



**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No:  
FS50505226**

**Dated:** 16th. December, 2013

**Appeal No. EA/2013/0285**

**Appellant:** Neil Gilliat

**Respondent:** The Information Commissioner ("the ICO")

**Before  
David Farrer Q.C.  
Judge**

and

**Malcolm Clarke  
and  
Michael Hake**

**Tribunal Members**

**Date of Decision:** 22nd. May, 2014

**Date of Promulgation:** 2<sup>nd</sup> June 2014

The Appeal was determined on written submissions.

Subject matter:

FOIA s.1(1)(a) Whether the public authority held the requested information.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 22nd. day of May, 2014

David Farrer Q.C.

Judge

[Signed on original]

## REASONS FOR DECISION

### The Request

1. The Appellant (“NG”) lives in Grimsby. The local authority is North East Lincolnshire Council (“the Council”). He wished to know the costs incurred by the Council in issuing Council Tax summonses.
2. On 2nd. May, 2013 he requested information from the Council in the following terms -

*“with reference to Regulation 34(5) of SI 1992/613*

*In circumstances where payment is made in accordance with 5(a) and (b) on the day of issue,*

*What cost would the Council have incurred in respect of the issue of that summons,*

*Either;*

*in actual pounds and pence*

*or*

*as percentage of overall costs incurred in respect of an application where the liability order is obtained ?*

*Note: The Authority will have accepted payment and the application halted, therefore no costs can be included in respect of agreeing or setting up payment arrangements, monitoring payment arrangements, telephone communications or correspondence entered into outside those automatically triggered,”*

3. The Council had notified Grimsby Magistrates’ Court on 4th. March, 2011 that it would from 1st. April, 2011 make a flat £70 charge for a Council Tax summons with no additional charge for the liability order. In its reply to the request it referred to that standard charge and stated that it did not hold the requested information relating to an individual

account. It maintained that response on 13th. June, 2013, when asked to provide an internal review.

### The Complaint

4 NG complained to the ICO on 26th. June, 2013. His case was and is that the Council must hold the requested information because -

- (i) it is under a statutory obligation to do so - a reference to Regulation 34(5) quoted in the request. That provides a strong “business reason” for holding such information - a reference to the wording of an earlier strike - out decision made by a Tribunal Judge dealing with a similar request in 2012 (EA/2012/0050).
- (ii) the point is reinforced by government guidance originally contained at paragraph 3.18 of a Department of the Environment practice note of 1993 which includes a reminder that the court may want evidence that costs in a particular case are “reasonably incurred”. That note was superseded by a Department of Communities and Local Government report, “Guidance to local councils on good practice in the collection of Council Tax arrears” dated June, 2013 which reminds councils, at paragraph 3.4 that -

*“In the interests of transparency, local authorities should be able to provide a breakdown on request, showing how these costs are calculated.*

This subparagraph was later amended to include text similar to that quoted from the earlier note. We record these changes since they are discussed at length in NG ’s submissions, though they make no difference to the strength of the advice, in the Tribunal’s view. -

- (iii) The Council would have all relevant expenditure and data on record to facilitate disclosure.

5 A further ground related to the Council’s claim to be unaware at the date of the request of the government guidance of June, 2013 referred to above, since it was not published at the

time. Ignoring for this purpose the 1993 guidance, this could not be an argument in support of this appeal since knowledge rather than ignorance of of such guidance might lead a council to hold the requested information - point (ii) of NG's submission.

- 6 The Council stated to the ICO that it did not keep such information at the relevant date but had since changed its practice. It did not carry out a search because it knew it would be pointless. It denied any obligation to hold such data.

### The Tribunal's Decision

- 7 Regulation 34(5) of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) does not oblige a council to hold the requested information. It reads -

*“(5) If, after a summons has been issued in accordance with paragraph 2 but before the application is heard, there is paid or tendered to the authority an amount equal to the aggregate of -*

*(a) the sum specified in the summons as the sum outstanding or so much of it as remains*

*outstanding (as the case may be);*

*and*

*(b) a sum of an amount equal to the costs reasonably incurred by the authority in connection with the application up to the time of the payment or tender, the authority shall accept the amount and the application shall not be proceeded with.”*

- 8 The obligations imposed are those set out in the last line, no more. A council may use a standard estimate of the costs that it reasonably incurs but, as the Guidance says, a court may question it so keeping the relevant data is good practice. This basis for rejecting the

Council's denial therefore fails. Even had there been such an obligation, that would not have demonstrated that the Council must have complied with it.

- 9 The bare assertion that the Council must hold the data is just that. If it involves the proposition that information is held from which the costs identified in the request could be calculated, then the Tribunal agrees with the ICO's Response that this was not the information requested and that any arithmetical calculation would disregard the fact that costs reasonably incurred vary from case to case since they are not confined to court fees.
- 10 The Tribunal, like the ICO, can find no reason to doubt the Council's denial that it holds this information. If it did, it would have every incentive to demonstrate compliance with good practice by disclosing it.
- 11 NG exhibited rulings from his earlier unsuccessful appeal. We do not consider that this material either strengthens or undermines his case. That appeal was struck out for a reason quite unrelated to the issues in this appeal.
- 12 For these reasons we dismiss this appeal.
- 13 Our decision is unanimous.

D.J. Farrer Q.C.

Tribunal Judge

22nd. May, 2014