



IN THE FIRST-TIER TRIBUNAL
(INFORMATION RIGHTS)

Appeal No. EA/2012/0223

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS505435686

Dated: 29th. September, 2014

Appellant: Sheila Walters ("SW")

Respondent: The Information Commissioner ("the ICO")

Before
David Farrer Q.C.
Judge

and

Pieter De Waal
and
John Randall

Tribunal Members

Date of Decision: 22nd. December 2014

This appeal was determined on written submissions

Subject matter:

Whether the public authority complied with the Appellant's request for information, pursuant to s.1(2) of FOIA or Reg. 5(1) of the Environmental Information Regulations 2004.

Decision of the First - Tier Tribunal

The Tribunal concludes that the public authority complied with the Appellant's request. It therefore dismisses the appeal.

Dated this 22nd day of December 2014

David Farrer Q.C.
Judge
[Signed on original]

REASONS FOR DECISION

1. This appeal arises from a simple misunderstanding of documents supplied by Rhondda Cynon Taf County Borough Council (“the Council”) in response to SW’s request for information.
2. SW was concerned about a number of matters relating to her property, Dringarth bungalow in Llwydcoed, and land behind it (“the land”). In the course of a letter dated 31st. January, 2014, SW made the following request -

“Also under the FOI I would like confirmation in writing where you stated the Council owned the land since 2011 as this was never made public, as this was left to the people of Llwydcoed for recreational purposes, including the entrance road to the park”.
3. The Council rightly treated this as a request for information as to the ownership of the land. On 26th. March, 2014 it responded by sending to SW a copy of a conveyance of the land dated 26th. March, 1976 to Cynon Valley Borough Council, the Council’s predecessor in title. The Council confirmed that the land was registered as the Council’s land in 2011 as part of its land registration programme. The land was shown in a largely illegible plan annexed to the conveyance.
4. SW sought an internal review of this response which resulted in the provision of a copy of the Land Registry Property Register held by the Council, including a different but legible plan which, she was correctly told, was an accurate record of the registered interests as at 22nd. January, 2013.
5. SW contacted the Land Registry, as advised, and obtained the Land Registry entry as at 9th. April, 2014, containing further inconsistent information, as it seemed to SW. Concerned as to the seemingly fluctuating responses from the Council and the Land Registry, she complained to the ICO, effectively asserting that the Council had failed to give full and accurate information in response to her request.

6. The Land Registry includes records of (i) property ownership and (ii) charges affecting the property. It is evident from the Land Registry entries that the recent history of the land was as follows :

- 10.3.1976 Land conveyed from Morfydd Davies to (effectively, the Council);
- 31.1.2011 The Council registered its title to the land.
- 19.9.2011 A right of way over the land (an easement) was granted by the Council to Howard Rhys Morgan and Helen Elizabeth Morgan and to a neighbouring landowner. This was entered in the Charges Register on 9th. December, 2011.
- 17.1.2013 The Council conveyed part of the land, presumably a minor part, to Mervyn Jones, who had evidently established title by a long period of adverse possession. This was registered in the Property Register on 20th February 2013, hence after the date of the property register of which a copy was provided to SW following the internal review.
- 12.2.2013 Rights over the land granted by the Council to Keith Thomas and Elise Denise Thomas were registered. (Whether these amounted to the easement referred to against the date 19.9.11 is unclear but is of no consequence).

7. The information provided in the Council's response to the request was accurate, save as to the conveyance of 17/1/2013. The response on internal review on 26th. March, 2014 evidently represented the information then held by the Council.. When she received the further response to her request for an internal review, SW wrongly, but understandably, interpreted the register entry of 19/9/2011 as indicating a conveyance of the freehold of the land, whereas it was simply the grant of an easement.
8. When she then checked the position with the Land Registry, she obtained a copy of the record at 9th. April. 2014, showing the registration of the conveyance to Mervyn Jones and the grant of rights to the Thomases. These transactions were evidently registered after the Council obtained a copy of the Land Registry record supplied on internal review. SW apparently construed the conveyance to Jones as a further conveyance of the whole of the land. Such misconceptions are to be expected when members of the public are confronted with records of an unfamiliar kind. The grant to Thomas was irrelevant to the request since it did not affect ownership.

9. The Tribunal inclines to the view that this appeal is governed by FOIA. However, whether it is governed by FOIA or by the Environmental Information Regulations, 2004 (“the EIR”) is academic because, in either case, the issue is the same - did the Council comply with the request? The answer is “Yes”.

10. The Tribunal is satisfied that the Council fulfilled its duties, whether under FOIA or the EIR, before the complaint to the ICO.

11. This decision is unanimous.

David Farrer Q.C.

Tribunal Judge

22nd. December, 2014

Promulgated 23rd January 2015