



Neutral citation number: [2023] UKFTT 00664 (GRC)

Case Reference: EA/2023/0170

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Heard on the papers**

**Heard on: 7 August 2023.**

**Decision given on: 24<sup>th</sup> August 2023.**

**Before: Tribunal Judge: Brian Kennedy KC**

**Between:**

**DIANE ROSELYN THOMAS**

Appellant

and

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

For the Appellant: Diane Roselyn Thomas as a Litigant in person.

For the Respondent: Clare Nicholson, Solicitor within the Information Commissioners' Office in writing in the Response dated 20 June 2023.

**Amended Decision:** The application to Strike Out the appeal has been granted. This decision has been amended from the initial draft dated 7 August 2023, further to the application through Rule 40 of the Tribunal Rules, in order to correct an administrative or typographical error leading to the wrong Paragraph 11's inclusion in the original decision.

## REASONS

---

### Introduction:

- [1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) as, against the Commissioner’s decision notice 2 March 2023 with reference number IC-213453-N5J0 (the “DN”), which is a matter of public record.

### Factual Background to this Appeal:

- [2] Full details of the background to this appeal, the Appellant’s request for information and the Commissioner’s decision are set out in the DN. On 15 September 2022 the Appellant he Appellant has requested information from the Plymouth City Council (“the Council”): *“My cousin has confirmed with [name redacted] he would like to purchase a lease on this grave so he can finally place headstone on the family grave, however, before he moves forward with this we would like access to all records held on Plot C14969 and I have highlighted this on the copy of the complaint attached. A payment was asked for and paid in 1958 and was hopefully of names, dates, amounts etc. that we have not seen, and it is these and any other records held that will held us determine the way forward.”*
- [3] The Council provided the Appellant with information within the scope of the request. The Appellant considers the Council to hold further information within the scope of their request. In their complaint to the Commissioner, the Appellant stated that they consider that the Council would hold a copy of a contract that was taken out between their family and the Council when the first burial took place in 1928. The Appellant believes that this document would set out whether or not the grave was purchased, whether payments were made in order to eventually own the grave, or whether payments were made to keep the grave and its surroundings tidy. The Appellant also considers that the Council would hold a breakdown of payments made by a family member in 1958.

- [4] The Council considers that it has provided the Appellant with all the information it holds within the scope of the request. The Council explained that information relating to the grave would be held within the Council's grave register. The Council confirmed that it has provided the Appellant with all the information held within the grave register that falls within the scope of the request.
- [5] The Council explained that if the grave had been purchased in 1958 by the Appellant's family member, a deed would have been issued which would be recorded in the Council's deed register. However, the Council stated that it does not hold any information relating to the purchase of the grave in 1958. Furthermore, the Council stated that it does not hold information relating to payments made by the Appellant's family member in 1958 as any financial records from that period would have been destroyed in accordance with the Council's retention policy.
- [6] The Commissioner considers that the Council has carried out adequate searches for the requested information. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council has disclosed all the information it holds within the scope of the request. The Commissioner maintains the position set out in the DN opposes the appeal and invites the Tribunal to uphold the DN.
- [7] The Appellant in her grounds of appeal states as follows:

*“My cousin and I would like the tribunal to consider our request to have the following questions answered by Plymouth City Council. Their response has always been a series of dates and the names of our family members interred in the grave. C14969 at Weston Mill Cemetery, Plymouth.*

*We are asking for a copy of the contract made between our grandparents Mr. Mrs. William John Long and Plymouth City Council in 1928, regarding our Great Grandmother Elizabeth Ann Cowling being the first family member to be interred there. A copy of the contract will show us all that was detailed and memorialized, all decisions made, including all monies paid*

*in 1928. The contract will then be the constant reference for all decisions made and decisions to be made. Any payment being requested would naturally have had the 'contract' as its guidance in 1958 and will for any future payments or decisions regarding our family grave.*

*Now generations later we are told that a deed would be held by a family member, but clearly over the years we find ourselves not able to produce any relevant records for this grave but believe the Council would have copies as part of its [sic] records.*

*My cousin and I feel that with a copy of the contract we and our future generations can move forward with confidence that we and they can make decisions with certainty and confidence.”*

**[8]** Following the Appellant’s complaint to the Commissioner, he approached the Council for its position and on 22 February 2023, the Council provided the following key submissions when answering the Commissioner’s questions during his investigation:

- *“The only information relevant to this request is held in the grave register, which is a physical document.”*
- *“There would be no records of a grave purchase in 1958 outside of this register, as all financial records from that time would have passed any retention period.”*
- *“The family who purchased the grave at the time would be expected to keep the proof of purchase.”*
- *“The process for updating the Grave register has not changed in decades and would be the same then as it is now.”*
- *“The retention policy states that all records relating to the purchase of grave plots including registers, deeds, statutory declarations and transfer of grants should be held for 75 years after the closure of the cemetery.”*

### **The Commissioner’s Response:**

**[9]** In the Tribunal's decision in the case of Bromley v Information Commissioner & the

Environment Agency (EA/2006/0072) the Tribunal had accepted that it was rarely possible to say with absolute certainty that a public authority did not in fact hold requested information somewhere in its records, but that, provided a search had been undertaken which was sufficiently rigorous, and the information had still not come to light, it was to be regarded, on the balance of probabilities, as not held for the purposes of FOIA.

**[10]** The Commissioner notes the specific nature of the request and is satisfied that Council have identified exactly where information within the scope of the Appellant's request for information is held or should be held in its records. He is also satisfied that the Council has undertaken a sufficiently rigorous searches of its records to be able to respond accordingly. The Commissioner stands by his Decision Notice.

**[11]** The Commissioner understands the personal significance of this matter to the Appellant and their family; however, the Appellant has provided no evidence that would contradict the submissions made by the Council. The Commissioner remains satisfied that, on the balance of probabilities, the Council holds no more information in relation to this request for all records held on Plot C14969.

**[12]** It is the Commissioner's case that;

a. the Council has confirmed it holds no deed for this grave; had it been purchased in 1958 then there would be a record of this as it would have been added to the Council's deed register and the Council has checked this register.

b. the grave register gives no indication that the grave had been purchased in 1958.

c. the Appellant has not provided any evidence to support their position that the grave was purchased *and accordingly that the Council should hold a copy of a contract/ deed.*

In any event the right of access to information under FOIA is only to information held at the time of the relevant request for information (rather than information that 'should' be held).

**[13]** The Commissioner invites the Tribunal to Strike Out the appeal as it has no reasonable chance succeeding. The Tribunal agrees. I accept and endorse the reasoning in the DN and can find no error of Law, nor flaw in the exercise of any discretion in the DN. The accepted test is whether or not, on the balance of probabilities, the Public Authority hold further information that has not been disclosed. There can be little doubt in this case that even at an oral hearing and

the Council joined as a co-respondent, their credible evidence would be as it has been presented to the Commissioner and the Tribunal Panel would dismiss the appeal.

- [14]** I also agree with the Commissioner that sympathy for the Appellant and her family is in order in the circumstances but that is not the test. Accordingly, I must Strike Out the appeal.

**Brian Kennedy KC.**

**24 August 2023.**