



IN THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)

EA/2012/0019

BETWEEN:

STEPHANIE HARVEY

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

IT IS ORDERED BY CONSENT THAT:

1. The appeal is allowed.
2. The Decision Notice reference FS50422187 dated 19 December 2012 is to be varied in the terms set out in Annex B.
3. No further steps are required to be taken by the Appellant or Respondent.
4. There be no order for costs.

Dated this 22nd day of June 2012
Judge Hughes

ANNEX A

Statement of reasons for consent order

1. This appeal concerned the Respondent's Decision Notice FS50422187. That Notice sets out the terms of the Appellant's original information request at paragraph 4. The public authority which the Appellant's request was directed at was Walberswick Parish Council ("the Council").
2. The Appellant's original request was dated 28 October 2010 and the Appellant appealed against the Decision Notice by way of notice of appeal dated 12 January 2012.
3. In the said Decision Notice, the Respondent found that the information which was the subject of the Appellant's request was, on the balance of probabilities, not held by the Council at the time of the Appellant's request.
4. Following the lodging of the Appellant's appeal, on the 10 January 2012, the Respondent was contacted by a third party who stated that on 26 October 2010 he had made an information request to the Council which covered the information requested by the Appellant in this case. He further provided proof that the Council had responded to that request for information on 2 November 2010 by providing the information in question.
5. The Respondent is content for the purposes of this order that the information in question, comprising the text of a public statement made by the chairman of the Council at the beginning of a public meeting of the Parish Council and which dealt with, inter alia, his acknowledged breach of the code of conduct, is information held by the Council for the purposes of the Freedom of Information Act 2000.
6. The Respondent had not previously been made aware of the circumstances drawn to his attention by the third party in his letter of 10 January 2012.

7. Therefore, in light of the new information which has now been presented to the Respondent, but which was not available to him at the time that his decision notice was issued, the Respondent accepts his conclusion that, on the balance of probabilities, the information requested by the Appellant was not, at the time of her request, held by the Council, is unsustainable.
8. The Respondent consequently accepts that his decision notice should be varied to record that fact.
9. The Appellant wishes to record her discontent with the manner in which the Council dealt with her request for information in the present case. However, she acknowledges that these matters are not within the jurisdiction of the Tribunal to rule upon.
10. In view of all the circumstances and subject to the Tribunal's views, the parties jointly submit that it is appropriate for these proceedings to be concluded by way of consent order, and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).

ANNEX B

1. The Decision Notice be varied to record that, on the balance of probabilities, the Council held the requested information at the time of the Appellant's original request and failed to confirm that fact pursuant to section 1(1) of the Freedom of Information Act 2000.
2. The Appellant now being in possession of a copy of the requested information, no further steps are required to be taken.