



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

**Appeal No: EA/2014/0176**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50523822**

**Dated: 24 June 2014**

**Appellant: Nick Bentley**  
**Respondent: The Information Commissioner**  
**Heard on the papers: Field House, London**  
**Date of Hearing: 3 March 2015**

**Before**  
**Chris Hughes**  
**Judge**  
**and**  
**Melanie Howard and Dave Sivers**  
**Tribunal Members**

**Date of Decision: 22 April 2015**

**Date of Promulgation: 5 May 2015**

**Decision: The Information Commissioner's decision notice is upheld and the appeal rejected**

**Subject matter:**

**Freedom of Information Act 2000**

## **REASONS FOR DECISION**

### Introduction

1. Mr Bentley is concerned at the operation of a privately run children's home close to his house. He has been fighting to have the home closed since 2011 (bundle page 100A), and has endeavoured to obtain the assistance of his MP and of councillors of the local authorities which serve his area. On 5 June 2013 he wrote to Staffordshire County Council with a request for information in 12 numbered parts (three of the requests being further subdivided). On 19 June he made a further 11 part request; again a number of the requests were in several parts; some of these overlapped with or repeated the first requests.
2. The Council replied on 3 July providing some answers to the first request and explaining that much of the information was not held by the Council. In response to the second request it explained that the home was run by Horizon care and suggested he contact them.
3. Mr Bentley was not satisfied with the information provided by the Council in response to his requests and the Council's reviews of its handling of the requests and complained to the ICO. The Council initially relied in part on arguments that certain information requested was personal data and that the requests in their context were vexatious. During the course of the investigation the Council concluded that it did not hold personal information within the scope of the request and had supplied all the information which it held.
4. The ICO published his decision on 24 June. At paragraph 20 of his decision notice the ICO indicated that as Mr Bentley had not, in requesting a review challenged the responses to questions 1, 2, 6 and 9 of the first request the ICO had not considered that part of the request further. The decision notice at paragraphs 22-46 considered the evidence for whether further information was held, noted the efforts of the Council to engage with Mr Bentley (paragraph 47), Mr Bentley's expectations of what the Council should hold and concluded (paragraphs 49-50) that no further information was held.
5. The ICO set out the Council's explanations of its relationship with the home and how it had searched for the requested information. The home is run by Horizon (a private company regulated by Ofsted), and the Council purchases some places at the home for children for whom it is responsible (paragraph 26). In searching for the information it contacted the relevant officials of the Council who procure places,

administer the contracts and oversee care needs of the children (paragraph 30) who would be the people who hold the information. They had also been responsible for liaising with local residents about their concerns. The ICO considered the contractual arrangements between the home and the Council and considered Mr Bentley's argument that the contract would open the home's records up to scrutiny under FOIA. The ICO did not agree (paragraph 37).

6. In his appeal against the ICO's decision notice Mr Bentley alleged that the Council had not answered the questions with honesty and integrity. He claimed to identify discrepancies in the Council's response and inconsistencies with information on absconsions from another source, the Staffordshire Police. He argued that the Council could have requested the information from the home. He further argued that it was in the public interest that all parts of his requests for information to be answered: "To hide behind the care-provider and rely on the other multi-agencies solely is not and should not be adopted....To say that the County Council have no involvement of how the home is run I cannot accept. That is why I wish for the Tribunal to have their say in this important request." (bundle page 14 – grounds of appeal).

#### The questions for the Tribunal

7. In approaching this appeal the tribunal reminded itself of the proper scope of its review of the decision of the ICO. The issue the tribunal has to consider is whether the notice is in accordance with the law; in coming to that decision it can review findings of fact upon which the ICO relied in coming to his decision.
8. In this case the question is whether or not the Council held any more information than it disclosed to Mr Bentley. The question is not, what in Mr Bentley's view it ought to hold, but what it does hold. Mr Bentley has expressed strong views about "hiding behind the care provider and rely on other multi-agencies" and clearly considers that the Council should be accountable for all the alleged shortcomings of the home and be able to answer all the questions he has asked. That however is a fundamentally false premise. The question is whether it is more likely or not that the Council actually has the information he has asked for.
9. In reviewing the information before the tribunal, the answers and explanations given by the Council as to why it does not hold the information requested have to be weighed; however an argument that the Council does not hold certain information

because it does not need to since it does not own or operate the home may clearly be an argument which will weigh in the tribunal's consideration of whether it actually holds the information. The Council therefore very properly can point to the care provider and the multi-agency arrangements to indicate why it does not hold information itself.

10. Furthermore it should be noted that the information which a public body holds need not be the most accurate information, FOIA gives a right to the information held, not a right to accurate information. One of Mr Bentley's key concerns appears to be absconsions from the home. He asked about absconsions with respect to young people (request 1 9(a)) and children (request 2 11(a)). He asked similar questions of the Staffordshire police. He received different answers – indicating a larger number of absconsions than the Council was aware of. This is not especially surprising, as the two bodies will almost certainly have different data capture mechanisms in line with their differing responsibilities, and have no requirement to coordinate their records. The fact that certain absconsions may have been known to one agency and not another is not indicative of any suppression or distortion.
11. While Mr Bentley has argued that the contractual arrangements mean that the Council is required to draw on the resources of Horizon in order to answer FOIA requests, a proper consideration of the contractual terms (bundle page 85) shows a far more limited right of access by the Council to information held by Horizon.
12. In his appeal Mr Bentley has not provided any cogent challenge to the searches carried out by the Council. The tribunal is satisfied that the appropriate people were contacted and there are no grounds for Mr Bentley to impugn the integrity of Council officials.
13. The explanations offered by the Council as to why it does not hold information are obviously valid: it does not own or operate the home, it is not the regulator of the home. The day to day records of absconsions and other matters are held by the home not the Council. It has provided such information, such as policies and numbers of absconsions as it has and has signposted Mr Bentley to other possible sources of information.
14. While Mr Bentley has disputed the ICO's approach to the scope of his investigation (decision notice paragraph 20) the tribunal is satisfied that the ICO was entitled under s50(2)(a) to treat that part of the request as one in respect of which Mr Bentley had not exhausted the Council's complaints procedure and the ICO was therefore not obliged to pursue the issue further.

Conclusion and remedy

15. The tribunal is therefore satisfied that Mr Bentley has failed to identify any error in law in the decision notice or any grounds for not accepting the facts upon which the ICO relied. The appeal is therefore dismissed.

16. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 22 April 2015