



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2018/0014**

**Decided without a hearing  
On 11 October 2018**

**Before**

**JUDGE KAREN BOOTH**

**Between**

**ROBERT BLEWITT**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION AND REASONS**

**Sitting in Chambers on 11 October 2018**

## DECISION

1. The decision notice issued by the Respondent on 23/11/17 (Reference: FS50691943) is not in accordance with the law and the appeal is allowed. The following decision notice is substituted in its place.

*The Council interpreted the request for information too narrowly and therefore contravened section 1(1) of the Freedom of Information Act 2000 ("FOIA"). The Appellant requested information about a "claim", which consisted of grievance procedures and legal proceedings. The information sought was for information relating to the period starting on the date on which the grievance was submitted and ending on the conclusion of the legal proceedings. On the balance of probabilities, further information is held by the Council.*

*As conceded by the Respondent, the Council also contravened section 1(1) because it failed to communicate the information at page 91 of the hearing bundle until after the Appellant had appealed to the Tribunal.*

*The Council contravened section 10(1) of FOIA because it failed to provide its substantive response within the statutory timescale.*

*The Council must take the following steps within 35 days:*

- *Inform the Appellant whether it holds further information falling within the scope of the request (applying the wider interpretation).*
- *Communicate that information to the Appellant or give a refusal notice complying with section 17 of FOIA. The name and other identifying details relating to the individual to whom the request relates should be redacted from any information provided (and the Council may also want to consider redactions in relation to other individuals to whom any information relates).*

## REASONS

### *Background to the appeal*

2. The Appellant is seeking information about costs and resources relating to a 2015 grievance (which culminated in civil court proceedings in 2017) made against Carmarthenshire County Council ("the Council") by an individual ("Ms X") with whom the Appellant is associated.

### *The request for information and the response*

3. On 14/3/17 the Appellant made a request to the Council for information in the following terms.

“[Ms X] made a claim against the Council commencing with a formal grievance submission on 26 May 2015 and culminating in a Court Hearing on 24/1/17.

Please provide information on the resources utilised and costs incurred by the Council in defending this claim.”

4. The Council treated the request as a request for information under the Freedom of Information Act 2000 (“FOIA”) and initially refused it in reliance on section 40(2) of FOIA. After consent to disclosure was provided by Ms X on 12/4/17, the Council provided some information on 21/6/17 (the amount of external Counsel’s fees and an estimate of the total time spent by an in-house solicitor) and advised that that was the only relevant information held. In their review response dated 28/6/17, the Council provided the nominal cost of the in-house solicitor (derived from the legal department’s digital time recording and case management system) and advised that other officers do not keep records of the time they spend on individual cases. On 17/7/17, the Council clarified that there were in fact two solicitors who worked on the case, but that the figures provided were for the total of their time spent.

*The complaint to the Information Commissioner*

5. The Appellant complained to the Respondent indicating that his concern was that the Council had refused /only partly fulfilled his request.
6. The Respondent investigated his complaint. The case officer wrote to the Council on 29/9/17 and raised the questions listed at the bottom of page 69 and the top of page 70 of the bundle of evidence. The Council provided a detailed and thorough response (page 74 of the bundle).

*The Information Commissioner’s decision*

7. On 23/11/17, the Respondent issued her decision notice (Reference: FS50691943). She decided as follows:
  - The Council did not hold any information other than that which had already been provided.
  - The Council had contravened section 10(1) of FOIA as it did not provide the information held within the statutory timescale.

The Council was not required to take any steps.

*The appeal to this Tribunal*

8. The Appellant appealed to this Tribunal. His grounds of appeal are set out on page 10 of the bundle, which also refers to an attached email of 12/1/18 (page 14). He asserted that there should be various documents that would leave a “sufficient formal trail to resource estimation” and that it was not credible that further records were not available.
9. His subsequent submissions are at page 16, which can be summarised as follows.

- As the matter was always likely to end up in court it is probable that the Council would have put systems in place to capture the costs information.
  - There were three distinct phases (grievance procedure stage 1, grievance procedure stage 2 and the court proceedings). Each phase would have key documentation (examples provided), outside of time management systems, that would provide the basis for identifying the key resources utilised.
10. The Respondent's response to the appeal is at pages 30A-G. The most significant points are as follows:
- The Appellant's sole challenge was to the Respondent's conclusion that, on the balance of probabilities, the Council does not hold further information.
  - There is nothing to disturb the Respondent's conclusions on the "costs incurred" part of the Respondent's request.
  - As to the "resources utilised" part of the request, the appeal is not opposed to the extent that the Council should have provided the information at page 91 of the bundle in its response to the Appellant (but as that information is included in the bundle, it has now been provided to the Appellant).
  - The Respondent believes that the Appellant has previously received other documentation (of a confidential nature) from the Council (on a date(s) unknown).
11. Following the case management directions dated 5/6/18, the Appellant submitted a Reply. His points can be summarised as follows.
- The request was for information about resources utilised since the original "claim" (i.e. prior to the grievance procedures), yet the Council's response at page 88 refers to information from the point when the Council's legal department first became involved.
  - As regards the references to the need to protect personal information, information re the attendants and duration of meetings etc. could be relevant to resources utilised, but without the need for disclosure of personal data.
  - He accepts that information relating to "resources" such as stationery etc. is not relevant to the request. Full disclosure of staff involvement and their costs (as provided for the legal department) would substantially meet his request.
  - Although information has been provided regarding the officers from whom the Council sought information, no contact appears to have been made with: the officer who carried out stage 1 of the grievance procedure; the panel members who led on stage 2; nor the HR officer who was a court witness.
  - The references to information already provided are misleading. No substantive response to the FOIA request has been made other than as provided/referred to in the bundle of evidence.

*The task of the Tribunal*

12. The task of the Tribunal is set out in section 58 of FOIA:

58 Determination of appeals

- (1) If on an appeal under section 57 the Tribunal considers—
- (a) that the notice against which the appeal is brought is not in accordance with the law, or
- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
- the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

13. The parties had opted to have the appeal determined on the papers. After reviewing the bundle of evidence, including the detailed submissions of the parties, I was satisfied that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.
14. The evidence before me consisted of: the papers in the open hearing bundle (99 numbered pages); and the additional open documents (case management directions dated 5/6/18 and the Appellant's undated Reply).

*The issues*

15. According to the Respondent, the only issue to be decided was whether, on the balance of probabilities, the Council held any further information that was relevant to the appeal. It seemed to me, however, that it was firstly necessary to decide whether the Council and the Commissioner had correctly interpreted the FOIA request.
16. The FOIA request referred to a claim *commencing with* a formal grievance submission on 26 May 2015 *and culminating in* a Court Hearing on 24/1/17 and requested information about resources/costs incurred by the Council in defending that claim. The reference to "that claim" is not entirely clear and it is arguable that the Council should have asked the Appellant to clarify this. However, it seems to me that the most obvious interpretation is that the Appellant was requesting information about resources/costs in relation to the monetary claim throughout the period commencing with the date on which the grievance was submitted and ending with the court hearing on 24/1/17.
17. The Respondent's case officer raised this very point in the 4<sup>th</sup> paragraph of her email dated 20/4/18 (page 86 of the bundle). The Council's response is in

points 1 and 2 in their email dated 24/4/18 (page 88). The explanation at paragraph 2 is unclear, but it suggests to me (as it did to the Appellant) that the Council interpreted the reference to “the claim” to be a reference to the legal proceedings only. This point was not followed up by the Respondent.

18. The wider interpretation is supported by the Appellant’s submissions at page 16 and his undated Reply referred to in paragraph 12 above. However, in that Reply, he refers to Ms X’s claim having *preceded* her first grievance submission. Given the specific reference in the FOIA request to the claim *commencing* with a formal grievance submission on 26/5/15, I do not accept that the request encompassed information relating to a period prior to 26/5/15.

*What was decided and why*

19. The Council (and the Respondent) had interpreted the request for information too narrowly. Because of this, I agreed with the Appellant that, on the balance of probabilities, further information was held in relation to the period from the submission of the grievance to the date when legal proceedings were instituted. Also, in view of the Appellant’s reference to the HR officer who was a court witness, further relevant information was, on the balance of probabilities, held in relation to the period *after* the legal proceedings were instituted.

*Conclusion*

20. The Respondent’s decision notice was not in accordance with the law primarily because the request was too narrowly interpreted. On the balance of probabilities, further information that fell within the scope of the request was held by the Council. The appeal is allowed and the decision notice in paragraph 1 is substituted for the Respondent’s decision notice.

**Signed: Karen Booth**

**Judge of the First-tier Tribunal**

**Date: 11 October 2018**