



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference:	EA/2011/0101
Appellant:	Mrs S.F. Gaskin
Respondent:	The Information Commissioner
Judge:	NJ Warren
Member:	N Watson
Member:	S Shaw
Hearing Date:	5 June
Decision Date:	1 July 2014

DECISION NOTICE

1. About two years ago the Tribunal gave a decision dismissing Mrs Gaskin's appeal on the papers. They were wrong to do so because she had not consented to that procedure. She appealed to the Upper Tribunal.
2. The Upper Tribunal identified the error of law in the First-tier Tribunal's decision and then at paragraphs 31 onwards discussed "what happens next".
3. The Upper Tribunal Judge explained that he had given serious consideration to refusing to set aside the First-tier Tribunal's decision because of doubts whether Mrs Gaskin could succeed. However, given the absence of the oral hearing which had been requested, he allowed the appeal, set aside the Tribunal decision and remitted the matter for rehearing before a new Tribunal. He added that the possibility of the case being struck out without a hearing remained.
4. This Tribunal decided to list the case for a hearing.
5. In October 2013 Mrs Gaskin applied late in the day for an adjournment on medical grounds. The adjournment was granted. The case was relisted for hearing in

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December 2013. Mrs Gaskin applied for a postponement relying on a letter from her doctor recommending that she take things easy for four to six weeks. The postponement was granted. The case was relisted for hearing in February 2014. Again, there was a late adjournment request from Mrs Gaskin on the ground that she was not fit to attend. The Tribunal again adjourned the case, this time with a warning that any future adjournment was unlikely.

6. The case was relisted for hearing on 5 June 2014. On 3 June 2014 Mrs Gaskin applied again for an adjournment on the ground that a recent blood test had required an urgent appointment at the local hospital and that rest was required. Having regard to all the circumstances, we concluded that it was in the interests of justice to refuse the application for an adjournment. We considered that it was in the interests of justice to proceed although neither party to the case attended.
7. Mrs Gaskin has had a series of disputes with English Heritage about building work in the precincts of Norwich Cathedral.
8. As long ago as May 2009 she wrote a letter to English Heritage. Most of the letter concerns the use of a protocol to threaten judicial review proceedings in the High Court but there is one paragraph which constitutes a request for information. It seems to be a request for all the copy documents which the director of English Heritage East had relied on for an assertion in another letter that there was “consultation” about developments at 56A, B and C, The Close. (The Tribunal papers also contain (page 35) another request apparently under the Environmental Information Regulations in respect of developments at the Stable Range in Ferry Lane. This is not the subject of this appeal).
9. English Heritage’s position throughout has been that they have shown Mrs Gaskin all the information which they hold. Mrs Gaskin was dissatisfied with this and complained to the Information Commissioner (ICO). The process then followed by the ICO is not easy to follow but it resulted in the issue of a decision notice on 14 March 2011 which found in favour of English Heritage. Mrs Gaskin then lodged her appeal to the Tribunal. The Grounds of Appeal are not easy to follow either.

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10. To assist Mrs Gaskin the Tribunal issued a case management note in October 2013 indicating that it seemed from the Notice of Appeal that her concerns were limited to two files which were reported missing. She was asked to confirm whether or not this was the case; she was also asked what remedy she sought from the Tribunal.
11. After the February adjournment another case management note indicated to Mrs Gaskin that the Tribunal's provisional interpretation of her response to the October 2013 case management note was that:-

“(a) The issue she wishes the Tribunal to consider is that of the two missing files.

(b) There are other persons, including the surveyor for the fabric of the cathedral who are likely to hold similar information.”

If this was a misinterpretation then Mrs Gaskin was asked to write to the Tribunal explaining why. Having considered Mrs Gaskin's reply to that case management note we consider it reasonable to proceed on the basis that the provisional interpretation contained in it is correct.

12. The ICO considered that English Heritage were wrong to have dealt with Mrs Gaskin's request under the Freedom of Information Act (FOIA). He considered that the correct legal regime was the Environmental Information Regulations (EIR). We have our doubts about this but it makes no difference to the outcome of this appeal.
13. In respect of the two missing files we accept the evidence of the corporate records manager at English Heritage in a detailed letter which is contained at pages 51-54 of the bundle. The letter displays a careful and diligent approach and we have no reason to doubt the statement that the two files are missing. In our judgment, the ICO was correct to decide that English Heritage did not hold any more information.
14. The second point raised by Mrs Gaskin seems to be that it would be open to English Heritage to reconstruct the files by going to various other bodies who might hold material identical to that which the files contained. No doubt English Heritage

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could do this if they wished to. It is not for the Tribunal, however, to tell them to do so. Our role is limited to considering whether English Heritage has fulfilled its obligations under FOIA or the EIR.

15. On the facts, no question arises here of a breach of Regulation 10 EIR. This is partly because the request asks for the information considered by an English Heritage employee and partly because Mrs Gaskin is herself well aware of the institutions which may hold similar information.
16. For these reasons we conclude that there are no grounds to interfere with the ICO decision and the appeal is dismissed.

NJ Warren

Chamber President

Dated 1 July 2014