



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

**Tribunal Reference:** EA/2012/0161  
**Appellant:** John Fortun  
**Respondent:** The Information Commissioner (ICO)  
**Judge:** NJ Warren

**DECISION NOTICE**

1. On 29 April 2010 Mr Fortun asked Thanet District Council (TDC) for:-
  - (i) management representation letters for the years between 2002/3 and 2005/6 inclusive (which we are instructed form a part of the Annual governance Report);
  - (ii) reports setting out the accounting and internal control weakness for the years between 2002/3 and 2007/8 inclusive;
  - (iii) the accounting working papers for the years from 2002/3 to 2007/8 inclusive;
  - (iv) the bank reconciliation statements for the years from 2002/3 to 2004/5 inclusive;
  - (v) a copy of the register of contaminated land;
  - (vi) a list of the posts of senior and middle-management employment that the Council was obliged to maintain by statute and/or by secondary legislation, i.e. by regulation, during the year 2002/3, setting out in summary form the responsibilities of each officer and a basic flowchart or table showing the line management structure.
  
2. TDC supplied some of the information but wrongly thought that the Freedom of Information Act did not apply to material also open to inspection under the annual audit procedures. It stated that it did not have the information requested in paras (v) and (vi) and refused to supply some of the other information.

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3. Mr Fortun applied therefore to the Information Commissioner (ICO). Some negotiations followed. TDC agreed to make full disclosure of its accounting working papers for all the years from 2002/3 to 2007/8 and claims to have done so in a DVD containing over 15,000 files. The TDC has offered to guide Mr Fortun through the information on the DVD if that would help but Mr Fortun prefers not to take up the offer.
4. TDC's position now, accepted by the ICO, is that they do not hold any information which is within the terms of the original request and remains undisclosed. Mr Fortun has appealed to the Tribunal. The ICO has applied for the appeal to be struck out on the ground that it has no reasonable prospect of success.
5. Mr Fortun makes three complaints in his grounds of appeal.
6. First, he contends that the ICO was wrong to decide the issue "on the balance of probabilities". He appears to suggest that the ICO or the Tribunal must be certain that further information is not held. That ground of appeal must fail. The ICO and the Tribunal decide the questions of fact before them "on the balance of probabilities".
7. In respect of the register of contaminated land, Mr Fortun asserts that he has been informed by TDC that although no land has yet been designated as contaminated, officers are currently prioritising sites "for further investigation". He argues that there must be some documentation recording such prioritising and that documentation must be in a folder called "the contaminated land register".
8. In my judgement, that reasoning is unsustainable. I accept the submissions of the ICO on this issue in paras 39-42 of their response. There can be no doubt that the phrase "contaminated lands register" in the request refers to the statutory register kept under Section 78R Environmental Protection Act 1990. It is not a synonym for preliminary discussions or preparatory work. It is obvious that no such material exists.

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9. Mr Fortun's third point relates to the data on the DVD. He argues that the arrangement of the files varies from year to year making them difficult to use and leading to the conclusion that there is more material undisclosed.
10. I readily accept that some of the material may be difficult to follow; but this seems to me to be a necessary consequence of the enormous amount of information that Mr Fortun requested. Of course there will be inconsistencies from year to year and much to plough through that might seem irrelevant to his purposes. This seems inevitable from the nature of the request. Given TDC's additional offer to explain and assist, I do not know what other possible steps a Tribunal might direct in order to make disclosure helpful to him.
11. Against this point, the ICO has helpfully traced some of the information that Mr Fortun was unable to find (see para 38 of the response). He notes too that all the material which TDC was required to hold by statute is within the material supplied in the DVD. These points make it harder for Mr Fortun to establish his point that "there must be more somewhere". Having reviewed all the material, it seems to me inevitable that the Tribunal should accept the hard evidence from TDC contained in their emails dated 27 April 2012 and 14 June 2012 and conclude, as did the ICO, that TDC has now complied with its obligations. They have no more information to give.
12. In response to the strike out application, Mr Fortun argued that the Audit Commission held management representation letters on behalf of Thanet DC. Before making this decision I asked him to supply more information about this. It appears that he relies upon general conversations and a letter written more than ten years ago by the Audit Commission. This confirmed that they "did receive a management representation letter" from the director of finance in relation to the 2000/2001 financial statements. It would not be possible for a tribunal to conclude from that evidence that, at the date of the current request, the audit commission held this information on behalf of TDC.

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13. In my judgement, on the evidence, it is inevitable that the Tribunal will conclude that the ICO reasoning in its decision notice is correct and that there is no ground under the Act for interfering with it.
14. In response to the possibility of a strikeout Mr Fortun complains about one particular item of information having been sent to the firm of solicitors who made the request on his behalf. The firm had gone out of business and never sent the information on to him. However, the correspondence shows a further letter from TDC sending Mr Fortun a hard copy and the piece of information concerned is outside the terms of the original request.
15. For these reasons I conclude that the appeal has no reasonable prospect of success and I strike it out.

**(Signed on the original)****NJ Warren****Chamber President****Dated 6 December 2012**