



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0059

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FER0511503

Dated: 4 March 2014

Appellant: Dr Rodney Cole

Respondent: The Information Commissioner

Heard on the papers: Fleetbank House

Date of Hearing: 29 July 2014

Before

Chris Hughes

Judge

and

Nigel Watson and David Wilkinson

Tribunal Members

Date of Decision: 17 August 2014

Date of Promulgation: 20 August 2014

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

Cases:

REASONS FOR DECISION

Introduction

1. On 4 June 2013 Basildon Council considered a planning application for a development which included building a number of houses. The papers before the Committee disclosed significant information for the Committee to base its decision and the contributions to the consideration of the application of various Council Departments. On 7 June 2013 Dr Cole made a request for information:-

“Please supply copies of all communications between Countryside Services and the Planning department particularly between [employee A] and [employee B] on the one hand and [employee C] on the other concerning planning application 12/1080/OUT (dry Street Pastures LoWS, Longwood Equestrian Centre, Basildon College, etc) between 27th March 2012 and the present.

Please also supply any correspondence between those departments concerning the mitigation proposals which had been submitted by Parsons Brinkerhoff for the Local Wildlife Site”

2. The Council replied on 27 June confirming that such information was held but declining to provide it relying on regulation 12(4)(e) of the Environmental Information Regulations. On review it upheld the position.
3. Dr Cole complained to the ICO who investigated the complaint and on 4 March 2014 issued a decision notice upholding the Council’s position.

The Appeal

4. In his appeal Dr Cole argued that the concerns of Countryside Services were not drawn to the attention of the committee considering the planning application. He argued that the internal exchanges were no longer live and that, the Decision Notice was incorrect. He submitted some of the disputed material which he has obtained from those conducting a judicial review of the planning application and argued there is now a need for greater transparency, that it is unfair that the Council is still not releasing the rest of the material, that the decision-making is no longer live and that

the planning decision was irregular because (he argues) the advice received on ecological issues was not independent.

5. In his written arguments Dr Cole expanded on these points and discussed at length the environmental issues which he considers at risk from this development and in particular the ecological merits of proposals for mitigation,

The questions for the Tribunal

6. The issue in law which the Tribunal; has to decide is twofold:-
 - Does the material fall within Regulation 12(4)(e) - that is the request involves the disclosure of internal communications and accordingly the exception to the duty to disclose is engaged:
 - If it is engaged, in all the circumstances of the case does the public interest in maintaining the exception outweigh the interest in disclosure.

Analysis

7. The request is for communications between two departments of the Council concerning a decision the Council was making; it is a request for internal communications and the exception is therefore engaged.
8. The request was made on 7 June 2013. At that stage much of the detail of steps to be taken in connection with the planning application and the mitigation of effects had not been worked out or agreed with the developer. The final agreement of the section 106 agreements and the issuing of planning permission did not take place until six months later. The ICO accepted the Council's argument that the need for a robust internal debate within a safe space during that period meant that the decision was a live issue for the Council. The Council obtained a range of advice on ecological issues from a number of different sources which were put before the Committee and the advice of the Countryside Services Department was not put before the Committee.
9. The question the Tribunal has to consider is framed by the time of the request and the response of the Council. The issue for the Tribunal to resolve is whether, at the time it relied on the exception, the Council was entitled to so rely.

10. At the time of the request the issues in the disputed material were “live” in that internal discussions and external negotiations were in train. There was a clear need for a safe space to allow the discussions to proceed and all issues to be explored without the full glare of publicity. The subsequent disclosure of some material in judicial review proceedings did not affect the validity of the initial decision. The issue of whether the advice the Council had received (from an organisation linked to or part of Essex County Council) was independent or not, is not a matter for the Tribunal to consider, in any event the same objection to any advice coming from its own Countryside Department could be raised. A substantial amount of environmental information relevant to the application was placed in the public domain by the Council; information which had been used as part of the consideration of the planning application.
11. The Tribunal considers that the ICO correctly weighed the issues before him and there is no substance in the challenge to his decision by Dr Cole.

Conclusion and remedy

12. The Tribunal is therefore satisfied that the decision notice is in accordance with the law and dismisses the appeal.
13. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 17 August 2014