



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)**

EA/2012/0081

B E T W E E N:-

TONY WISE

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

**Ruling on an application by the Respondent that this appeal be struck out
under rule 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (General
Regulatory Chamber) Rules 2009 (“the 2009 Rules”)**

1. This application succeeds. This appeal will be struck out as it has no reasonable prospects of success.

2. I am satisfied that, as required by rule 8(4) of the 2009 Rules, the Appellant (“Mr. Wise”) has had the opportunity to make representations as to this application, as evidenced by his written response dated 21st. May, 2012.
3. The background to (“Mr. Wise`s”) request for information to the Chief Constable of Lancashire (“CCLC”) ¹ was an alarming series of thefts of metal, particularly of metal cable in his local area. These were identified as a preface to the request.
4. His request, dated 18th. May, 2011, was framed in the following terms : -

“Please supply information about the police response to these alleged thefts bearing in mind their repeated nature, the size of the thefts and the total alleged loss to the public purse.

Please also produce to me all press releases or notifications in the press or anywhere else from Lancashire Constabulary that raised awareness of these thefts to the public and requested that the public be vigilant in relation to these thefts. Please supply any notifications of phone numbers or contacts released by the police in order that the public could call in with information.”

Although the second paragraph is probably subsumed within the first, this has been treated, by the ICO and the Tribunal, as two requests contained respectively in the two paragraphs of his e mail.

5. The subsequent history of the handling of these requests and the subsequent complaint to the Respondent (“the ICO”) is set out in the Decision Notice and

¹ In this ruling “CCLC” is used generally for the purposes of reference to the Constabulary.

does not require detailed repetition here. In summary, CCLC inferred from Mr. Wise`s letter of 23rd. June, 2011 that he had read the relevant crime reports (which had been supplied to his brother) and, by letter of 6th. August, 2011, indicated that they were the only information held which fell within the ambit of the first request. CCLC answered a series of specific questions attached to the request. As to the second request, CCLC stated that there had been no police press releases and referred to the need for the consent of the victim before any press release could be made.

6. The ICO upheld Mr. Wise`s complaint as to the handling of the first request and required CCLC to provide the crime reports to Mr. Wise. He held that CCLC had failed to check with Mr. Wise that he accepted that he could read the reports sent to his brother and had therefore breached FOIA s.1(1)(a) and (b). He required that copies of those reports be sent to Mr. Wise and they were.
7. He made similar findings as to the exiguous record of a meeting of CCLC with the local authority, the fact of which emerged only late in his investigation. That was also provided.
8. As to the second request, he concluded that there was no evidence to cast doubt on CCLC`s denial that he held copies of press releases, since his media policy did not require media appeals in every case but allowed for a flexible approach. To that extent he rejected Mr. Wise`s complaint.
9. Both in his grounds of appeal and in his response to the strike – out application, Mr. Wise asserts that the ICO :-
 - (i) in upholding his complaint as to the first request interpreted the scope of that request too narrowly and
 - (ii) was wrong to find that CCLC held no material within the scope of the second request.

10. Ground (i) raises an interesting question as to the interpretation of the words “*the (Decision) Notice is not in accordance with the law*” in FOIA s.58. Do they cover only the outcome of the ICO’s investigation, including the steps which he requires the authority to take? Or do they extend to his reasoning, including, in this appeal, his view of the scope of the request?
11. Here, it is unnecessary to consider that issue because I have no doubt that the ICO was right to conclude in paragraph 8 of the Decision Notice that Mr. Wise’s subsequent claims that request 1 extended to documentary evidence of refusals of consent by the victims, discussions as to publicity within CCLC, briefing notes, minutes, memos etc. Were misconceived. They plainly amounted to fresh requests, to which various exemptions might well apply.
12. Based on his interpretation of request 1, the ICO upheld the complaint. There is no arguable ground of appeal.
13. It is important to emphasise that the ICO and the Tribunal are not concerned with the wisdom of the course of action followed by CCLC nor with the question whether a more active and direct approach to the media should have been adopted, given the social consequences of these grave crimes. Those are matters for CCLC and it is beyond the remit of ICO or Tribunal to pass judgement on what he did.
14. As to request 2, the ICO in his response rightly relies on the principle referred to in *Wise v ICO EA/2010/0073*² that it is for an appellant to show that it is more likely than not that the Decision Notice is not in accordance with the law.
15. Where the issue is whether a public authority holds requested information, that burden requires some evidence, direct or, more probably, circumstantial, that it does. Mr. Wise is mistaken when he asserts in his response to the

² Paragraph 17

strike – out application that such a step “is not usually appropriate” where there is a dispute as to relevant facts. The evidence from press cuttings and other media material which Mr. Wise exhibits demonstrates that prominent publicity was given to the thefts but not by CCLC. The belated discovery of the record, such as it was, of the meeting involving Blackpool Council and police officers does not give rise to an inference that there must be copies of police press releases as yet undisclosed.

16. I conclude that there is no reasonable prospect that Mr. Wise can show, on a balance of probabilities, that CCLC holds material responsive to request 2.

17. For these reasons I grant this application.

Signed

David Farrer Q.C.

Tribunal Judge

27th. June, 2012