



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

**Tribunal Reference:** EA/2012/0254  
**Appellant:** Neil Gilliatt  
**Respondent:** The Information Commissioner  
**Judge:** NJ Warren

**DECISION NOTICE**

1. The Information Commissioner's Office (ICO) has applied to strike out Mr Gilliatt's appeal on the ground that it has no reasonable prospect of success.
2. On 8 January 2012 Mr Gilliatt made a request under the Freedom of Information Act (FOIA) to the North East Lincolnshire Council.
3. The first part of the request is no longer in issue. He asked about the Council's policy in relation to a fee sometimes levied by bailiffs known as "Header H". The Council said they didn't have a policy. The ICO considers that it would have been more helpful for the Council to have supplied a copy of the Statutory Schedule of Charges which contains "Header H". It seems a reasonable inference that Mr Gilliatt was aware of the Schedule anyway.
4. The second part of the request covered a period of six years. Mr Gilliatt wanted to know how many North East Lincolnshire Residents had incurred the Header H fee where goods had not been physically removed. He also wanted to know how many residents had paid the fee. At first the Council stated they did not have this information. In the course of an ICO investigation the Council changed its stance. The information received back from the bailiffs did include it but it was in a form that meant that it would take about five minutes looking at each file to obtain it. There were over 30,000 files and the total cost would be nearly £40,000. The relevant cost limit under FOIA is £450.
5. In his appeal Mr Gilliatt does not contest these calculations.
6. First, he complains about the change in the Local Authority's approach. Mr Gilliatt is right to say that the Council's first decision was mistaken. This does not mean to say that the argument can lead to his appeal succeeding. Although there has been some uncertainty at times about the time at which various "exemptions", to use a broad term can be claimed, I do not accept that it can be a correct interpretation of FOIA that a Public Authority which first considers that it does not hold

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information; then discovers that it does hold it in a form from which it is very expensive to extract it; is nevertheless bound by law to then spend that money, in this case £40,000 in consequence of its earlier misunderstanding.

7. Mr Gilliatt's second point is that the Council's bailiffs must hold this information on their behalf. He points out correctly that the Council's contract with its bailiffs requires them to assist and cooperate with the Council to enable it to comply with its disclosure obligations under FOIA including supplying requested information within 48 hours of being asked to do so by the Council. However, the costs limit is a defining element of the Council's obligations under FOIA. It is a natural presumption that the bailiffs hold the information in the form in which they supplied it to the Council. It cannot be the effect of the contract that the costs limit in FOIA does not apply simply because someone else holds the information on behalf of the Public Authority.
8. Finally, in his reply to the ICO application Mr Gilliatt says that there are some more cases known as "return cases" where money is paid to the bailiffs in full. He says that these are not reported back to the Council and, in contradiction to his earlier claim that the bailiffs hold the information on behalf of the Council, he says that the Council are therefore wrong to say that they hold the information requested. This convoluted argument cannot succeed. If there are more cases, then the costs will be even higher.
9. All this means that the ICO is correct. The appeal cannot succeed. In my judgement it should be struck out now under Rule 8(3)(c).

**(Signed on the original)****NJ Warren****Chamber President****Dated 28 February 2013**