



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2011/0234

ON APPEAL FROM:

**The Information Commissioner's
Information Notice No: FER0365518
Dated: 19 September 2011**

Appellant: EAST STAFFORDSHIRE BOROUGH COUNCIL

Respondent: INFORMATION COMMISSIONER

On the papers

Date of decision: 29 DECEMBER 2011

Before

**Robin Callender Smith
Tribunal Judge**

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the Information Notice dated 19 September 2011 and dismisses the appeal.

REASONS FOR DECISION

The issues

1. This is an appeal under s.57 FOIA in respect of an information notice served by the Information Commissioner (“IC”) on East Staffordshire Borough Council (“the Appellant”) on 19 September 2011.
2. On 17 July 2009 the original requestor, Mrs Gill Robinson, made a written request for information that was subsequently resolved (FER0280929) without the IC issuing a decision notice.
3. It then became clear to the IC that Mrs Robinson wanted some additional information beyond the scope of her original July 2009 request. The IC advised Mrs Robinson to make a new request in respect of that to the Appellant.
4. Some time in September 2010 Mrs Robinson telephoned the Appellant and made a verbal request that – as it was information in relation to the Environmental Information Regulations 2004 – was sufficient to trigger the Appellant’s responsibilities. She subsequently complained to the IC that she had not received all the information requested from the Appellant in that call and that she did not agree with the exceptions cited by the Appellant.
5. The IC contacted the Appellant on 19 April 2011 requesting information to assist with his investigation together with a copy of the withheld information and the arguments in respect of each exception cited. The Appellant provided a response on 19 May 2011, providing copies of the information it had identified as being within the scope of the request but disputing that it was a separate request vis a vis the earlier request.
6. The IC contacted the Appellant on 19 August 2011 setting out the background to the new request, pointing out that all the relevant information up to and including the date of the new request would fall within the scope of the request.
7. The Appellant responded on 2 September 2011. It refused to accept the IC’s account and stated that it considered the request to be an extension of the earlier request.

8. There were further interchanges between the IC and the Appellant until, on 12 September 2011, the Appellant contacted the IC to state that – after further consideration – it did not view the request in issue as a separate request for information.
9. The IC then required all internal correspondence and information held by the Appellant in respect of Longcroft Farm, Yoxall, Burton on Trent up to and including early September 2010 to be supplied under s.51 FOIA.
10. The Appellant's position is that Mrs Robinson "*never requested information up to and including early September 2010*" but only for a 5-year period up to 17 July 2009.
11. Its grounds of appeal also stated:

"Regardless of how that information is classified, the Council is of the opinion that it has provided Mrs Robinson with the information she has requested so far as it was able to do so. Mrs Robinson has subsequently complained that certain documents had been redacted and that certain other documents had been withheld in their entirety; she has never complained that the information provided was in respect of an incomplete timeframe."

12. It is the Appellant's case that Mrs Robinson's request for information had been complied with and that all that remained in issue was whether documents in the file supplied to the Respondent on 13 September 2010 should have been redacted or withheld from Mrs Robinson.
13. The Appellant conducted an internal review of the redacted information and withheld documents. In doing so it did not consider that the documents supplied to Mrs Robinson on 13 September 2010 were sent in response to a new request; rather that this was additional information falling within the original 2009 request.
14. The Appellant noted the IC's comments at paragraph 25 of the Response regarding the recollections of a former employee of the Appellant and maintained there was no reason to doubt that those recollections were other than accurate. That employee had spoken to Mrs Robinson and had then begun the task of collating the additional information. That task was undertaken in accordance with what Mrs Robinson had told the employee she required and the information in question spanned the period from 18 June 2008 to 1 October 2009.

The Decision

15. This is a straightforward dispute of fact. The Appellant's position is not assisted by the fact that both Mrs Robinson and the IC are not satisfied with the current impasse.
16. The IC states that Mrs Robinson was advised to make a new request, beyond the scope of the original July 2009 request, which she made by telephone to the Appellant in September 2010.
17. She clearly did not think that new request had been complied with, hence her additional complaint to the IC.
18. The existence of the new request is evidenced in the email dated 6 September 2010 from the Appellant to the IC stating that an employee (Mr Ray Hallmark, a Principal Law Clerk) had spoken to Mrs Robinson and that she "*would like copies of all the documents on the file*". That indicates, on the balance of probabilities, that there was a new request made by her on or around September 2010.
19. The fact that Mr Hallmark notes that "*her recollection does not match mine, but as I did not make a note of the conversation I have decided to deal with her request now*" suggests that his focus at that stage was still on the original request and not on the fact that this was a new request.
20. The fact that Mrs Robinson was asked by the Appellant to make a written request for an internal review of the September 2010 request in November 2010 (notified to her in February 2011) is further evidence of the new request.
21. The Appellant cannot produce any contemporaneous evidence to rebut the IC's contention about the request and the timescale – because of inadequate internal note taking in respect of telephone conversations and requests – and it has, as a result, placed itself in a difficult position in rebutting the IC's assertion.
22. The burden of proof in an appeal such as this rests on the Appellant and the standard of proof within the appeal is on the balance of probabilities. The Appellant has failed to discharge the burden of proof.
23. I am satisfied, on the balance of probabilities, that the IC's requirement under s.51 of FOIA that the Appellant provides the required information detailed in Paragraph 9 of the Information Notice dated 19 September 2011 should be complied with forthwith.

24.I remind the Appellant of the warning contained in Paragraph 10 of that Information Notice.

Signed:

Robin Callender Smith

Tribunal Judge

29 December 2011