



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

EA/2011/0235

**ON APPEAL FROM
The Information Commissioner's Decision
No FS50362050 dated 22 September 2011**

Appellant: Mr Stephen Forster
Respondent: Information Commissioner
Second Respondent: Westminster City Council
Date and place of hearing: 26 March 2012 at the Royal Courts of Justice
Date of decision: 14 May 2012

Before

**Anisa Dhanji
Judge**

and

**Andrew Whetnall and Paul Taylor
Panel Members**

Representation

For the Appellant: in person
For the Information Commissioner: Ms Joanne Clement, Counsel
For the Westminster City Council: Mr Aiden Briggs, Counsel

Subject matter

FOIA section 1(1) – whether the public authority holds the information; section 21 – whether the information is reasonably accessible.

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INFORMATION RIGHTS**

EA/2011/0235

DECISION

Dated: 14 May 2012

Public Authority: Westminster City Council

Address of Public Authority: 3rd Floor
101 Orchardson Street
London NW8 8EA

Name of Complainant: Mr Stephen Forster

Decision: This appeal is dismissed.

Signed

[Signed on original]

**Anisa Dhanji
Judge**

**IN THE FIRST-TIER TRIBUNAL
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REASONS FOR DECISION

Background

1. This is an appeal by Mr. Stephen Forster (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), on 22 September 2011.
2. The appeal arises from a request for information made by the Appellant to the Westminster City Council (“Council”) on 4 October 2010 for a list of motorcycle parking bays and the addresses where they can be located.

The Request for Information

3. The request was made in the following terms:

“I need a list of motorcycle parking bays (the addresses where they are located) so that I can plan trips into town.

I found this site: <http://www3.westminster.gov.uk/maps/fmn-form.cfm?maplayers=25>

That search facility is no use to me. I need to see all the places where I can park and then I can plan my trip accordingly.

The web page obviously requires a full list to function but that list has not be [sic] made available. Could you either supply the list to me or point me to the place where it is already available.”

4. Correspondence ensued between the Appellant and the Council, during the course of which the Council said that the information was exempt under section 21 of the Freedom of Information Act 2000 (“FOIA”) on the basis that the information requested was accessible by other means. The Council provided a link to the Traffic Management Order (“TMO”) which contained about 100 pages of images of a list (in a pdf file), of the names of all the streets in the City of Westminster on which motorcycle bays are located.
5. The Appellant considered that his request had not been satisfied because the list he had been referred to was in a fixed form. The information it contained was not accessible because it did not allow him to search, re-order or edit the data in the list for his own purposes without having to type the data into another file.
6. Following an internal review, the Council informed the Appellant that it considered that section 21 had been applied correctly in respect of his request. The Council also considered the application of section 11 of FOIA. It noted that applicants have the right to request that information be provided in

a specific format, and that public authorities must accommodate any such preference where it is reasonable to do so. The Council said it had considered whether it was possible to provide the information requested in the form sought by the Appellant. However, given the number of pages and records that would require transcription, it considered that this would not be reasonable.

The Complaint to the Commissioner

7. The Appellant complained to the Commissioner under section 50 of FOIA on the basis that the Council had failed to provide the information “in a format that was useful”.
8. The Commissioner investigated the complaint. He found that:
 - the requested information was reasonably accessible to the Appellant and therefore, the Council had correctly applied section 21; and
 - as the exemption in section 21 was engaged, there was no need for the Council to consider the Appellant’s request under section 11.

The Appeal to the Tribunal

9. The Appellant has appealed to the Tribunal against the Decision Notice.
10. The Council was joined as a party, and at the Appellant’s request, the Tribunal held an oral hearing. The parties lodged an agreed bundle of documents and skeleton arguments. The Council also lodged a witness statement from Ben Goward, the Head of Information and Communication Technologies Service Delivery at the Council. For the avoidance of doubt, we should say that we have considered all documents submitted, even if not specifically referred to in this determination.
11. Prior to the hearing the Appellant and the Council requested more time in order to have discussions which it was hoped might lead to a withdrawal of the appeal. The time was granted but the discussions did not achieve the desired result, and the hearing proceeded as scheduled.

The Tribunal’s Jurisdiction

12. The scope of the Tribunal’s jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other Notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
13. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed,

as in this case, the Tribunal will often receive evidence that was not before the Commissioner.

The Legislative Framework

14. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA.

15. Section 21 of FOIA which is the exemption relied on by the Council provides as follows (in so far as it is relevant):

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

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Issues

16. The only issue in this appeal is whether the information requested is exempt under section 21 of FOIA on the basis that it is reasonably accessible to the Appellant because he can access a list in pdf format containing the location of the parking bays.

17. There has been some confusion about whether and to what extent the Appellant relies on section 11 to assert that the Council must provide the information to him in such form as he has requested. His letter to the Commissioner dated 11 March 2011 suggested that he was relying on section 11. Subsequently, however, in his letter to the Commissioner on 17 March 2011, he said that he was not relying on section 11, and he has reiterated this in written submissions and orally at the hearing. We have accordingly not considered section 11 further.

Findings

18. The Appellant has taken great pains to explain his position clearly and fully and we are grateful to him for doing so. By summarising his position only briefly, we do not intend to do a disservice to his full and clear arguments, but

for reasons we will explain, we find there has been a misapprehension on the Appellant's part of certain matters that were only clarified by the Council when it served the witness statement of Mr Goward and further clarified in Mr Goward's oral evidence at the hearing. The Appellant's arguments have been largely superseded by the matters emerging from that evidence.

19. The Appellant accepts that the pdf list that forms part of the TMO contains details of all the motorcycle parking bays in Westminster, with addresses and locations for each. Although it does not contain the post code for the parking bays, the Appellant has said he is not seeking the post codes.
20. However, what he says he wants and what he believes the Council is obliged to provide to him, is the same list in a form that he can search, manipulate and re-order which he cannot do with a pdf file. He says that the information in the list in pdf form does not satisfy his request because in that form, the information is not reasonably accessible to him. In his view, the Commissioner has confused accessibility to a document which contains information, with accessibility to the information contained in a document. He says that even if one has access to a document which contains all the information requested, it is still possible that much of the information will not be reasonably accessible. This is particularly the case for lists, database dumps, spreadsheet data, etc. He says that the information he seeks is the myriad relationships which exist between the various data items. Those relationships and groupings are present in the data regardless of the presentation, but will not be readily apparent, and therefore not reasonably accessible to the user, if the data is presented in a fixed form. He points out that section 21 refers to the information (not the document containing the information) being "reasonably accessible".
21. The Appellant's arguments have been premised on the assumption that the Council holds the list in the form that he wants. He says that if they hold the information in the pdf format, they must hold the information in a character encoded form suitable for searching and collation. Indeed, he says that it is inconceivable that the Council does not have it. He says that such a list would have to have existed in order for the pdf list to have been produced, and that it is not plausible that the list would have been destroyed or that the Council would have to recreate the list if and when it needs to be updated. He also disputes the Council's claim that to produce the list in the form that he wants would involve considerable effort.
22. However, it became apparent at the hearing that the Appellant's assumptions do not hold true. The evidence of Mr Ben Goward, as set out in his Witness Statement and as further explained at the hearing, is that the Council's information technology function is outsourced and that they only have a small internal team. That team deals with a large number of databases on myriad different functions and only rarely does it interact with the underlying database. He says in particular that the Council does not have a digital copy of the list that forms part of the TMO. He does not dispute that it must have existed, but he says that to his knowledge, and on the basis of inquiries he has made, the file no longer exists. It is very rare for the Council to need to edit or alter the list so they would not need to have it for that purpose. He also

explained what effort would be needed to create the list in the form that the Appellant seeks.

23. While Mr Forster was critical, in his submissions, about certain aspects of the way in which the Council's information technology systems are managed, he appeared to accept, in the end, after having had a full opportunity to cross examine Mr Goward, that the worst that can be said is that the Council does not manage aspects of its information technology function in a manner that the Appellant considers to be skilled, efficient or even sensible. He was clear that he was not challenging Mr Goward's credibility, and in particular, he did not challenge Mr Goward's evidence that the data is not held in the form that he seeks and that to produce the list would involve the effort that the Council claims that it would. The Appellant does not assert that the Council are required to manually transcribe the information in the pdf list to create for him a list in a searchable form.
24. Having heard Mr Goward, we too have no reason to doubt his credibility. While it may be that his internal inquiries could have been more extensive, we accept that genuine efforts were made to verify that the Council does not hold the list in question in any other form. We remind ourselves that the standard of proof applicable is the balance of probabilities. We accept, to that standard, that the Council does not hold the list in the form that the Appellant was seeking, and that producing it is not the simple matter that the Appellant had thought it must be.
25. For the reasons set out above, we consider that the Appellant's appeal must fail. We would note that in any event, the Appellant now has the list in the form that he has been seeking. As a result of the discussions referred to in paragraph 11 above, the Council provided the Appellant with the information in the form of a spreadsheet. Mr Goward has explained in paragraphs 19 – 22 of his Witness Statement how the spreadsheet was produced and the time it took to produce it. The Council's position remains that it was not required to produce it.
26. The Appellant confirmed at the hearing that the spreadsheet satisfies his request. It had not been provided until shortly before the hearing and therefore does not have bearing on the correctness of the Decision Notice. It is not a reason, therefore, to dismiss the appeal. However, the fact that the Appellant has the information he has been seeking has had some bearing on the brevity of this decision. It seems to us to be of little value to expound any points of principle in detail, bearing in mind that they would have little practical effect in this case, and no binding effect on future decisions of this Tribunal.
27. For completeness, we would mention that the Appellant indicated at the hearing that he wanted further information beyond what he had originally requested. In particular, he wanted the longitudinal and latitudinal coordinates for the individual barking bays. That was not part of his original request, however, and therefore, does not come within the scope of this appeal.

28. The Appellant also indicated that he wanted to know whether the Council would provide a similar spreadsheet if and when it receives a similar request in the future. That, too, is not a matter within the scope of this appeal.

Decision

29. For the reasons set out above, we dismiss this appeal. Our decision is unanimous.

[Signed on original]

Anisa Dhanji

Judge

14 May 2012