



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2009/0031
Information Commissioner's Ref: FS50145203

Determined on the papers

Decision Promulgated
14 August 2009

BEFORE

DEPUTY CHAIRMAN

ROBIN CALLENDER SMITH

and

LAY MEMBERS

ROGER CREEDON

DAVID WILKINSON

Between

MARCUS ANDERSON

Appellant

and

INFORMATION COMMISSIONER

Respondent

Subject matter:

Information Tribunal (Enforcement Appeals) Rules 2005 as amended

Application for striking out, Rule 9

Cases:

Bennett v Information Commissioner EA/2008/0033.

Representation:

For the Appellant: Mr Marcus Anderson
For the Respondent: Mr Mark Thorogood (Solicitor)

Decision

The Tribunal upholds the decision notice dated 24 March 2009 and strikes out the appeal under Rule 9.

Reasons for Decision

Introduction

1. The Decision Notice in this appeal was issued on 24 March 2009. It concerned two separate requests for information made by Mr Marcus Anderson (the Appellant) to Caerphilly County Borough Council (the Council). The first request was made in a letter dated 4 June 2005 and related to information held by the Council regarding repairs that had been carried out for the Council to a block of flats in which the Appellant resided. The second request was dated 22 August 2005 and related to an anonymous complaint that had been made to the Council about the Appellant.
2. Given the terms of the Appellant's grounds of appeal, the matter before the Tribunal related to the Information Commissioner's decision in respect of the *second* request.
3. On 22 August 2005 the Appellant's mother was visited by a Council officer regarding complaints that had been made about someone living in the Appellant's property who had been taking photographs through neighbours' windows. On the same date, the Appellant's mother wrote to the Council requesting details of the accusations made.
4. On 30 August 2005 the Council replied stating that it had received an anonymous letter regarding alleged antisocial behaviour but that it did not intend to take any further action in relation to it. On 1 September 2005 the Appellant's mother requested a copy of the anonymous letter, the envelope and the date on which it had been sent to the Council. The Appellant's mother further stated that her son, the Appellant, was now dealing with the matter.
5. The Council issued a refusal notice on 30 September 2005 advising the Appellant that the letter was exempt from disclosure by virtue of section 38 Freedom of Information Act 2000 (FOIA) and was "Information the disclosure of which would, or would be likely to, endanger the safety of any individual". The Council did however provide a summary of the complaint as follows:

“The writer advises that he/she feels they are being watched 24 hours and that you are walking around with a camera. It is alleged that this makes them feel very uncomfortable and wary of being near you. It is alleged that you phone the police over everything your neighbours do. The letter also alleges that you have been 'working on the fiddle' for many years by repairing houses for which you have received income”.

6. The Council upheld its decision on internal review. In its letter dated 18 December 2006 the Council also suggested that the anonymous letter contained personal data relating to the Appellant and the author of the letter. Insofar as the letter contained personal data of the Appellant, the Council considered that this had been disclosed to him by way of a summary given in its refusal letter of 30 September 2005. In so far as the letter contained personal data of the author the Council considered that disclosure would contravene the Data Protection Act 1998.
7. The Appellant made a formal complaint which the Information Commissioner acknowledged on 18 December 2006. The Commissioner served a Decision Notice dated 24 March 2009. The decision as regards the second request was that the information contained in the anonymous letter related to the complainant and was exempt from disclosure under section 40 (1) FOIA because it constituted personal data of which he was the data subject.

The appeal to the Tribunal

8. The Appellant appeals by way of a notice received on 20 April 2009. The Appellant identifies three grounds of appeal as follows:
 - “The Information that has been supplied has been intentionally altered by Caerphilly Council and therefore is not in its original form and inaccurate. I challenge the accurately (sic) of the summery (sic).”
 - "This personal information has been released into the public domain by Caerphilly Council on two separate occasions. One verbal and the other formal (reference my letter 22nd August 2005) (Please refer to the Decision Notice FS50145203. Information already released to me is considered to be in the public domain).”

- "No proof has been supplied (to me) to support the existence of the document. I challenge the authenticity of this document."

Conclusion and remedy

9. Rule 9 of the 2005 Rules provides that "where the Commissioner is of the opinion that an appeal does not lie to, or cannot be entertained by, the Tribunal, or that the notice of appeal discloses no reasonable grounds of appeal, he may include in his reply under rule 8 (2) above a notice to that effect stating the grounds that such contention and applying for the appeal to be struck out."
10. In *Bennett v Information Commissioner EA/2008/0033* the Tribunal stated "*... the language used in Rule 9 is unambiguous. A reasonable grounds of appeal is one that is readily identifiable from the Notice of Appeal, relates to an issue the Tribunal has jurisdiction to decide and is realistic not fanciful*".
11. The Appellant suggests that the "information supplied" (assumed to be a reference of the summary of the complaint given by the Council in its letter of 30 September 2006) has been 'intentionally altered'. This ground does not raise issues that are relevant to the question of whether the withheld information amounts to the Appellant's personal data and is therefore exempt under section 40 (1) FOIA. However, the Information Commissioner was satisfied that the summary provided to the Appellant accurately reflected the complaints made.
12. The second ground relating to what is or is not in the public domain does not raise issues that are relevant to the question of whether the withheld information amounts to the Appellant's personal data and is therefore exempt under section 40 (1) FOIA.
13. The Appellant is not entitled under FOIA to be provided with evidence that a document exists. Moreover, this ground does not raise issues that are relevant to the question of whether the withheld information amounts to the Appellant's personal data and is therefore exempt under section 40 (1) FOIA. In the event, the Information Commissioner was provided with a copy of the withheld information.
14. The Tribunal is satisfied that the Appellant has failed to address the substance of the Decision Notice so as to provide reasonable grounds of appeal and in particular

has failed to address the Information Commissioner's finding that the withheld information amounts to personal data about himself and is therefore exempt under section 40 (1) FOIA. He has not set out any -- or any reasonable -- grounds that the Information Commissioner's Decision Notice is wrong in law.

15. Our decision is unanimous.

Signed

Deputy Chairman

6 August 2009