

**[FREEDOM OF INFORMATION ACT 2000]**

Determined on papers  
On 13 December 2005

Decision Promulgated  
16 December 2005  
.....

**Before**

**ANDREW BARTLETT QC  
JOHN RANDALL  
MALCOLM CLARKE**

**Between**

**EDWARD SIMMONS**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

For the Appellant: N/A  
For the Respondent: N/A

## **DECISION**

The appeal is dismissed.

### Reasons for Decision

1. This appeal is concerned with the quality of the information provided by a public authority in response to an information request.

#### **The request and the Information Commissioner's decision**

2. By letter of 15 January 2005 the appellant, Mr Simmons, requested of Ann Chant, Chairman of the Board of the Inland Revenue, full details of how his band for Council Tax had been calculated.
3. The Valuation Office Agency ("VOA"), which is an executive agency of the Inland Revenue (now Her Majesty's Revenue and Customs), provided or purported to provide the requested information by a letter of 26 April 2005 and enclosures. Mr Simmons was dissatisfied with the response from the VOA and complained to the Information Commissioner.
4. By a Decision Notice dated 9 June 2005 the Information Commissioner decided-

(1) The Inland Revenue had not responded to Mr Simmons' request within the time limit of 20 working days set out in Freedom of Information Act s 10(1).

(2) No further action was required because the Commissioner had been informed that "*the information considered by the Valuation Office Agency in calculating the Council Tax band applicable to Mr Simmons's property has now been provided to him by letter dated 26th April 2005 from the Liverpool Group office of the Valuation Office Agency*".

#### **The appeal**

5. By an appeal notice dated 5 July 2005 Mr Simmons appealed to the Information Tribunal pursuant to Freedom of Information Act s 57.

6. The basis of the appeal, as set out in Mr Simmons' appeal notice, is that the Commissioner was in error because "*study of the 26<sup>th</sup> April package DOES NOT ANYWHERE SHOW A CALCULATION, so the information I require has NOT been given*".
7. Mr Simmons originally requested an oral hearing, but by letters of 9 and 30 July 2005 indicated that his preference was for the appeal to be disposed of without a hearing. The Commissioner's view in his Reply was that the appeal could properly be determined without a hearing. Mr Simmons, in his response of 3 August 2005, agreed.
8. The Tribunal was of the same view, and so indicated. In response, Mr Simmons wrote on 7 October 2005 stating that he did, after all, require a hearing, because "*the 24 pages of 'considerations' of the VOA had not been subject to oath*", and that this would only occur at an oral hearing.
9. We are satisfied that this appeal can properly be determined without a hearing under rule 16 of the Information Tribunal (Enforcement Appeals) Rules 2005. We take that view because, as we explain below, Mr Simmons' whole approach to this appeal is based on a misunderstanding of the nature of this Tribunal's jurisdiction (that is, the Tribunal's legal powers and duties). We do not consider that an oral hearing would serve any useful purpose.

### **The background to the request**

10. Mr Simmons lives at a property called Osborne Court, which is a development of apartments designed specifically for retired and elderly people. It was built in about 1999-2000. Mr Simmons purchased No 8. He was very dissatisfied with the Council Tax banding determined by the VOA, and appealed to a Valuation Tribunal. The appeal was dismissed, confirming the banding as Band E.
11. Mr Simmons did not attempt a further appeal to the High Court. Instead, he has carried on the fight by correspondence with various bodies, and by assisting other Osborne Court owners with their Valuation Tribunal appeals. There have been 13 appeals in all. None has succeeded. His request for information (15 January 2005) explained "*Over five years I have persisted in this battle only because of my conviction that I am right and that justice for my neighbours as well as myself depends on me*".

### **The 26 April package**

12. The VOA's letter of 26 April 2005 stated:

*"I believe that you have asked for full details of how your original Council Tax band was calculated. The information we considered has been photocopied and enclosed.*

*In addition I have enclosed documents where the banding of your property has been subsequently considered.*

*To avoid duplication, I have not included any documentation that I believe you have been provided with already (e.g. Valuation Tribunal decisions)*

*I hope this satisfies your request and gives an idea of how your property was originally banded."*

13. The enclosures were:

(1) A valuation office note relating to Osborne Court, headed "*Situation as at 21<sup>st</sup> September 2004*". This gave details of valuation appeals in regard to Mr Simmons' property and other properties within the development, and listed four points made by Mr Simmons and the Valuation Office's responses to them.

(2) Sales literature relating to Osborne Court, and lists of selling prices of various plots.

(3) Lists and graphs of sale prices at 14 other addresses from 1991 to 2000.

(4) VOA letters of 27 January 2003 (with a revised graph) and 14 March 2005.

(5) A signed handwritten note dated 21 December 2004, headed "8 Osborne Court – Mr Simmons".

14. The note of December 2004 contains an explanation purporting to justify Band E for Mr Simmons's property. It stated:

*"Property purchased in March 2000 for £147,000 – it can be argued that £4500 of purchase price should/could be excluded (on generous side in my opinion). That gives value as at 3/2000 for £142,500 -> this represents OMV [open market value] of property as at 3/00 for an "empty" dwelling reflecting the use of common parts – see PN5 [Practice Note 5] of CT Manual on disaggregation of dwellings.*

*Need to take 3/00 value back to 3/91 – best evidence is sales in locality to show general uplift of values. See notes by D. Hughes dated 17/11/04. This show a max*

*growth of 30% although this is way above other % increases and could well be down to property having been extensively improved during 92 – 99. However giving benefit of doubt and taking a rate of growth of 25% \*PTO and applying to No 8 produces*

$$£142,500 - 25\% = £106875$$

*with Band E between £88,000 - £120,000 still within margin of Band.*

*Therefore I am satisfied that Band E for No 8 Osborne Court is correct.*

*\* Looking at the local evidence which is limited but the best available then a growth of 15-20% during the period is reasonable.”*

15. The other enclosures provide further detail on a variety of points concerning the approach adopted and the information used.
16. Mr Simmons considers that the information in the package does not contain full details of the calculation of his Council Tax band. What gives rise to this complaint is that Mr Simmons strongly disagrees with the approach adopted by the Valuation Office and with many of the points relied on by them. He considers that the calculations and reasoning, such as they are, are inadequate to justify the banding. He says they have simply not provided the information requested by him; the calculation provided is not the one that he asked for; he requires a different calculation, based on a proper valuation of his property on the correct basis as at April 1991, and correctly indexed. He also points out that some of the information provided post-dates the time when his banding was originally decided upon, and therefore could not have been considered originally.

## **Decision**

17. Our jurisdiction in relation to the decision notice is set out in Freedom of Information Act s 58. We must consider whether the notice was in accordance with the law, and whether any discretion exercised by the Commissioner ought to have been exercised differently. We have power to review any finding of fact on which the notice was based.
18. In our view it is necessary to recognise the limits of the information rights afforded by the Freedom of Information Act. By s 1(1) a 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. For the purposes of Mr Simmons's information

rights, the quality of the information held by the Inland Revenue as justification of the banding is of no relevance. Whether Mr Simmons is right to say that there ought to have been a particular kind of calculation, and reference to indexing, within the information held by the Revenue, is not for us to decide. The question for us to determine on this appeal is whether the information actually held – however poor or inadequate it may have been for justifying the Revenue's decision as to his Council Tax band - has been communicated to him.

19. Having considered the written evidence, we have come to the conclusion that the Inland Revenue have provided to Mr Simmons the information actually held by them at the time of the request concerning the details of how of his Council Tax band had been calculated. Mr Simmons has not identified any information actually held, which has not been communicated to him, and we do not find ourselves able to infer on the evidence that any relevant information, held by the Revenue at the time of the request, has been withheld from Mr Simmons.
20. The fact that the Revenue also provided some information which was put together after the time when the original assessment was made does not in the circumstances of this case spoil the Revenue's response or make it inadequate. Mr Simmons's appeal does not complain that the inclusion of the subsequent information in any way obscures what the original information was.
21. So far as we can determine, Mr Simmons' real quarrel is over the quality of the information and of the reasoning contained within it, not over whether the information actually held by the Inland Revenue has been communicated to him. Whether the content of the information held is truly adequate, in fact and in law, to justify the banding is a separate question, and one we have no legal power to adjudicate. Even supposing it to be wholly inadequate, Mr Simmons's complaint that he has been taxed unjustly and unlawfully is not a complaint that we have any jurisdiction to deal with.
22. It is apparent from letters sent by Mr Simmons to the Tribunal that his aim and desire is to conduct a thorough investigation into how the Inland Revenue dealt with his case when his banding was set. The Information Tribunal is not the right forum for such an investigation. Our powers relate to the giving of access to information held by public authorities. It is not our function to investigate how the Inland Revenue has exercised its powers of setting taxation levels.

23. We are clear that it is not the function of the Information Tribunal to act as a court of appeal from the decisions of public authorities or other tribunals on substantive questions within their jurisdiction. Under the Freedom of Information Act we are concerned only with the information actually held by the relevant public authorities, not with the quality of the information or the quality of their use of it.
24. Mr Simmons has a subsidiary complaint concerning the decision notice issued by the Commissioner which we ought to notice. The decision that the 20 day time limit was not complied with was placed under the heading "*The Commissioner's Decision*". Mr Simmons says the part of the decision which mattered was the conclusion that no further action was required, and that the Commissioner made an "*attempt to conceal*" this part of his decision by placing it in a separate paragraph under the heading "*Action Required*".
25. We consider this subsidiary complaint to be unreasonable and without any justification. While the decision notice could have been differently expressed, it was plain to anyone reading the notice that part of the Commissioner's decision was that no further action was required. We reject the imputation that there was an attempt at concealment by the Commissioner.
26. For the above reasons we dismiss this appeal.

Signed

Date 13.12.05

Andrew Bartlett QC

Chairman/Deputy Chairman