



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

Appeal No: EA/2015/0211

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50562987

Dated: 9th, July 2015

Appellant: Vance Richard Wells

Respondent: The Information Commissioner ("the ICO")

Before

David Farrer Q.C.

Judge

and

Stephen Shaw

and

Henry Fitzhugh

Tribunal Members

Date of Decision: 8th. March, 2016

Subject matter:

FOIA s.1(1)(b) Whether Longstanton Parish Council ("the Council") held an insurance claim form BH/3/76913 relating to a claim for losses resulting from theft.

The Tribunal's decision

The Council did not hold such a claim form. The appeal is dismissed.

Abbreviations	(in addition to those above)
The DN	The ICO's Decision Notice
FOIA	The Freedom of Information Act, 2000

The Reasons for the Tribunal's Decision

The Background

1. Over a period of several years up to 2013, the Parish Clerk then employed by the Council, is alleged to have stolen large sums of money belonging to the Council. The Council contacted its insurers who appointed a loss adjustor. He discussed with the Council a possible claim on its insurance policy in respect of such losses.
2. It did not recover any payment from its insurers. The inevitable result was a very considerable rise in the parish council precept. A number of local residents requested Mr. Wells, who is a forensic accountant and lives in the parish, to carry out an audit pro bono. It was conducted between January and March, 2014.

The Request

3. On 16th. July, 2014 Mr. Wells made a number of linked requests for information, relating to the successive Council Chairs, council minutes and correspondence, the insurance cover obtained, the identity of the loss adjustor and the supposed claim on that insurance. Suffice it to say that those requests were satisfied save for the request for certain minutes and for the insurance claim form. On 13th. August, 2014, he therefore wrote again, thanking the Council for information supplied but stating that he–

“must now ask for a copy of the claim form ref. BH/3/76913. Perhaps you could scan and send that to me in the next day or so”.

That constitutes the effective contested request for the purposes of this appeal.

4. On 12th. September, 2014, following some interim correspondence, the Council replied to the request of 13th. August, 2014 in these terms –

“ We can advise you that the opportunity of a claim being pursued for losses incurred was discussed with the loss adjustor at the time. The

advice received from them was that there would be no likelihood of a successful claim, therefore, no claim form was provided by them in this regard”.

A further exchange on 24th. and 29th. September, 2014 produced the same response to the same request

5. Subsequent correspondence dealt with matters which do not concern the Tribunal, such as the availability of a copy of the claim form held by the insurer. Mr. Wells provided the claim form number quoted above (if that is what it was) to the Council. On 10th. November, 2014 the Council indicated that it was not dealing further with the request.
6. Mr. Wells complained to the ICO on 25th. November, 2014 and subsequently requested an internal review by the Council. The upshot of that review, provided to Mr. Wells on 13th. February, 2015, was that the Council did not have the requested claim form and did not intend to write to the insurers to obtain a copy. The latter refusal is immaterial to this appeal save, arguably, as evidence that it knew that the insurers did not have one.

The Decision Notice

7. The DN included a finding that the Council held relevant minutes which it had not disclosed and required it either to disclose them or issue a fresh response to the request in relation to them. That decision is not the subject of appeal.
8. As to an insurance claim form, it accepted the Council’s explanation in its response to the ICO by letter dated 20th. April, 2015, that no claim was made due to the loss adjustor’s advice, based on the Council’s failure to appoint a finance committee or maintain any check on the clerk’s handling of council funds, contrary to its rules of governance. The reference was to a correspondence file, not a claim. There was no claim form to disclose.

The Appellant’s case

9. Mr. Wells asserts, in his reply by email to the Tribunal and the ICO dated 29th. October, 2015, that a claim was made by the Council on its insurers in respect of losses of about £15,000, in accordance with the policy that it held. A perfectly valid claim, set out in a claim form reference BH/3/76913, was then abandoned at the instance of a councilor who was having a sexual relationship with the Parish Clerk and persuaded his fellow councilors, when consulting the loss adjustor, falsely to divert all blame from the Clerk to previous councilors who had ignored proper financial

procedures. If true, that amounts to a criminal conspiracy by the councilors to defraud the Council of a very large sum of money to the grave prejudice of parishioners paying council tax.

10. He relies on two documents exhibited to the Grounds of Appeal.

- (i) An Email from the insurers, Allianz UK to Mr. Wells dated 17th November, 2014, headed "*Our Ref. BH/3/076913 Longstanton Parish Council*", which begins "*I refer to the above claim . . .*". (It then proceeds to refuse any further information).
- (ii) An Email dated 2nd. September, 2015 from the loss adjustors referring to "*documentation under our claim reference 5002725*"

The reference to a claim with reference numbers, he says, proves that a claim was made; hence a claim form exists and must be held by the Council in accordance with statutory requirements.

11. We need not deal in detail with Mr. Wells' claims that the Council must obtain copies of the claim form, if they exist, from the insurers or the loss adjustors. If they held such documents, they would not do so as agents of the Council. They are not public authorities for the purposes of FOIA. The Council is under no duty under FOIA to obtain them from either body, nor they to provide them.

The Respondent's case

12. The ICO repeated his acceptance of the Council's explanation for the absence of a claim form set out at §8 above.

Our Reasons

13. The only material point of law is that our decision is reached on a balance of probabilities.

14. It is routine for insurance claims to be notified to insurers before any formal claim is made. Such a claim is normally made on a form provided by the insurer after such notification. It is quite usual for negotiations between the insured and the loss adjustor appointed by the insurer to take place before any claim is lodged. Once notification has taken place, it is to be expected that some identifying code will be allocated by the insurer and/or the loss adjustor in the form of a reference number, so that the relevant file can be identified when a communication is received.

15. We therefore regard the existence of such reference numbers as rather flimsy evidence that a claim form had been completed and submitted. The

same applies to the use of the word “claim” which is likely to be used to cover any material served in contemplation of a possible claim before the requisite facts are established.

16. Furthermore, in considering whether it is more likely than not that a formal claim was made, it is reasonable to consider the general picture.
17. The loss of up to £60,000 is a very grave matter for a modest – sized parish council, as demonstrated by the exorbitant demands it made on the council precept. It is apparently suggested by Mr. Wells that up to eleven councilors bowed to the demands of one colleague who wished to protect his dishonest mistress by falsely exculpating her and somehow attributing all the blame to their predecessors in office.
18. Why they should do so, given the risk to their own reputation, perhaps their liberty and the financial hardship to their friends and neighbours is far from clear. To what extent it would have involved an unexplained retraction of the content of the claim which is alleged to have been made, is difficult to judge. How evidence of her acquisition of council money could be dressed up by councilors simply as the result of inadequate financial supervision, we cannot say, since we have not seen any relevant documents or other evidence.
19. On the other hand, it is not difficult to understand that a bona fide intention to claim might falter when confronted by evidence of gross financial mismanagement and neglect in clear breach of the conditions of the Council's insurance policy. We have not seen it but are well aware that such policies routinely include strict stipulations as to financial controls designed to prevent the kind of fraud apparently practised here. We know little of the mechanics of the alleged fraud but it is unlikely to have been of such sophistication as to have escaped the attention of a reasonably alert treasurer or finance committee. If so, it is likely that the absence of proper supervision contributed to the losses, which would almost certainly relieve the insurers of the contractual duty to indemnify.
20. The Council's account to the ICO and related explanation for the “claim” reference number is altogether more plausible than Mr. Wells' allegation. The evidence is incomplete and it is impossible to be certain but the Tribunal has no hesitation in finding it highly probable that there was no claim form for the reasons given by the Council in answer to the IC.
21. We wish to add that the apparent implication of Mr. Wells' Reply – that a genuine claim was made but was suppressed in order to protect the Clerk,

on account of her relationship with a council member - seems to have been made without any solid evidence, despite the gravity of the misconduct imputed to all concerned. If there was any substantial supporting evidence, the Tribunal did not see it.

22. Such accusations, assuming that they are material to the Appellant's case, as they appear to be here, should never be made in written or oral submissions without a firm credible evidential basis.

23. For these reasons this appeal is dismissed.

24. our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

8th. March, 2016