



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
[INFORMATION RIGHTS]**

**Case No. EA/2015/0195**

**ON APPEAL FROM:**

**Information Commissioner's  
Decision Notice No: FS50576215  
Dated: 5 August 2015**

**Appellant: Dr Ernesto Pinto**

**Respondent: The Information Commissioner**

**On the papers**

**Date of decision:**

**Before  
CHRIS RYAN  
(Judge)**

**Subject matter: Whether information held s.1**

## DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

### REASONS FOR DECISION

1. This appeal arises out of a Decision Notice of the Information Commissioner issued on 5 August 2015. It has been determined by a Judge sitting alone under a direction to that effect by the Chamber President. The determination has been made on the basis of written submissions and without a hearing because the Appellant opted for that means of determination and I consider it an appropriate method for dealing with the issues that arise under the Appeal.
2. The only issue under consideration in the Decision Notice was whether Sport England held any information at the time when the Appellant had submitted an information request to it (11 February 2015), which had not been disclosed in response to the request. The Information Commissioner decided that it had not.
3. The Decision Notice was issued after the Information Commissioner had completed an investigation into a complaint submitted to him by the Appellant. The complaint identified that the Appellant's concern was that Sport England had provided him with some only of the information he had asked for. Specifically, it said that two emails had been withheld.
4. The Information Commissioner's investigation was carried out under the powers given to him by section 50 of the Freedom of Information Act 2000 ("FOIA"). The relevant parts of that provision read as follows:

*"(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.*

*(2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him—*

*(a) that the complainant has not exhausted any complaints procedure which is provided by the public*

*authority in conformity with the code of practice under section 45,*

*(b)that there has been undue delay in making the application,*

*(c)that the application is frivolous or vexatious, or*

*(d)that the application has been withdrawn or abandoned.*

*(3)Where the Commissioner has received an application under this section, he shall either—*

*(a)notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so, or*

*(b)serve notice of his decision (in this Act referred to as a “decision notice”) on the complainant and the public authority.*

*(4)Where the Commissioner decides that a public authority—*

*(a)has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or*

*(b)has failed to comply with any of the requirements of sections 11 and 17,*

*the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.*

5. The “*specified respect*” in which Sport England had allegedly failed to comply with the FOIA was recorded in paragraph 9 of the Decision Notice as “*whether Sport England holds further information falling within the scope of the request*”.
6. The Decision Notice also recorded (in paragraphs 16-29) how Sport England had responded to the information request and the searches it carried out. Those paragraphs also recorded the manner in which the Information Commissioner challenged Sport England when it became apparent that the Appellant had obtained, from another source, certain e-mails which fell within the scope of the information request but had not been disclosed to him. The explanation provided by Sport England is also recorded.
7. The Information Commissioner concluded that, on the balance of probabilities, Sport England did not hold any further relevant information. The rationale for that conclusion appears in paragraphs 30 -33 of the Decision Notice and does not merit being repeated here.

8. The Appellant lodged an appeal against the Decision Notice on 1 September 2015. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.

9. The Grounds of Appeal did not address the decision which the Information Commissioner had made. It stated, in plain terms:

*“The issue is therefore NOT whether Sport England still holds relevant material, but whether it had handled information correctly, and in line with the requirements of the Freedom of Information Act, by deleting a specific email exchange. The ICO decision does not address this issue at all.”*

10. The Appellant then went on to explain that his criticisms were that:

- a. Sport England had not acted in accordance with the Code of Practice on the management of records established under FOIA section 46, in particular because it did not have a clearly established policy on the deletion of emails;
- b. Sport England had further breached the Code of Practice by deleting certain specific emails that should have been retained; and
- c. The Decision Notice “contradicts” FOIA section 47 because it represented a failure to promote good practice and observance of the requirements of FOIA.

11. On the basis of those criticisms the Appellant invited this Tribunal to

- a. require the Information Commissioner to serve an enforcement notice on Sport England to ensure it fully complies with the law;
- b. issue a recommendation that Sport England prepare, agree and follow a proper policy for the handling of information; and
- c. consider whether the deletion of the emails in question constituted a crime.

12. This Tribunal has no jurisdiction to either explore any of the criticisms made or take any of the steps requested. Its jurisdiction is limited to a consideration of the Decision Notice under appeal and that, in turn, is limited to the consideration of any failure by a public authority to comply with obligations imposed under Part 1 of FOIA. Sections 46 and 47 do not fall within that Part. It follows that any breach of a relevant Code of Conduct may not be investigated by either the Information Commissioner or this Tribunal on appeal. FOIA section 49 requires the Information Commissioner to report annually to Parliament and it is clearly for Parliament, and not this Tribunal, to express any

views on the manner in which he may have exercised the functions imposed on him under section 47 or any other provision.

13. Although the Appellant has not therefore raised any issue which this Tribunal has jurisdiction to consider it is appropriate to add that I see no grounds to criticise the Decision Notice in respect of either the scope of the Information Commissioner's investigation, the steps which it records him as having taken in the course of that investigation or the reasons given for reaching the decision that he did.

14. The Appeal is accordingly dismissed.

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Judge  
2016