        | Edward Capewell (attendance excused) |
| For the Second Respondent: | Daniel Lucas                         |

## **Decision**

For the reasons given below, the Tribunal dismisses the appeal but amends the Decision Notice dated 27 June 2011 to include the following in paragraph 46:

By failing to comply with section 1(1) within twenty working days of receipt of the request for information the Havant Borough Council breached section 10(1) of the Freedom of Information Act 2000.

No further action is required.

## **Reasons for Decision**

### **Introduction**

1. This is an Appeal against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 27 June 2011.
2. The Decision Notice relates to a request made by the Appellant under the Freedom of Information Act 2000 (the 'FOIA') to the Havant Borough Council (the 'Council') for information about charges imposed for providing copies of environmental information.
3. The request was made against a background of requests made by the Appellant to the Council over a period of time in respect of information broadly related to planning decisions at addresses in the relevant area. The Appellant is particularly concerned at the level of fees charged by the Council for providing copies of environmental information<sup>1</sup>.
4. On 15 July 2010 the Appellant made a request for "environmental information", listing particular documents or plans, including:

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<sup>1</sup> Regulation 8(3) of the Environmental Information Regulations 2004 provides that a charge for making environmental information available upon request "*shall not exceed an amount which the public authority is satisfied is a reasonable amount.*"

*“I require a list of the fees required for photocopies of environmental information, together with a breakdown of the costs and how they were calculated.”*

5. On 28 July 2010, *“to ensure there is no confusion or loss of requests I will list and further clarify my requests”*, the Appellant again listed various documents he wished to have disclosed and made the following consolidated request relevant to this Appeal:

*“I require the following information as required by [the Environmental Information Regulations]*

- a) a Schedule of your charges; and*
- b) the circumstances in which a charge may be made or waived;*
- c) in addition a list of your photocopy charges for environmental information, including a breakdown of how those charges were calculated.”*

6. Although the majority of the information listed in this request was “environmental information” and therefore fell to be dealt with under the Environmental Information Regulations 2004, the part of the request the subject of this Appeal was properly dealt with under FOIA as it was a request for “administrative information”. This was conceded by the Appellant during the hearing before us.

7. The Council responded to the request after the twentieth working day following receipt which it now concedes amounts to a breach of section 10(1) of FOIA<sup>2</sup>. The Council informed the Appellant that the fees required for photocopies of various types of information are set out in the Council’s Prices Book and provided the link to a page on the Council’s website where this could be viewed. It explained that the

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<sup>2</sup> The Council made this concession at the hearing. It had previously been argued that, in the context of dealing with a number of requests from this Appellant over a similar period of time, the Council’s cumulative response was appropriate and timely, and it was relevant that this was the only request that did take longer than twenty working days (by one day).

Prices Book does not contain a breakdown of the costs of photocopying, nor how they were calculated.

8. The Appellant continued to correspond with the Council in respect of the charges imposed, in particular arguing that the Prices Book was not up to date and requesting that he be provided with information on the circumstances in which a charge may be made or waived.
9. The Appellant complained to the Commissioner on 30 September 2010.
10. The Commissioner commenced his investigation and the Decision Notice was issued on 27 June 2011.
11. In summary, the Commissioner concluded that the Council had disclosed to the Appellant the information that it held about its charges for environmental information and photocopying, but had failed to explicitly deny that it held information about the breakdown of its photocopying costs or the circumstances in which a charge for environmental information may be made or waived amounting to a breach of section 1(1)(a) FOIA.

#### The Appeal to the Tribunal

12. The Appellant now appeals against the Commissioner's decision.
13. The Tribunal was provided in advance of the Hearing with an agreed bundle of material, and written submissions from the parties. Although we can not refer to every document in this Decision, we have had regard to all the material before us.
14. The Appellant is not represented in these proceedings and had put forward a number of "grounds of appeal". A number of these relate to matters in respect of which this Tribunal has no jurisdiction and,

following discussion with the Appellant, the submissions made at the hearing before us were limited to four grounds.

### Ground 1

15. The Appellant submits that the Decision Notice should have included all breaches of section 10(1) of FOIA<sup>3</sup>. When asked to identify the other breaches he submits should have been included, the Appellant argued that as his request was for a “Schedule” of charges, the Council should have provided a hard copy of the Prices Book rather than providing the link to the relevant website. He conceded that he would not have raised this as an argument if the Prices Book had been sent as an email attachment; his argument rests on the fact that he had to do further work in order to view the information requested.

16. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.

17. We are satisfied that by providing the Appellant with the hyperlink to the relevant webpage the Council complied with its duty under section 1(1)(b). We note that the Council did not choose to rely on the absolute exemption provided in section 21 of FOIA not to comply with the request and informing the Appellant that the information requested was reasonably accessible by other means.

18. We are not satisfied that there were other breaches of section 10 of FOIA and this ground of appeal is dismissed.

### Ground 2

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<sup>3</sup> In addition to the breach of section 10(1) by the Council failing to respond to the request within twenty working days.

19. The Appellant submits that the Council failed to disclose other information relevant to the request. He argued that the Council should have referred him to other relevant information *“that would have identified the circumstances of a certain charge.”*
20. This ground of appeal arises from information provided verbally to the Appellant by a Council employee. In querying the level of the fees charged by the Council in relation to “environmental searches”, the Appellant had made contact with an environmental health officer. Information provided verbally by this individual appears to have caused confusion in respect of the charges that his particular service imposed for carrying out “environmental searches”. Before us, the Council’s Information and Records Management Officer attempted to clarify this confusion. “Environmental searches” cover both domestic and commercial situations and encompass a wide variety of matters, as diverse as grass cutting, the handling of nuclear waste, and the disposal of whale carcasses. Some of these “environmental searches” would be regarded as “value added” work for which the Council can charge a higher, commercial fee under the Reuse of Public Sector Information arrangements.
21. We agree with the Council that the information provided by the environmental health officer was not relevant to the request for information under FOIA made by the Appellant (repeated in paragraphs 3 and 4 above).
22. The Appellant also argued that the Council should have provided him with an up to date Prices Book as the information given to him suggested these charges were out of date. The Council’s Information and Records Management Officer explained that the Prices Book provided was current at the time of the request and remains the only written record of charges held by the Council. She explained that in relation to the Appellant’s contention that some charges are now being waived, the impact of the Environmental Information Regulations on the charging regime for environmental information has necessitated a

thorough review of the charges imposed and it might be that some charges would be waived on a “day to day” basis. She reiterated what the Commissioner had been told during his investigation that the Council did not hold any written policy on when charges may be waived.

23. We are satisfied that the Council does not hold any further information in respect of the circumstances in which a charge may be made or waived, or a breakdown of how the charges in the Prices Book were calculated. The information provided as a result of discussion with the environmental health officer was not relevant to the request made on 15 July 2010 and clarified on 28 July 2010 and in our opinion has led to unfortunate confusion to the Appellant.

24. This ground of appeal is dismissed.

### Ground 3

25. The Appellant submits that the Council should have provided him with an individually created schedule of the relevant charges extracted from the Prices Book. He argued that the Prices Book itself is not the information he requested as it covers charges levied for such a wide range of services that he was required to perform an extraction exercise to access the information he had requested.

26. The Council submits that this argument amounts to a suggestion that it was required to create new information. The Appellant disagrees; extracting the relevant charges is not creating new information but simply providing the actual information requested rather than an excessive amount of additional irrelevant material which served to distract him.

27. We accept that the Prices Book contains a large amount of information that had no interest to the Appellant, however it is not a long document, consisting of 49 pages of tables and containing a clear index. Although in providing advice and assistance under section 16 of FOIA

the Council could have provided solely those pages dealing with “environmental” information or those listing the charges for copies , or could have drawn the Appellant’s attention to specific pages or entries, its failure to do so does not, in our opinion, amount to a breach of section 1(1)(b) of FOIA.

28. We agree with the Commissioner that the fact that the information disclosed contains unrelated information does not detract from the fact that the requested information (on the photocopying charges for environmental information for example) is located on pages with clear headings which identify it.

29. This Ground of Appeal is dismissed.

#### Ground 4

30. The Appellant submits that the Council should have adopted and/or followed a code of practice and, as it failed to do so, the Commissioner’s Decision Notice is flawed because he should have issued a Practice Recommendation.

31. In particular the Appellant was concerned that the Council had failed to carry out an internal review of his complaint about the way in which his request for information was dealt. We have seen various letters and emails from the Appellant to the Council’s complaints monitoring officer; however it is difficult to follow which request for information these relate. In the context of the Appellant’s correspondence with the Council it is clear that he remains dissatisfied with the information provided to him and with the way in which the Council continues to deal with his requests for information.

32. Section 45 of FOIA provides for the issue of a code of practice by the Secretary of State to public authorities in connection with the discharge of the authorities’ functions under Part 1 of FOIA. Any such code of practice is “*guidance*” which it would be “*desirable*” for public authorities to follow. There is no obligation under FOIA for a public



authority to hold an internal review. The Appellant's argument that the Council is in breach of FOIA because it did not formally adopt and/or follow a code of practice is therefore misconceived.

33. Under section 48 of FOIA the Commissioner is provided with the power to give a public authority a recommendation specifying the steps which ought to be taken to conform with the exercise of its functions proposed in the codes of practice issued under section 45, but this power is discretionary. This Tribunal has no jurisdiction over the Commissioner's general functions and the Appellant's argument on this point is also misconceived.

34. This Ground of Appeal is dismissed.

#### Conclusion and remedy

35. The Council concedes that in failing to deal with the request for information within twenty working days of receipt it breached section 10(1) of FOIA. We direct that the Decision Notice be amended accordingly, otherwise, for reasons given above, this appeal is dismissed.

36. Our decision is unanimous.

Annabel Pilling

Tribunal Judge

Dated: 25 January 2012



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

**EA/2011/0155**

**BETWEEN:**

**KEVIN CROSS**

**Appellant**

**And**

**THE INFORMATION COMMISSIONER**

**Respondent**

**And**

**HAVANT BOROUGH COUNCIL**

**Second Respondent**

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**DECISION ON  
APPLICATION  
FOR PERMISSION TO APPEAL  
TO THE UPPER TRIBUNAL**

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1. The Appellant has applied for permission to appeal to the Upper Tribunal against the decision of 25 January 2012.
2. The right to appeal against a decision of the Tribunal is restricted to those cases which raise a point of law.
3. Under Rule 43(1) of the Rules, I must first consider, taking into account the overriding objective in Rule 2, whether to review the decision in accordance with Rule 44. There does not appear to me to be any basis upon which to review the decision of 25 January 2012; the Appellant disagrees with the findings of the Tribunal.

4. I make the following observations:

- (i) The Appellant suggests one ground of appeal lies in respect of the use of the word “verbally” rather than “in writing” in respect of the method by which information was passed to him by a Council employee. This apparent factual error was not brought to the Tribunal’s attention during the relevant period when the Decision had been sent to the parties before it was promulgated. The notes from the hearing suggest that the Appellant referred to “X told me” and “X said”. In any event this does not affect the Decision itself and does not amount to an error of law.
- (ii) The Appellant suggests a further ground of appeal lies in respect of the fact that the Second Respondent’s representative who attended the hearing was not named in the Decision itself. She was a party to the proceedings, properly in attendance and the Tribunal was entitled to hear from her. There was no need to name her in the Decision.

5. I have considered the other grounds of appeal advanced by the Appellant. I do not consider that there was any error of law in the decision of 25 January 2012 and the application for permission to appeal is therefore refused.

Annabel Pilling  
Tribunal Judge

2 March 2012