



NCN: [2024] UKFTT 379 (GRC)
Case Reference: EA-2023-0400

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard: On the papers

Heard on: 10 May 2024
Decision given on: 14 May 2024

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY
TRIBUNAL MEMBER JO MURPHY
TRIBUNAL MEMBER EMMA YATES

Between

DIMITRI SHVOROB

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is dismissed.

REASONS

Introduction

1. The parties and the tribunal agreed that this matter was suitable for determination on the papers.

2. This is an appeal against the Commissioner's decision notice IC-239799-X0P3 of 15 September 2023 which held, on the balance of probabilities, that the London Borough of Bexley (the Council) held no further information within the scope of the request.

Background to the appeal

3. This appeal relates to a change in the Council's provision of facilities to report illegal parking activity.
4. APCOA is contracted by the Council to provide a mechanism for the public to request parking enforcement at specific locations, dates or times. ACPOA is obliged to provide this service between 08:30 and 2200 Monday to Saturday.
5. Until relatively recently the facility to report incorrectly parked cars was provided by telephone. Members of the public reported illegal parking by calling 020 8301 6317 to talk directly to someone at ACPOA. This is referred to by the Council as the Enforcement Line.
6. There has also been, for several years, a dedicated parking line manned by contact centre staff at the Council with the number 020 3045 3000 (the Parking Line).
7. The Council and ACPOA made an operational decision, at some unknown point before 22 March 2023, to move to online services as the main method of reporting incorrectly parked cars. As this was treated as an operational decision rather than one for the Council/Executive no committee papers were produced in relation to the decision.
8. After the change, rather than being signposted to ring ACPOA directly by calling the Enforcement Line (020 8301 6317), individuals are signposted to call 020 3045 3000 ('the Parking Line'). Option 5 on this line is 'Request a visit by a parking attendant'. If option 5 is selected, the caller is automatically transferred to the Enforcement Line (020 8301 6317) without being informed about that transfer.
9. The Enforcement Line is still manned by APCOA personnel, although the options have changed and callers are encouraged to use the online reporting service. There remains an option to talk to the on-duty APCOA radio control operator (option 4) although this is an option only during certain hours. The Enforcement Line can still be called directly, although the direct number is no longer advertised. It can also be accessed via the Parking Line. Whatever route is taken, once on the Enforcement Line option 4 still provides the facility to talk a person from APCOA within certain hours.

Requests, Decision Notice and appeal

The Request

10. This appeal concerns a request made to the Council on 22 March 2023:

“The council's parking-warden phone line (020 8301 6317) appears to have been recently discontinued. Can you please share any materials explaining the motivation for this decision. (Including emails if relevant).”

The response

11. In its response on 20 April 2023 the Council confirmed that it held the requested information and responded as follows:

“The Council has not discontinued the facility to report alleged illegal parking activity, although we acknowledge that the process has changed and this is not accurately reflected in the guidance contained on the web page. The new process is detailed below:

- Phone 020 3045 3000
- Select Option 5
- Select Option 4”

12. In the appellant’s request for an internal review dated 23 April 2023, he stated that:

“The initial response does not (begin to) answer the question.

I would like to see the council's papers related to the decision to discontinue the parking-warden phone line.”

13. In its response to the internal review dated 20 June the Council stated:

“My decision is that the outcome of the internal review is unsuccessful.

The decision to move to online services as the main method of reporting incorrectly parked vehicles was a operational decision between the supplier and the Authority and within the terms of the contract. As such there are no papers to disclose concerning this decision.”

14. The Appellant complained to the Commissioner on 20 June 2023. In his section 50 complaint he states:

“The council effectively refused to answer the FOI request, saying the asked-about service change (the closure of the parking-warden phone line) was an "operational decision" and "there are no papers to disclose concerning this decision". I find it implausible.

PS. In the initial response - which does not begin to answer the request - there is a reference to a second phone line. That one is different from the one my request was about. (And it doesn't work anyway - so the council is merrily providing false information. But that is a side issue)."

15. During the course of the Commissioner's investigation the Council provided the following further clarification:

"The Enforcement Line 020 8301 6317, which is provided by APCOA, remains operational and is manned by APCOA operatives. Additional facilities have been added to the line over time, and callers are encouraged to use the online reporting service. However, callers can still speak directly to the on-duty APCOA Radio Control operator using Option 4.

Line 020 3045 3000 has been a dedicated parking line manned by Contact Centre staff for several years. When callers select Option 5, "Request a visit by a Parking Attendant," they are automatically transferred to APCOA's direct line, 020 8301 6317. This happens without the caller being informed. Option 4 on this line also allows them to speak to the APCOA Radio Control operator.

We acknowledge that requesting enforcement action verbally is not as straightforward as it used to be, due to the automated menus. However, the line 020 8301 6317 has not been discontinued, it is still operational and staffed by APCOA personnel as explained above.

Furthermore, our contract with APCOA does not explicitly specify the mechanism they must provide for public enforcement requests, and we believe APCOA is fully compliant with their obligations.

They offer the following mechanisms:

A direct online portal accessible to the public 24 hours a day, which provides a unique reference number for reports. This level of service is not required by the contract for verbal requests.

A direct reporting line, 020 8301 6317, manned by APCOA staff beyond the contract requirements.

An indirect reporting line, 020 3045 3000, which facilitates direct communication with APCOA by automatically transferring calls from the Authority's line.

Regarding claims of bad faith and misunderstandings by Mr Shrovob, changes were made without internal correspondence, however as explained

the enforcement line 020 8301 6317 remains in service. We have encouraged online reporting for efficiency.

...

Our responses to questions about the old parking warden phone line were accurate, emphasising that both lines, 020 8301 6317 and 020 3045 3000, are operational.”

The Decision Notice

16. In a decision notice dated 15 September 2023 the Commissioner concluded that the Council did not hold any further information in relation to the request. The Commissioner stated that he had tried both phonelines that have been referred to and he is satisfied that they both work. He was satisfied that the phoneline in the complainant’s request has not been discontinued. As such, on the balance of probabilities, the Council will not hold any information relating to the phoneline being discontinued.

Notice of Appeal

17. The Grounds of Appeal are, in essence, that the Commissioner was wrong to conclude that the Council did not hold any information within the scope of the request.

18. The appellant makes two points in his grounds of appeal.

19. First, he complains that the Commissioner appears to have misunderstood the appellant’s complaint/misstated the scope of his request. The Commissioner based his decision on his conclusion that the phonelines had not been discontinued. The Commissioner based that conclusion on calling the relevant phonelines himself and being satisfied that they work.

20. The appellant argues that he made clear to the Commissioner and to the Council that he was complaining about a change in the process, in that originally the number itself still worked but it was no longer possible to speak to a parking warden and that it would direct you to complete an online form and that when a new number was introduced, you could only speak to an individual at reduced times (not at evenings and weekends).

21. Second, the appellant complains that the Commissioner’s conclusion was wrong because it is unlikely that the Council holds no paperwork about the reason for the change: ‘I question absence of paperwork regarding a material degradation of service’ and ‘why would anyone accept that a council made the change without any paperwork?’

The Commissioner’s response

22. In essence the Commissioner relies on his decision notice. He submits that the evidence provided by the Council during his investigation was sufficient to show that no further relevant information was held.

Submissions of the Council

23. In response to an order from the tribunal following an unsuccessful strike out application by the Commissioner, the Council made the following submissions:

“2.1. The Council understands the request, in light of the surrounding circumstances, to be a request for information explaining the [Council’s] motivation for ‘discontinuing’ line number 020 8301 6317 i.e. cutting off the phone line with that number.

2.2. The original request clearly stated “The council's parking-warden phone line (020 8301 6317) appears to have been recently discontinued.”

2.3. The Council confirmed that the line had not been discontinued. The method of access had been altered and this was clearly explained in answering the Appellant’s questions. It was, and is still, possible for members of the public to report alleged incorrectly parked vehicles directly to APCOA, (the civil traffic and parking service supplier) via the phone number. It is acknowledged that the online process has significant advantages over verbal reporting, however, the telephone facility has not been removed, merely adapted.

2.4. The telephone line 020 8301 6317 has not been discontinued. It is still active and whilst it can be called direct it is now advertised to be accessible via the new services menu on 020 3045 3000. When following the directions to submit a verbal report of alleged incorrectly parked vehicles members of the public will speak directly with an APCOA representative through 020 8301 6317. It is merely no longer a directly published telephone number – the new services menu number is the published number instead.

...

3.1. The telephone line has not, in fact, been discontinued, so no “searches” were pertinent nor could they be made.

3.2. Notwithstanding the Council confirmed to the Appellant that there were no records to support the decision to integrate the original reporting number into the new services menu. Council officer emails were searched. Given this was an operational decision (rather than one for Council/Executive) there are no committee papers.”

Appellant’s reply

24. The appellant submitted as follows in relation to the Council's submissions:

"1. The council continues to act in bad faith, persisting with the tactic of confusing "parking-warden phone line (020 8301 6317)" with "telephone line 020 8301 6317". As explained earlier, the parking-warden phone line was one of several accessed through 020 8301 6317. The common access number remaining in operation does not mean that the "parking warden phone line" is operational, i.e. one can speak to a parking warden. On February 22, when calling 020 8301 6317 and selecting Option 3, one hears an automated message asking to submit the report online.

2. Leaving semantic games aside, it is not disputed that the hours during which a Bexley parking warden can be contacted on the phone have shrunk: weekend and evening service is gone. (It is not clear what the hours of operation of the online service are: this was one of my FOI queries, which the council did not answer, arguing - again, in bad faith - that nothing has changed). Repeating what I wrote in my earlier submission, I do not believe that a material degradation in the service could have occurred without a paper trail. Paragraph 3.2 says "Council officer emails were searched". (No detail is provided. Which council officers' emails were searched? Using what keywords?) I highly doubt it, but appreciate that there is not much a judge can do about a council lying in response to a FOI request."

Legal framework

25. Section 1(1) FOIA provides:

"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."

26. The scope of a request is determined objectively, in the light of all the surrounding circumstances.

27. The question of whether information was held at the time of the request is determined on the balance of probabilities.

The role of the tribunal

28. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was

not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

29. The issues for the tribunal to determine are:

- 29.1. What was the scope of the request, objectively construed in the light of all the surrounding circumstances?
- 29.2. On the balance of probabilities did the Council hold any information within the scope of the request?

Evidence

30. The tribunal read an open bundle.

Discussion and conclusions

Scope

31. The question of what information was requested by Mr. Schvorob can only be determined on the basis of what he said and not on the basis of what he meant. In other words, the tribunal has to determine the request objectively, taking into account the surrounding circumstances.
32. Mr. Schvorob used very clear, unambiguous language to ask for any materials explaining the motivation behind the decision to discontinue the Enforcement Line (020 8301 6317), which he referred to as 'the parking-warden phone line'.
33. In his request for an internal review, he used the same clear unambiguous terminology: 'I would like to see the council's papers related to the decision to discontinue the parking-warden phone line.'
34. At the time of the response, we find that request, objectively construed, even in the light of the fact that the Council knew that they had recently made other changes to the way in which the Enforcement Line operated, was clearly for recorded information on the reasoning for a decision to discontinue the Enforcement Line.
35. As there had not been any decision to *discontinue* the Enforcement Line, we accept that no information would be held.
36. For those reasons, the appeal must fail.

Observations

37. It is clear, in retrospect, that Mr. Shvorob did not mean to limit his request to papers related only to any decision to *discontinue the telephone line*. It is clear that what he is

interested in is any recorded information explaining the motivation for the operational decision to make the changes that had been made to the Enforcement Line set out in paragraphs 7-9 above.

38. Further, given the number of steps that have to be followed before speaking to a real person it was not unreasonable for Mr. Schvorob to have made an assumption at the time that the Enforcement Line had been discontinued.
39. The Council has a duty to provide advice and assistance and we note that it did, in its response, attempt to explain the changes that had been made and it did, in its internal review confirm that this had been an operational decision and that there were no Council papers concerning the decision. It also confirmed to the Commissioner that the changes were made without 'internal correspondence'.
40. The Council was ordered by the tribunal to 'explain the nature and extent of any searches for recorded information, including emails, which it carried out before informing the appellant on 20 June 2023 that there were no 'papers to disclose concerning this decision''.
41. The Council's response to this order was that 'Council officer emails were searched. Given this was an operational decision (rather than one for Council/Executive) there were no committee papers'.
42. On the basis of the above, had we concluded that the request should properly have been construed as a request for any recorded information related to the decision to make the operational changes in question, we would not have been satisfied that the searches carried out were adequate.
43. It is not at all clear that the Council have searched for correspondence with ACPOA relating to the relevant operational decision or for any other documents recording any discussions with ACPOA relating to that operational decision. These are not 'internal emails' nor are they 'committee papers'.
44. On that basis we would have concluded that we were not satisfied, on the balance of probabilities, that no further information was held and we would have ordered the Council to undertake a fresh search and provide a fresh response.
45. Although that is not within our power because we have dismissed the appeal, we note that the appellant could achieve the same outcome by making a new request for any emails or other recorded information relating to the decision to make the specified operational changes to the provision of facilities to report illegal parking activity.
46. It may of course be the case that no discussions took place with ACPOA that are contained in emails or other recorded information, but at present we are not satisfied that a search has been undertaken for any such documents.

47. It is, of course, entirely a matter for the appellant if he wishes to make such a request and for the Council to determine the appropriate response in accordance with its obligations under FOIA.

Signed Sophie Buckley

Date: 13 May 2024

Judge of the First-tier Tribunal