



EA/2017/0053

**Between:**

**GUY PIGGOTT**

**Appellant**

and

**THE INFORMATION COMMISSIONER**

**Respondent**

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**JUDGMENT**

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**Hearing:** 15 August 2017

On the papers at Fleetbank House, London.

**Subject Matter:** Public Authority claiming exemptions under s40 (2) & (3)

**Authorities cited:** Linda Bromley and Information Commissioner v Environment Agency  
EA/2006/0072

**Result:** Appeal refused.

**REASONS**

**Introduction**

[1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“DN”) dated 1 March 2017 (reference FS50643925) which is a matter of public record.

[2] The Tribunal Judge and lay members sat to consider this case on 15<sup>th</sup> August 2017.

**Factual Background to this Appeal:**

[3] Full details of the background to this appeal, Mr Piggott's request for information and the Commissioner's DN are set out in the Decision Notice and not repeated here, other than to state that, in brief, the appeal concerns the question of whether North East Lincolnshire Council ("the Council") held information pertaining to two individual living persons.

## **CHRONOLOGY**

22 June 2016	Appellant's request for information on the qualifications of two officers along with building reports
12 July 2016	Council provided the reports but refused to provide the qualifications, citing s40(2) (personal information exemption)
19 July 2016	Appellant requests internal review
1 Aug 2016	Council upholds refusal under s40(2)
26 Aug 2016	Appellant complains to the Commissioner
4 Nov 2016	following further investigation, Council now claims that it does not hold the requested information
11 March 2017	DN FS506339 upholding the University's reliance on s36

## **RELEVANT LEGISLATION**

### ***s1 FOIA Information held or not held***

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

## **COMMISSIONER'S DECISION NOTICE**

[4] The Commissioner must decide on the balance of probabilities whether the public authority holds the requested information. In the instant case, the Council provided the Commissioner with proof that the two individuals were not employed by the Council, and the Council had no access to the employee qualifications of its contractors. Whilst it conceded that one of the two individuals had been employed by the Council a number of years ago, the completion by that individual of any training, refreshers or subsequent qualifications are not available to the Council. The most that the Council was able to say is that it is aware that all employees of this contractor are required to complete a 2 day training course, which is supplemented by regular refresher courses / activities specific to

Housing Health and Safety Ratings Systems and other housing and inspection related knowledge and training. The Council also pointed out that its operating guidance does not make any specific requirement for officers to hold any particular qualifications.

### **NOTICE OF APPEAL**

[5] The Appellant requested clarification as to whether the Council did not hold the qualifications because the individuals at the time of the inspections were employed by another company, or because the individuals are not qualified.

### **COMMISSIONER'S RESPONSE**

[6] The Commissioner pointed out that Council had already confirmed that neither of the named officers were employees of the Council at the time of the inspections, and that there was no business purpose or statutory requirement to have access to the individuals' qualifications as they were employed by another company. The test laid down in *Linda Bromley and Information Commissioner v Environment Agency EA/2006/0072* is whether it can be found on the balance of probabilities that the information is held, taking into account the quality of the authority's initial analysis of the request, the scope of the search made on the basis of that analysis and the rigour and efficiency of any such search. The Commissioner stands by her application of this test in finding that the Council does not hold the information.

### **REPLY BY THE APPELLANT**

[7] The Appellant claimed that the Commissioner and the Council still haven't confirmed whether they do not hold the information because the individuals are not qualified or because they are employees of a contractor. He made certain allegations about already holding personal knowledge of the qualifications of one of the individuals, and alleged bad faith on the part of the Council and the Commissioner in attempting to prevent a public authority being proved wrong in a public forum. The Appellant questioned the use of the Freedom of Information framework when public authorities can use third party partners in the exercise of their functions and then claim not to hold the relevant information.

### **CONCLUSION:**

[8] The Tribunal is not persuaded by the Appellant that the Commissioner erred on the facts or in the Law in this matter. We accept that the principles in: *Linda Bromley and*

Information Commissioner v Environment Agency EA/2006/00 have been properly applied by the Commissioner. We accept and adopt the Commissioner's factual matrix and reasoning in her Analysis at paragraphs 18 to 20 of the DN. The Appellant provides no evidence to undermine the Commissioner's acceptance of the factual matrix described by the Commissioner to have pertained at the time of the request. It is clear to us that it was established, on the balance of probabilities, to the Commissioner's satisfaction that Council, who are the Public Authority in this appeal, do not hold the disputed information.

**[9]** Accordingly we dismiss the appeal.

Brian Kennedy QC

21 August 2017

Promulgated 31 August 2017