



FIRST-TIER TRIBUNAL GENERAL REGULATORY CHAMBER

Tribunal Reference:	EA/2014/0086
Appellant:	Debbie Bryce
Respondent:	The Information Commissioner
Second Respondent	Trinity Hall, Cambridge
Judge:	Peter Lane
Member:	Alison Lowton
Member:	Roger Creedon
Hearing Date:	30 April 2015
Decision Date:	10 June 2015
Promulgation Date:	11 June 2015

DECISION NOTICE

1. On 25 February 2013 the appellant wrote to Trinity Hall (“the College”) requesting information that she believed had been deposited in the College’s archives by Trinity Hall Association (“THA”), an alumni association. The appellant’s request was later clarified as a request for archive records of the minutes of meetings of THA, and of its correspondence, in the years 2003 to 2008.
2. The Commissioner found that THA was separately constituted and separately financed from the College; that THA was not a public authority for the purposes of the Freedom of Information Act 2000; and that the College, as a general matter, did not have access to THA’s documents. The Commissioner held that THA minutes of meetings for 2003 to 2008 were published on the College’s website and held by the College for the purposes of FOIA but that the College did not hold any other relevant THA correspondence. The Commissioner found that THA minutes for the relevant period were accessible on the College’s website and the College was accordingly not required by the Commissioner to take any steps.
3. It is common ground that the notice of decision is factually incorrect, to the extent that the THA minutes on the website from 2003 to 2008 are the minutes of

the THA's annual general meetings. The appellant's request was directed at the minutes of all meetings of THA, including those of its Committee.

4. The appellant appealed to the First Tier Tribunal. Her case, in essence, is that THA is part of the College, with the result that material held by THA in the private residence of any of its officers, such as the Secretary of THA, is held by the College, which is a public authority for the purposes of FOIA. The appellant also contends that, in any event, the College, as a matter of fact, holds non-AGM minutes and correspondence of THA for the relevant period.

5. The First-tier Tribunal reached a decision on the appeal in October 2014. That decision was, however, set aside by the Chamber President pursuant to section 9 of the Tribunals, Courts and Enforcement Act 2007. He ordered that the appeal be considered afresh by a differently constituted Tribunal, which would not be bound by any previous findings. At the time of the original decision, the College was not a party to the appeal. The College was subsequently made a party and has submitted a response and other written material, including witness statements.

6. An oral hearing of the appeal took place on 30 April 2015 at East London Tribunals, London E14. The appellant appeared in person. The Commissioner did not appear and was not represented. The College was represented by Ms R Kamm of counsel. We heard oral evidence from Dr Chris Angus, Secretary of THA and from Mrs Sheila Hunter, Personal Assistant to the Bursar of the College and its Compliance Officer. The Tribunal endeavoured to assist the appellant in asking questions of the witnesses and generally as to the presentation of her case. When the appellant announced, during the course of the proceedings, that she had not received her copy of the bundle sent to her by the Commissioner, the Tribunal gave the appellant the opportunity of examining the bundle, to make notes thereon and to correlate it with the materials the appellant had in other form.

7. Dr Angus' statement records that he is an alumnus of Trinity Hall, having matriculated in 1967. He joined the Committee of THA in 2008, subsequently becoming Secretary at the AGM in September 2011. As such, he sets the agenda for meetings, and is responsible for taking minutes, the preparation of reports on THA's activities and dealing with external correspondence. Dr Angus states that he is also responsible for holding the physical records of THA, with the exception of historic records which have been deposited in the College archives (we note that these relate to a period far earlier than 2003 to 2008).

8. Dr Angus stated that THA is an autonomous body with its own constitution, funding and governance structures. The Governing Body of the College has no representation on THA's Committee and no control over the operation of THA at either a strategic or day to day level. Control of THA's finances is under the guardianship of THA's financial officer, who is the Company Secretary of a major global engineering company.

9. In 2003/2004, a generous benefactor, Dennis Avery, made two large financial gifts. One gift was, in effect, to pay the College to provide secretarial support to THA. The second gift was to THA directly, which chose to have the investment

managed by the College, where the endowment is ring-fenced, with dividends paid to THA. The minutes of the Committee of THA on 10 September 2003, submitted by THA specifically in connection with this appeal, stress the essential nature of THA being independent of the College: "It should not depend upon the College for funding or become inevitably enmeshed in fund raising". The template of THA's stationery, created by Dr Angus, includes the College's crest as a form of branding but, according to Dr Angus, this is in no way intended to imply that THA is part of the College.

10. THA minutes and correspondence for 2003 to 2008 are, Dr Angus said, held as paper copies in lever-arch files and boxes that, as current Secretary, he holds at his private address. This was so at the date of the appellant's request. None of this material has been transferred to the College archives, although there had been discussions about the possibility of doing this, which came to nothing.

11. Dr Angus stated that any THA minutes or correspondence materials generated by College staff on behalf of THA were of such a kind that he "can see no reason at all why the College would want to retain copies of such minutes in either paper or electronic form" and that "I do not believe that the collected correspondence for the period in question is available other than from the set of paper records in my possession".

12. In the course of questioning by the appellant and the Tribunal, Dr Angus said that the College has no control over THA and that the College was used "as a facility" by THA. Two members of the College's staff attended Committee meetings of THA but they were, in this capacity, under the instruction of THA; rather than the other way round. No one from the College has or could dictate what THA should do. Though an alumni liaison committee had been created a few years ago, it was subsequently done away with.

13. Dr Angus said that he was a "year rep", a concept borrowed from American Universities, whereby a person is nominated by the College to keep in touch with people of their year of matriculation. Alumni who gave consent to their details being passed to their year rep did not thereby give consent to the information being passed to THA. Accordingly, as THA Secretary, Dr Angus needs to contact the alumnus in question through the Alumni Office of the College, in order to ask whether the person is content to have details passed to THA. If Dr Angus contacted alumni, this tended to be in his capacity as year rep rather than as a THA officer. As Secretary, he has no access to College data, other than that which the College could provide him with the permission of the person concerned. The THA has no access to the College's computer systems.

14. Dr Angus was asked about the rules of the THA. These set out its objects as follows:-

1. To provide an organisation that will keep Trinity Hall members worldwide in touch with each other and with the College.
2. To ensure that Trinity Hall members' views are heard in matters connected with the welfare of the college.
3. To arrange social gatherings or other events for the purpose of drawing Trinity Hall members together.

4. To arrange and to hold an Annual Meeting as well as an Annual Dinner in the College.
5. To provide, generate and support other events of interest to members throughout the year”.

15. The Rules also state that all Trinity Hall members who matriculate are automatically members of THA and that such membership is free. The remaining rules deal with the management of THA, through an elected committee, comprising a President, Vice-President, Secretary, Financial Officer and “10 members representing as far as possible Trinity Hall interests, of whom at least 8 shall be current Year Rep at the time of their appointment”.

16. Dr Angus said that the election to the Committee was an informal process, whereby people who could be of use were approached. They would be elected at the AGM, which was open to all members. Dr Angus agreed with the appellant that more information about candidates for election to the Committee could probably be provided to members of THA.

17. Mrs Hunter’s witness statement includes this:-

“4. I have been told that Ms Bryce considers that THA is part of the College. Trinity Hall is a college in the University of Cambridge and its members are the Master, and Fellows, along with junior members who are undergraduates and graduate students of the College. The master and fellows constitute the Governing Body of the College to whose meetings are invited junior member representatives (for unrestricted business). The Governing Body is constituted and regulated in accordance with college Statutes. The Governing Body is responsible for the strategic direction of the college, for its on-going administration, and for the management of its finances and assets. Supporting the Governing Body is a range of committees and advisory groups; the THA has no representation on Governing Body or on any college committees or advisory groups (except where they have been invited to sit as external members on now moribund alumni related committees in the past).

5. The Trinity Hall Association is a separately constituted and independently financed and run alumni association. It has its own Rules of Association which set out the purposes of the association and a committee; the Governing Body of the College has no representation on the THA Committee and no control over the operation of the THA. Since 2004 the THA has been financed by the income produced from a gift given to it by a benefactor, prior to that time I understand that it was financed by a one-off fee paid by all alumni on graduation from the College.

6. The College also received a gift from a benefactor in 2004 to enable it to provide secretariat support to the THA via its alumni and development office. The alumni and development office only acts on behalf of the THA and only at the direction of the THA Committee. Typically this involves sending out invitations to THA events on behalf of the THA Committee using the College’s alumni database, processing bookings for

events, and forwarding correspondence received from the THA, either electronic or physical to the secretary of the THA.

7. College staff are not involved in the preparation or circulation of the agenda and minutes for THA committee meetings nor do they respond to correspondence for the THA, other than in connection with an event booking. Representatives of the alumni and development office are invited to attend THA committee meetings in an advisory capacity but are not members of the committee. It is usually only the development director who attends THA Committee meetings”.

18. Mrs Hunter goes on to state that the College only holds copies of THA minutes (with the exception of AGM minutes) for the period between 1904 and 21 May 1966, which were in a physical form in the College’s archive. The College does not hold any THA correspondence from 2003 to 2008. Details of THA material held in the archive is documented in the on line catalogue known as Janus, which is available to the public and can be accessed via the internet.

19. Mrs Hunter has confirmed this position with both the Fellow Archivist, Dr Pollard, and with Mr Robert Athol, who was formerly the Assistant Archivist. She has also personally visited the archive to examine the documents held. Mrs Hunter has, “confirmed verbally with Mr Athol that he believes that he catalogued all THA material held in the archive prior to his departure in July 2014, and I do not believe that any other THA documents are held elsewhere in the College, other than the material available via the College website”.

20. Mrs Hunter considers that the actions undertaken constitute a “reasonable search of the archive for the information that Ms Bryce requested”.

21. So far as concerns relevant material that might be held by the College otherwise than in its archive, Mrs Hunter stated:-

“15. From my discussions with the Development Director, Dr Rachelle Stretch, I believe that the College Alumni and Development Office does not hold copies of the requested minutes, or any THA correspondence, either in hard copy or on the College computer system (email attached). Those minutes that were circulated to staff in the Alumni and Development Office were routinely deleted after any relevant action points had been carried out and to retained by the college in either paper or electronic form and they were not held by the College at the time of the request. The exception to this was the THA AGM minutes which ... are available on the College website. No other College staff outside the Alumni and Development Office would have been copied with minutes of THA Committee meetings.

16. Dr Stretch has confirmed to me that, where the College was contacted about a THA matter, other than events, in the period 2003 to 2008 the majority of the communications were hard copy letters which were forwarded to the THA and that the College did not retain a copy. Where the College was contacted about a THA matter by email, the email would have

been forwarded to the THA committee at their personal email address and the standard practice was for such emails to be deleted once any required action had been completed. Any responses to alumni to such letters or emails would have been made by the THA from their personal email addresses or by post and these replies were not copied to the College. The tha@trinhall.cam.ac.uk address to enable emails to be relayed to the THA committee was not introduced until the beginning of 2013.”

22. Under questioning by the Tribunal and the appellant, Mrs Hunter stated that the decision as to what to hold in the archive was made by the Archivist, who would decide what would be accepted. She confirmed that she had spoken to the Assistant Archivist, who said that he had catalogued all the THA material held in the archive; but that Mrs Hunter also went to the archive herself, but could not find anything. College correspondence would be retained by the College but THA correspondence is forwarded without taking a copy, since it is not regarded as the College’s correspondence. Correspondence would be shared amongst staff only if there was a need.

23. The College’s case is that at no material time did it hold any information falling within the scope of the appellant’s request, with the exception of the AGM minutes which were available on the website. The materials held by THA at the home of Dr Angus are not held by the College for the purposes of the FOIA, because THA is not part of the College.

24. The College’s case has two further aspects, which only come into play if THA is part of the College and/or THA material within the scope of the request is held by the College. These are that the THA material may be exempt from disclosure by reason of section 40(1) and/or 40(2) of FOIA; and that the appellant’s request was vexatious.

25. The appellant considers that, far from being independent, THA exists only to serve the development function of the College. She believes it is necessary to see any contract that may exist between the THA benefactor and the College. Only a perusal of THA Committee minutes would show whether independence has been achieved. THA is in the nature of a “virtual” organisation that exists only by reference to the College. The part played by the College’s staff in THA affairs underscores this point.

26. The appellant thinks it is implausible that the material is not, in fact, held by the College in its archive. The appellant had been informed that there was space for such material to be held. Conversations with a librarian in another institution reinforced the appellant’s view that the material was, in reality, held.

27. We have had full regard to the submissions, both written and oral, and to the oral and written evidence, including that not specifically referred to in this decision. Our decision on the appeal is unanimous.

28. The Tribunal has considered carefully and holistically the issue of whether THA is part of the College for the purposes of the FOIA. Having done so, we are in no doubt that the THA is a separate entity for these purposes. We accept the

evidence we have heard in this regard from the witnesses. The objects of THA, set out above, make it plain that – contrary to the appellant’s views – THA does not exist in order to serve the development function of the College. In other words, it is not the College’s fund-raising arm, or even part of it. Of course, the fact that THA is an association of alumni of the College means that it has a connection with the College. However, the degree of that connection, on the evidence, falls far short of showing any legal right or *de facto* ability of the College to control or otherwise influence THA.

29. The fact that staff members of the College provide secretarial support to THA, as a result of funding made available by a benefactor, is not indicative of any control or other influence by the College on THA’s affairs. We see no reason to reject the evidence of Dr Angus regarding the distinction drawn between his position as year rep, on the one hand, and his position as Secretary of THA on the other. We find that Dr Angus and the College keep separate the data protection position of alumni, *vis a vis* the College and THA respectively.

30. In this regard, we note from the materials that the appellant has asked THA not to provide the College with copies of THA’s correspondence with the appellant; a matter which underscores the separate nature of the two entities.

31. The appellant submitted that it was necessary to examine a contract between the benefactor and the College regarding services provided to THA. There is, however, no reliable evidence that any such contracts exist. In any event, we consider the evidence adduced by the College regarding that relationship to be truthful. Given that one of the aims of the benefaction was to ensure the independence of THA, it would frankly be remarkable if any such contract were to have produced the opposite result.

32. We anticipate the appellant may criticise the Tribunal for failing to pursue this matter with the “robustness” she may wish. However, the Tribunal must act on such evidence as is before it and the appellant has not begun to show that it would be in the interests of the overriding objective to compel disclosure of any such contract. On the contrary, to do so would merely be to enter into what is often referred to as a “fishing expedition”.

33. Accordingly, none of the material held by the Secretary or other officers of THA, relating to the relevant period, is held by the College as a public authority under the FOIA.

34. We turn to the issue of whether THA material for 2003 to 2008, within the terms of the appellant’s request, is held by the College, whether in its archive or otherwise. In this regard also, we have carefully considered the evidence and the submissions of the parties, particularly those of the appellant. She considers that it is implausible that no such material is held. She derives assistance from this view, *inter alia*, because of her understanding that there is space in the archive and because of what she understands to be the views of the librarian of another institution.

35. The issue for the Tribunal is whether it is more likely than not that the material is held by this public authority. Having considered the evidence, in

particular that of Mrs Hunter, who (like Dr Angus) we found to be an entirely credible witness, we are fully satisfied that it is more likely than not that the material is not held. Mrs Hunter has explained the nature of the investigation she has undertaken in relation to the archive. Those investigations are, we consider, of an entirely reasonable nature.

36. We also find as a fact that it is more likely than not that the relevant material does not exist elsewhere in the College. Given the nature of THA and of the College staff's involvement, we find it entirely plausible that any such material which the staff might take away from meetings would not be retained for more than a short period and, certainly, not from 2003 to 2008. The evidence makes it plain that such staff would have no reason to keep the THA material. The appellant's questioning of Mrs Hunter on this issue failed to disclose any hint of such a reason.

37. We allow the appeal to the extent that the Commissioner's notice of decision falls to be read as if, in paragraph 20, the reference to minutes in the last sentence were a reference to minutes of the THA's AGMs in 2003 to 2008 and that the decision notice should record that non-AGM minutes for 2003 to 2008 are not held by the College. No action, however, falls to be taken as a result of this amendment.

38. Otherwise, for the reasons we have given, the appeal is dismissed. Because we have found that THA is not part of the College, it has not been necessary for the Tribunal to reach any findings on the alternative submissions of the College as regards the issues of data protection and vexatiousness.

Peter Lane

Chamber President

Dated 10 June 2015