



Tribunals Service
Information Tribunal

Promulgated on 17th July 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN
Chris Ryan
And
LAY MEMBERS
Rosalind Tatam and Paul Taylor

**IN THE MATTER OF AN APPEAL TO THE INFORMATION TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No EA/2007/0011

BETWEEN:

Mr. M. G. Weait

And

THE INFORMATION COMMISSIONER [Respondent]

The Tribunal Upholds the decision notice dated 3 January 2007 and dismisses the appeal.

Reasons for Decision

Request for Information

1. In September 2005 the Appellant, Mr Weait, was involved in a grievance procedure with Wokingham District Council ("the Council") arising out of a planning decision taken under delegated powers in October 2004. On 5 September 2005 he wrote to the Council explaining that, in order to take his complaint further, he required certain information from it. His letter then listed 12 requests for information under the Freedom of Information Act 2000 ("FOIA"). At the end of the list he also mentioned that a particular Council employee had told him that he planned to make contact with the Local Government Ombudsman's office. Mr Weait wrote that he required a specific answer from the Council on whether the individual did contact the Ombudsman's office and, if so, what was said and who the individual contacted. This has subsequently been treated by all concerned as a thirteenth request.
2. In the course of subsequent correspondence Mr Weait expanded on one of his requests that related to the Council's internal procedures for

handling interviews with members of the public in particular circumstances. In a letter to the Council dated 18 October he asked for a copy of a particular report form (form SR1) which, he assumed, would have been completed by a particular member of the Council's staff following a meeting with him in November 2004. In a subsequent letter dated 10 November 2005 he asked if there was any record of aggression or violence on his part during that meeting. These two further enquiries have been treated by all concerned as, respectively, requests 14 and 15.

3. Later in this decision we set out and deal with each of the 15 requests in turn and we therefore do not go into further detail about them at this stage.

Complaint to the Information Commissioner

4. On 23 January 2006 Mr Weait wrote to the Information Commissioner complaining about the Council's failure in his eyes to deal with his requests in accordance with FOIA. The Information Commissioner investigated the complaint. The only issue at stake during that investigation was whether or not the Council had failed to disclose information which it held that was relevant to any one of the requests. This arose out of regulation 5(1) of the Environmental Information Regulations 2004 ("EIR"), to the extent that a request was interpreted as relating to environmental information, or out of FOIA section 1(1) for the remainder.

EIR Regulation 5(1) reads:

"...a public authority that holds environmental information shall make it available on request".

FOIA Section 1(1) states:

"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 the information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him"

As the public authority's obligations are substantially identical under those two provisions nothing turns on the categorisation of any of the requests as either an EIR or FOIA request.

5. The Information Commissioner issued a Decision Notice on 3 January 2007. In it he concluded that the Council had not complied with the FOIA in certain respects. In respect of one of the requests it had provided information in hard copy but, until prompted by the Information Commissioner, it had not provided relevant information stored electronically. In respect of another request the Information Commissioner concluded that the Council had not responded within the period of twenty working days, as required by FOIA section 10(1). In all other respects he was satisfied with the Council's explanations and concluded that there was no evidence that it held any further recorded

information that ought to be disclosed. He did not require any further steps to be taken in respect of the two breaches that he had identified.

The Appeal to the Information Tribunal

6. On 28 January 2007 Mr Weait appealed to this Tribunal. Under a Directions order dated 5 March 2007 the Council was joined as a party to the Appeal, although it chose to play a quite limited role in the Appeal. At Mr Weait's request the Appeal was determined on paper, without a hearing, on the basis of an agreed bundle of papers and written submissions filed by Mr Weait and the Information Commissioner, but not the Council.
7. The powers of the Tribunal on an appeal from a Decision Notice of the Information Commissioner are set out in FOIA section 58 and provide, under section 58(2), that the Tribunal may review any finding of fact on which the Decision Notice was based.
8. In the following paragraphs we deal with each of Mr Weait's requests in turn.

Request 1. All formal and informal information held in paper format or on computer, relating to all stages of my complaints investigated by [name], [name], [name], [name] and all other staff involved. That will include, for example, all details of [name]'s investigation and his final report to you.

9. Initially the Council only provided information that it held in hard copy but subsequently, in the course of the Information Commissioner's investigation, it agreed to provide additional information that had been held in electronic format. The Information Commissioner recorded in his Decision Notice that the Council had initially failed to provide the relevant electronic records but, as this had been provided subsequently, decided that he did not require any further steps to be taken.
10. Mr Weait was not satisfied that, even with that information provided to him, the Council's response to his request had been adequate. He expressed the view in submissions made to both the Information Commissioner and this Tribunal that the Council had not disclosed all the contents of its file on his complaints about the planning decision in question. In support of his position he relied on the following facts and matters:
 - a. His recollection that one of the Council employees in question had written notes during a conversation with him.
 - b. The fact that another of the Council employees had denied that she had made any record of a meeting held in November 2004 and yet such a document came to light in the course of an investigation of the Council's handling of the planning matter by the Local Government Ombudsman.
 - c. His recollection that the file he had seen during a meeting with a Council representative was significantly thinner than the one that was disclosed in response to his request.

- d. His recollection that during one of his meetings he saw a plan on which a line or lines had been drawn from his property, yet no such marked up plan appeared among the papers disclosed to him from the case file.
11. In the course of his investigation the Information Commissioner required the Council to provide details of the search which it had undertaken and concluded that the Council had supplied Mr Weait with copies of all plans and other information which it held and which related to the request. He did not believe that Mr Weait had any sound evidential basis upon which to question the truthfulness of the Council's assurances in this respect and he accepted the Council's explanations in respect of the plan, which Mr Weait believed he had seen, and of the absence of the meeting notes referred to. Having reviewed the steps taken in the course of the investigation we conclude that the matters mentioned in paragraph 10 (a) – (d) above do provide some justification for Mr Weait's scepticism. The Information Commissioner raised with the Council a number of questions about those matters and about the Council's records management, which we do not believe were completely answered. However, we believe that the Information Commissioner's conducted his investigation with an appropriate level of rigour and that it would not have been appropriate, in terms of pragmatism and proportionality, to have pursued the questions further. We do not believe that we have any basis, in the context of a paper determination without cross examination, to alter the factual conclusion reached by him, namely that the Council did not have any additional information that should be disclosed to Mr Weait.

Request 2. Internal guidance on how complaints should be investigated including the collection and storage of information obtained.

12. This request was not pursued, once it had been established that Mr Weait wished to be provided with the 2004 edition of the guidance document.

Request 3. Internal procedures giving guidance to staff on how to proceed with an interview involving a member of the public with whom they do not feel safe.

13. Although it appeared that Mr Weait had conceded, in the course of the Information Commissioner's investigation, that he was satisfied with the information provided under this head, the complaint appeared to be revived in the Grounds of Appeal to this Tribunal. The agreed bundle includes an incident report form accompanied by two pages of notes. It is said that this material was provided to Mr Weait previously. We have some sympathy for Mr Weait to the extent that he might not have recognised these documents as comprising the Council's "procedures" in existence at the time to which the request refers. However, the Council has made it clear that this is all that it had at that time by way of such procedures and we find no basis upon which we might impugn the Information Commissioner's finding that the Council holds no

further information which ought to be disclosed in response to this request.

Request 4. Copies of the Appraisals and planning officers' names for all single storey side extensions where neighbours' kitchens, with windows opposite, have not been considered habitable and that has been used as the supreme reason for planning approval. Applications over the last three years in the Earley, Lower Earley and Woodley areas.

Request 5. Copies of the Appraisals and planning officers' names for all single storey side extension proposals which have been rejected by your Council over the last three years in the Earley, Lower Earley and Woodley areas.

14. We deal with both of these Requests together. Initially, Mr Weait was not satisfied that the information on planning matters comparable to those arising in his case was complete. However, in the course of the Information Commissioner's investigation he accepted with, in his own words "some incredulity", a written assurance from the Head of the Council's Chief Executive's Office that he had been sent copies of all comparable planning application records.

Request 6. All papers referring to site visits made to my neighbour at [address] by [name] and [name]. These should include all official reports and any private notes particularly relating to their various conversations with my neighbour

15. Mr Weait originally believed that records should exist in respect of four site visits but he appears to have accepted that there were in fact only two. He complained that he had originally been sent a single report in respect of a site visit on 20 September 2004 but that the Local Government Ombudsman had subsequently disclosed to him a copy of the same report but with the addition, on the reverse side, of a rough drawing and note dated 27 September 2006. In the course of the Information Commissioner's investigation the Council claimed that the additional material had not been in existence at the time when the original request was made, as it had been completed retrospectively by the planning officer in question after it had become apparent that the Local Government Ombudsman was investigating the original planning matter. The Information Commissioner has stated, in his submissions to us, that there is no evidence to support the explicit or implicit suggestion made by Mr Weait that the Council deliberately and wrongfully withheld or concocted information on this point. However, we think Mr Weait was entitled to pursue the point with some vigour and that the Council should not be surprised if it faces criticism for having, by its own admission, created a record of a meeting some time after the event without making it clear, on the face of the record, the date on which it was written. But for the fact that Mr Weait had sight of the document both before and after the addition had been made it would appear to anyone reading the document, including the Local Government Ombudsman, that it was a contemporaneous note.

Having said that our only task is to consider whether the Information Commissioner was entitled to conclude, as he did, that there were no further relevant site visit reports to be disclosed. We think that he was so entitled.

Request 7. Your in-house definition of a non-habitable room and its ramifications.

Request 8. The reference to the source originating the sentence in your planning guide stating, under two storey extensions, a kitchen may be considered habitable etc.

16. We deal with Requests 7 and 8 together. The Council asserts that it held no recorded information on what defines a habitable room. It is apparent from the documents recording the conduct of the Information Commissioner's investigation that the assertion was tested and that the Information Commissioner ultimately accepted that, while there might be an informal understanding between the Council's planning officers as to how to determine what could be characterised as "habitable", there was no written definition retained among the Council's files. We have some sympathy for Mr Weait's evident belief that no planning authority, hoping to deliver a consistent and transparent service, would rely on a definition recorded only in the memories of those employed by it from time to time. It is evident that his suspicions were increased, again with some justification, by virtue of the manner in which Council employees appeared, from time to time, to have changed the basis for their assessment of whether or not a room was habitable for planning purposes. However, we do not accept his submission that the Council ought to have obtained a definition from a neighbouring local authority. The issue before us is whether or not the Council held the information in question and not whether, as a matter of effective administration, it should have obtained it, or developed it itself. We conclude that there is no evidence before us that might lead us to conclude that the Information Commissioner was wrong in concluding that there is no further recorded information to be disclosed.

Request 9. All papers, personal or otherwise, held by [name] recording her conversations or conclusions with the designing architect for the proposed extension before the planning application was officially submitted and up to its approval.

17. The Council has asserted that no record was kept of the conversation in question, indeed, that the planning officer referred to and other planning officers employed by the Council did not "as a matter of course keep notes of telephone conversations". Mr Weait's scepticism on the point was fuelled by his own recollection that the planning officer concerned seemed to him to have been able to quote from the conversation in the course of a further communication some months later. However, we do not know exactly how detailed the recollection was and believe that, as the Information Commissioner pursued his enquiries on the point with some vigour, we have no basis on which to

caste doubt on the truth of the Council's firm denial that it held any information relevant to the request.

Request 10. The plan referred to in your letter, page 4, paragraph 3, submitted in October 2004 with the application showing a 25 degree line from my kitchen window drawn in by the applicant and the heights of the existing boundary wall.

18. A dispute developed between Mr Weait and the Council about a plan provided to him by the Council. The dispute was exacerbated by a mistake in one of the Council's letters to Mr Weait which attributed an incorrect date to the plan. The Council suggested to the Information Commissioner that Mr Weait had in any event been made aware of the correct date in the course of his discussions with Council officials. It is evident from Mr Weait's submissions to us that he is no longer claiming that a relevant plan has been withheld, although he would like us to support his criticism of the Council for having apparently wrongly identified the plan in question. Our jurisdiction does not extend beyond determining whether the conclusion of fact reached by the Information Commissioner (that no additional relevant plans were held by the Council) was correct. We are satisfied that it was and say nothing more on the subject.

Request 11. Your internal guidance to staff dealing with any objection raised by a member of the public and/or a parish council to a planning proposal.

Request 12. Any communication between your Council and Earley Town Council on this planning application

Request 13. I do require a specific answer from you on whether [name] contacted the Ombudsman's office and, if so, what was said and who he contacted.

19. Requests 11, 12 and 13 were not pursued by Mr Weait on the Appeal.

Request 14. Please provide a copy of the SR1 form presumably completed by [name] after my meeting with her and held by corporate Health and Safety

20. This supplementary question, relating back to the procedures in respect of certain meetings raised under Request 3, was set out in a letter from Mr Weait to the Council of 18 October 2005. We deal with it below by reference to Request 15.

Request 15. Is there any record of the inferred aggression or violence on my part when meeting [name] either by her, your very aggressive receptionist in that group or any third party?

21. This further supplementary question was raised by Mr Weait in a letter to the Council on 10 November 2005. We deal with both Request 14 and Request 15 together.

22. The Council did not rely, (as it seems to us it could have done), on the fact that these requests were for the personal data of the person making the request and would therefore have been exempt under FOIA section 40(1). However, it explained, in the course of the Information Commissioner's investigation, that no form was completed at the time although under procedures introduced subsequently it would now be a requirement for all members of staff to do so. We believe that the denial was probed to an appropriate degree by the Information Commissioner in the course of his investigation and that no information has come to light, either from that investigation or from Mr Weait in the course of this Appeal, to suggest that the original denial was not true.

Conclusion

23. In the light of the individual conclusions, set out above by reference to each of the Requests, we have decided that there are no grounds for us to disagree with the findings of fact made by the Information Commissioner. We also agree with the Information Commissioner that, in the circumstances of the case, it was not necessary for him to have required further steps to be taken in respect of the Council's failure to comply with the FOIA in two respects. The Decision Notice must therefore stand and Mr Weait's appeal must be dismissed.

Signed

Chris Ryan
Deputy Chairman

Date: 17th July 2007