



**Neutral Citation Number**

**IN THE FIRST-TIER TRIBUNAL** **Case Nos. EA/2016/0018 & 0022**  
**GENERAL REGULATORY CHAMBER**  
**INFORMATION RIGHTS**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice Nos:** FS 50598756 &  
FS50610750

**Dated:** 13 & 28 January 2016

**Appellant:** Ms Anna Christie

**Respondent:** Information Commissioner

**Public Authority:** Southwark Council

**Heard at:** Fox Court London

**Date of hearing:** 14 June 2016

**Date of decision:** 18 June 2016

**Before**

Angus Hamilton

Judge

and

Dave Sivers

and

Andrew Whetnall

**Subject matter: s 1(1) Freedom of Information Act 2000**

**Cases considered:**

*Bromley v IC and Environment Agency* IT 31 August 2007

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notices dated 13 and 28 January 2016 and dismisses the appeals.

## **REASONS FOR DECISION**

### **Introduction**

1 Under section 1(1) of FOIA (the Act) a person who has made a request to a public authority for information is, subject to other provisions of FOIA:

(1) entitled to be informed in writing by the public authority whether it holds information of the description specified in the request (section 1(1)(a)); and

(2) if the public authority does hold the information, to have that information communicated to him (section 1(1)(b)).

### **Requests by the Appellant & The Commissioner's Decisions**

2 On 30 September 2015 the Appellant wrote to the public authority making the following request:

**“1. Would you please state the employment title of Ms CD and confirm or not whether she is legally certificated to work as a process server, and if so please state which Court she works for, and confirm or otherwise whether or not she is a member of a bailiff association or trade organisation.**

**2. Please provide a copy of her signed Code of Conduct from her employer.**

**3. Please provide copies of her legal authority to serve statutory demands.**

**4. Please provide the name and address of your bailiff company.”**

- 3 The Council provided its response dated 6 October 2015 (albeit attached to a covering email dated 27 October 2015), confirming that it did not hold the information sought in questions 1-3. The Council provided the information requested for question 4.
- 4 The Appellant requested an internal review of the Council’s decision. The Council provided its response to the internal review on 11 November 2015. The Council confirmed its original decision: that the information requested at questions 1-3 was not held by the Council.
- 5 The Appellant complained to the Commissioner about the Council’s response. The Commissioner conducted an investigation and issued Decision Notice FS50598756 on 13 January 2016 in accordance with s. 50 of the Act. The Commissioner held that the public authority had complied with its obligations under s1(1) of FOIA. The Commissioner found that, on the balance of probabilities the public authority did not hold the sought information.
- 6 On 30 September 2015 the Appellant also wrote to the public authority making the following request:

**“1. Please state the job title and job description of Mr AB.**

**2. Please state whether Mr AB is certificated to act as a bailiff or is a member of his trade organisation.**

**3. Please state whether Mr AB has had complaints relating to his behaviour from members of the public.**

**4. Please state whether the Authority has checked whether he has signed a Code of Conduct and it has been seen by London**

**Borough Southwark HR Officers/ Managers.**

**5. Please state whether any criminal checks were made on Mr AB's background prior to his employment with Southwark Council.**

**6. Please state the Court which Mr AB works for."**

- 7 On 6 October 2015 the public authority provided its response, stating that following a search of its records, the information requested was not held by the public authority.
- 8 The Appellant requested an internal review on 27 October 2015 asserting that the public authority's legal services department did hold the requested information.
- 9 The public authority responded on 11 November 2015, upholding its original decision that it did not hold the information requested. The Appellant complained to the Commissioner about the public authority's response.
- 10 The Commissioner served Decision Notice FS50610750 on 28 January 2016 in relation to this matter in accordance with s. 50 of the Act. Again the Commissioner held that the public authority had complied with its obligations under s1(1) of FOIA. Again the Commissioner found that, on the balance of probabilities the public authority did not hold the sought information.
- 11 In both cases the Commissioner established through his investigation that neither of the named individuals were employed or had ever been employed by the public authority and so it did not hold any information about them as employees. The public authority also advised that, in respect of Mr AB, it had not received a complaint about him. The public authority also explained that both Mr AB and Ms CD had acted on behalf of the public authority as process servers. The public authority explained that when it needed to use a process server to serve court documents, it might appoint a local firm,

depending on the availability and location for service. When using such firms, the public authority did not require information about those firms' employees or ask for copies of codes of conduct. The public authority therefore did not have details of employment titles or membership of trade organisations.

### The Appeals to the Tribunal

- 12 On 30 January 2016 the appellant submitted appeals to the Tribunal (IRT) in relation to the two Decision Notices. As the appeals raise very similar matters they have been considered together.
  
- 13 In her Grounds of Appeal Ms Christie makes a number of assertions which can be briefly summarised as follows:
  - a) That the individuals in question are 'very well known' to the public authority.
  - b) That the individuals in question are in fact employees of the public authority.
  - c) That the public authority is lying and does in fact hold the sought information.
  - d) That if the public authority does not hold the sought information that it ought to or could easily obtain it.
  
- 14 Ms Christie also submitted a statement which Ms CD, in her role as a process server, had prepared for the the public authority in relation to proceedings it had brought against Ms Christie. Ms Christie also submitted an email addressed to the public authority dated 11 October 2014 in which she comments that:

**'A letter was pushed in my face.... After I was hit in my shoulder by Mr AB after I tried to close the door on AB'.**

Ms Christie appeared to be submitting this email as evidence that the public authority had received a complaint about Mr AB, that they were being

dishonest on this issue, and, therefore, were likely to be being dishonest about not holding the other sought information.

### The Questions for the Tribunal

- 15 This matter was considered on the papers only. The public authority was not joined as a party to the proceedings and made no formal representations to the Tribunal.
- 16 The Tribunal judged that the sole question for them was to consider whether the Commissioner was correct to conclude that, on the balance of probabilities, the public authority did not hold the sought information. That the test is on the balance of probabilities was proposed in *Bromley v IC and Environment Agency* IT 31 August 2007. The decision was not binding upon the Tribunal but the Tribunal chose to follow it.
- 17 The Tribunal considered all the written material before it presented by both the Commissioner and the appellant.
- 18 The Tribunal considered that both of the appeals were devoid of any real merit and also considered that the appellant was fortunate not to have the appeals struck out administratively upon receipt.
- 19 The Tribunal dealt with the points raised by the appellant in the following ways:
  - The Tribunal considered that it was irrelevant whether the individuals were well known to the public authority or not.
  - The Tribunal noted that the appellant had provided no evidence whatsoever in relation to her claim that the individuals were in fact employees of the public authority and no evidence to undermine the explanation from the public authority that the individuals were employed by an external company.

- The Tribunal did not consider that the appellant's email of 11 October 2014 constituted a complaint against Mr AB. The word 'complaint' does not appear in the email in relation to Mr AB and the email lacked any other element which would have established it as a complaint. The allegation about being struck appeared to be entirely tangential to the rest of the contents of the email. Thus it did not constitute evidence that the public authority was 'lying' about not having received any complaints about Mr AB. The Tribunal noted that the appellant had not produced any other evidence from which it could be inferred that the public authority was being dishonest or acting in bad faith.
- The Tribunal could not see the relevance of the statement from Ms CD since it provided no evidence at all that the public authority held the sought information. The Tribunal were bewildered as to why the appellant felt that it did.
- FOIA does not impose any obligation on a public authority to gather information which it 'ought' to have or which it could 'easily obtain'. It relates only to information actually held.

### Conclusion

20 The Tribunal therefore concludes that the Commissioner was correct to conclude that on the balance of probabilities the public authority did not hold the sought information.

21 Our decision to dismiss these appeals is unanimous.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 18 June 2016