



Neutral Citation Number: [2023] UKFTT 818 (GRC)

Case Reference: EA/2023/0012

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

**Heard on: 20 September 2023
Decision given on: 3 October 2023**

Before

TRIBUNAL JUDGE CARTER
TRIBUNAL MEMBER DAVE SIVERS
TRIBUNAL MEMBER EMMA YATES

Between

IVAN MURRAY-SMITH

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

Decision: Appeal dismissed

REASONS

1. This is an appeal under section 57 of the Freedom of Information Act 2000, against the Commissioner’s Decision Notice IC – 201636-Y6YS which held that the City of Bradford Metropolitan City Council (“the Council”) did not hold the information sought by the Appellant and that there were no steps for the Council to take.

2. This request information for information by the Appellant was as to the Council's Traffic Regulation Order 2015 (TRO), which sets out restrictions in the Bradford area. The Appellant sought information in a particular format.
3. The appeal was heard in person with the Appellant in attendance; the Respondent did not attend.

Request, Decision Notice and Appeal

4. The request for information was made by the Appellant to the Council on 28 October 2022. This stated:

“I hereby request, under the Environmental Information Regulations 2004, a copy of the Traffic Regulation Order that imposes waiting restrictions on Brearton Street. Please could this be provided in PDF format, with searchable/selectable text, and inclusive of all schedules ”.

5. The Council disclosed the TRO plus certain Schedules but with regard to Schedule 1 to the TRO which was understood to set out the restrictions by area, it provided a link to an online map which it said contained the relevant information and that it was reasonable to provide this in this publically available format. In effect, the Council stated that it did not hold the Schedule 1 information in the particular format requested. It explained that it had moved away from textual based Schedules to their TROs and relied upon map based information as this was considered more accessible to the general public than text based information.
6. The Respondent in its Decision Notice accepted the Council's position that it did not hold the outstanding information requested and accepted that it had complied with regulations 5(1) and 6(1) in providing the Appellant with a link to information contained in its map based system.
7. On appeal, the Appellant argued that:
 - a. He did not accept that the information was not held;
 - b. He could prove to the required standard of proof (see below) that the Schedule 1 information was held, as he adduced to the Tribunal evidence as to the provision of a scan of what was said to be part of the original Schedule 1 of the TRO in a Traffic Penalty Tribunal he had been involved in;
 - c. There was a compelling public interest in providing the information from the original TRO as there was no guarantee that there were not errors as between the online map based version and the original TRO, this being important for individuals' decision whether to challenge and then ability to challenge penalty notices. He explained that he represented motorists in cases before the Traffic Penalty Tribunal and that he was aware that there is a small but significant minority of cases where either errors have crept in or the TRO is missing or has expired.

Legal Framework

8. The Tribunal's remit is governed by section 58 of the Freedom of Information Act 2000. This requires the Tribunal to consider whether the Decision Notice made by the Respondent is in accordance with the law or where the Respondent's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Respondent and may make different findings of fact from the Respondent.
9. It is not in dispute that the Environmental Information Regulations 2004 (EIR) apply to the information requested.
10. Relevant to this appeal are the following provisions of the EIR. First regulation 5(1) which provides:

“Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request”.
11. The standard of proof which is to be applied to the question of whether or not information is held is the balance of probabilities (see *Linda Bromley v the Information Commissioner and the Environment Agency* EA/2006/0072).
12. The second relevant regulation of EIR is regulation 6(1) which provides:

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available unless -

 - (a) It is reasonable for it to make the information available in another form or format; or*
 - (b) the information is already publicly available and easily accessible to the applicant in another form or format.”*

Evidence

13. We read and took into account of an open bundle containing documents and correspondence. There were no witness statements. The Appellant did answer questions from the Tribunal at the hearing and in so doing did give some oral evidence.

The Respondent's Reply

14. The Respondent argued that :
 - a. The Council had disclosed all the relevant information it held and complied with regulation 6(1) in that the information was publically available;

- b. It was entitled to accept the word of the Council that a text based format was not held.
- c. The scan of the original that had been provided by the Appellant was not in pdf form and was not searchable or selectable, hence the information was for this reason not held.
- d. The arguments as to potential errors were speculative.

The Appellant's Response

15. The Tribunal noted from the Appellant's reply that:

- a. the Respondent was labouring under a misconception that he was seeking a text based version of Schedule 1, when he had been seeking a map based version all along, albeit a copy of the original and in a particular format;
- b. having produced the scan of the original he argued that the Council could convert that into a searchable/selectable pdf, that is the format he had requested;
- c. he referred to information provided by another local authority and in a different format which enabled searching and the provision of information to a greater degree than available via the map based online version provided by the Council – he took the view that the Council could easily provide this information in the format he was requesting; and
- d. as there was a disclaimer as to liability on that online version, members of the public could not be satisfied as to the accuracy as against the original version, hence heightening the importance of being sure he was provided with the information from the original.

The Tribunals consideration

16. The Tribunal approached the Appellant's right to see the requested information in the following way:

- a. first asking whether it was held by the Council; and
- b. then whether the Council was obliged to provide the information in the particular format requested.

17. The Tribunal asked itself how the request should reasonably and objectively have been interpreted. It took the view that this had not been fully considered by either the Council or the Respondent. It took the view that the request was for the up to date information contained

in the TRO, as it had been amended from time to time since 2015 and that the Council had acted reasonably in, in effect, seeking to comply with an interpretation of the request that was asking for uptodate information. This was a reasonable interpretation as without more explanation from the Appellant it would be normal to assume that the information sought was that which was most useful, that is the uptodate information. It only became apparent that the Appellant was in fact seeking the information contained in the original of the TRO on his making his appeal.

18. In the event, the Council and the Respondent had both understood that the Appellant was asking for a text based Schedule based on their reading of the request. This could have been clarified but in the event made no difference to the overall decision of this Tribunal.
19. Importantly, the Council asserted that Schedule 1 of the original TRO explicitly referred to the link to the online maps, but the Tribunal had not been provided with any evidence to substantiate this. Indeed the scan of part of the original of Schedule 1 provided by the Appellant did not show any link, rather it was a map itself.
20. The Tribunal, interpreting the request as seeking uptodate information (not the original of the 2015 TRO alone), considered that the information the requester was seeking, could have been provided by disclosing the information from the original TRO along with that contained (insofar as relevant to Brearton street) in all amending instruments. Insofar as the Appellant had provided a scan of Schedule 1 to the original TRO, it took the view, on the balance of probabilities, that the Council held both the original Schedule 1 and any relevant further amending Orders.
21. The Tribunal did not accept the assertion of the Respondent that the scan of the original was not evidence that the information was held on account of it not being in the format requested (pdf searchable/selectable). The Tribunal considered that this was in effect mixing up the two questions set out in paragraph 16 above. In its view, the scan was relevant to answering the first question and the format arose in the second question.
22. Having decided the information was held in the original TRO plus its amending Orders (if relevant), it then moved on to consider whether the Council had nevertheless complied with its obligations under EIR, by satisfying regulation 6.
23. The Tribunal had been provided a link to the online map based version containing what was said to be the Schedule 1 restrictions. It compared this to the scan of the original version of Schedule 1 provided by the Appellant. It was apparent from this comparison that the online version whilst not in PDF form, was searchable (if not selectable) and according to a number of variables. Indeed, it appeared to contain all of the information by type that was available in the scan of the original. Just as importantly, the online map was said to contain the uptodate information as to applicable restrictions.

24. With regard to the assertion that there could be errors as between the information contained in the original TRO and any the amending instruments, the Tribunal took the view that the Appellant had not produced any evidence beyond his own testimony to substantiate this so as to displace the Council's assertion that it was either reasonable to provide the information in this other format or that it was publically available in this online format. With no disrespect to the Appellant the lack of documentary evidence to support this, did not take matters much further. The Appellant did state that there was a not likelihood of errors just a possibility.
25. Having decided that the request was reasonably interpreted by the Council as being for the uptodate information contained in the TRO as amended, and the online map version, being searchable, it concluded that this was sufficient for the purposes of regulation 6. This was either because it was reasonable to provide this in a different format to that requested, that is a pdf or because it was publically available in this different format.
26. The Tribunal concluded that the Respondent been correct not to order the Council to disclose any information. It noted that had the Appellant made a request for the information contained in the original TRO plus any amending Orders, this could have resulted in a different outcome, provided he could have evidenced a real risk of errors as between the originals and that found online.
27. As would be understood, the right under the EIR is essentially as to the provision of information not the provision of copies of particular documents. Moreover, the EIR does not provide a right to information in whatever format is asked for provided the tests in regulation 6 are met, as here. It is not moreover the role of the Tribunal to comment on what information should be provided.
28. For the above reasons, the appeal is refused.
29. Finally, the Tribunal thanks the Appellant for his helpful submissions at the hearing.

Signed Tribunal Judge Melanie Carter

Date: 29 September 2023