



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

Tribunal Reference: EA/2013/0058
Appellant: Kevin Cross
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. On 11 July 2011 Mr Cross asked Havant Borough Council for some information under the Environmental Information Regulations (EIR). The request is sometimes referred to in the papers as dated 12 July. The information sought related to the Council's Building Act Register. At first the Council refused the request on the ground that it was manifestly unreasonable. They upheld that decision on an internal review dated 3 August 2011.
2. After the intervention of the Information Commissioner (ICO) the Council changed its mind and provided the information to Mr Cross. On 28 February 2013 the ICO issued a decision notice which found that, in failing to provide the requested information within 20 working days, the Council was in breach of EIR 5(2). The ICO did not require the Council to take any steps.
3. Mr Cross has appealed to the Tribunal against the ICO decision and the ICO has asked for the appeal to be struck out.
4. I have carefully read at least twice all the documents supplied to the Tribunal by Mr Cross and by the ICO. Having done so, I have reached the conclusion that the analysis set out in the ICO's strike out application is accurate and convincing. I agree with the application and, in my judgement, the proper and proportionate thing

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to do is to bring the appeal to an end now by striking it out. I wish to add the following by way of additional reasons.

5. Mr Cross has dyslexia. He complains that he has been unable to put his case forward in writing and asks for a telephone hearing of the strikeout application. Whilst I accept that Mr Cross's dyslexia means that the written procedure makes extra demands upon him, in my judgement, he is able to meet those demands. His submissions to the Tribunal range over decisions of the European Court, decisions of the Tribunal and of the Upper Tribunal and various guidance documents. He has already conducted at least one Tribunal case. He has been able to make dozens of information requests to Havant Borough Council and several complaints to the ICO. I am satisfied that Mr Cross has not been inconvenienced by a written procedure. I am also satisfied that in all the circumstances it would be disproportionate for me to hold a telephone hearing in order to determine the application.
6. Mr Cross, in his grounds of appeal, complains that the ICO decision notice does not deal with related issues. He also says that the ICO should have recorded a breach of Regulation 11 EIR which requires a public authority to consider representations and to review its decision under the Regulations.
7. It is essential to recognise what this appeal is not about. As I have indicated, Mr Cross has made a large number of requests for information to Havant Borough Council and several different complaints to the ICO. Indeed Mr Cross' application for a decision in this case, which is dated 22 July 2011, seems at first sight to refer also to a request for information concerning the calculation of land charges search fees. In context, however, the document may not involve two complaints. Just three weeks before on 27 June 2011 the ICO had issued another decision notice involving Mr Cross and Havant. The first paragraph of Mr Cross' letter seems therefore to refer to that investigation almost by way of introduction to his new complaint about the Building Act Register. Be that as it may, the ICO quite properly has separated out Mr Cross' complaints. On 7 September 2011 the ICO wrote to Mr Cross allocating case reference number FER0406336 to the request for information about the Building Act Register. The letter referred to five other issues

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which Mr Cross had referred to the ICO and explained the extent to which they were being dealt with and, where relevant, gave the reference number under which they were being dealt. The Tribunal has before it an appeal against the decision on case reference number FER0406336 only; and it would be wrong for the Tribunal to deal with issues which had been separately dealt with by the ICO and have not been appealed to the Tribunal. I should add that Mr Cross also complains about the ICO's failure to deal with a request dated 5 July 2011. There is nothing in this complaint. The request dated 5 July is in identical terms to the request dated 11 July.

8. Some weeks ago when considering this case I decided that I needed further information about Mr Cross' claim that the ICO should have investigated a breach of Regulation 11. This was because Mr Cross was claiming that he knew nothing about the council's decision on internal review until the ICO decision notice was received. Having seen the letter from Havant dated 3 August 2011, containing the results of the internal review, Mr Cross now accepts that he did receive that letter on 7 August 2011. There is therefore no prospect of Mr Cross being able to establish that there was a breach of Regulation 11. (Further regulation 11 requests were made later in the year but these were not before the ICO and are not before this Tribunal.)
9. In my judgement it would be unfair on the ICO for the appeal to continue; it would be potentially unfair on Havant Borough Council if they were joined as a party; and it is in the interests of justice to bring the appeal to an end now.

(Signed on the original)

NJ Warren

Chamber President

Dated 23 August 2013