



Case Reference: EA/2023/0279.
NCN: [2023] UKFTT 00640 (GRC)

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

Heard on the papers.

Heard on: 31 July 2023.

Decision given on: 2 August 2023.

Before:

Tribunal Judge: Brian Kennedy KC

Between:

PRAKASH PUCHOOA

Appellant

and

THE INFORMATION COMMISSIONER Respondent

In an application by the Respondent to Strike out the Appeal

Decision: The application is granted and appeal is Struck Out.

REASONS

Introduction:

- [1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) as, against the Commissioner’s decision notice 5 May 2023 with reference number IC-199663-K9B6 (the “DN”), which is a matter of public record.

Factual Background to this Appeal:

- [2] Full details of the background to this appeal, the complainant’s request for information and the Commissioner’s decision are set out in the DN. On 20 June 2022, the complainant wrote to London Borough of Newham (“the Council”) and requested information in the following terms:

“On 6 May 2020, you responded to my request to stop antisocial behaviour on [address redacted]. Please see the document entitled, Correspondence - Mayor, which lists all correspondence between the Mayor and I. You refused to look into this matter, stating that the ASB team had investigated this matter. Among your comments, you mentioned that there was no ASB and that I was implicitly responsible for causing tension in the area. This contradicts the Council's own ASB letter sent in June 2019, addressing ASB head on. (see pdf document attached).

- 1) Under the FOI Act, could you please provide the names of the ASB officers, who reached this conclusion since I have not dealt with Newham ASB officers, other than [name redacted] (see PDF document).
- 2) Could you please clarify whether these were, in fact, ASB officers or PCSOs who work in the area?
- 3) Could you also disclose information about how they reached their decision regarding ASB in the area
- 4) and their conclusion that I was an instigator?
- 5) I have attached correspondence between PCSO [name redacted] and myself dated back to 2019, which shows that ASB was a concern. This contradicts the conclusion of the Mayor's Office.

This information is needed to understand the council's decision-making process. It is not exempt under any of the rules and should not take any more than 18 hours since you should have the info at hand. Happy to provide any more info, if needed.”

- [3]** The Council responded on 15 July 2022. It stated that for [1] and [2] there was no information held as there were no other Anti-Social Behaviour (ASB) officers investigating the complainant's case and the ASB Officer liaised with the PCSO regarding the reported criminal offences. For [3] the Council explained how an ASB Officer would make a decision and that this would have been outlined in letters sent to the complainant by the ASB Officer. For [4] the Council explained the information would be the complainant's own personal data so would be exempt under section 40(1) of FOIA. For part [5] the Council stated commenting on individual cases was outside the scope of FOIA.
- [4]** The complainant requested an internal review on 29 August 2022 disagreeing with the responses to parts [1] to [3] stating that [name redacted] ASB Officer had not dealt with anything after 2019 so there must be more information held.
- [5]** The Council responded on 9 December 2022. It stated it considered its responses to have been factually correct and reiterated the ASB Officer assigned to the Appellant's case is the only ASB officer who has been assigned. The Council stated it was aware that other officers from other sections of the Council's sections of the Council's Law Enforcement team as well as the PCSO team had responded to reports made to the Council.
- [6]** The Appellant contacted the Commissioner to complain about the way his request for information had been handled and in particular that the Council had not provided all the information it held. During the course of the Commissioner's investigation the Council changed its position in relation to part [4] of the request, acknowledging that it should have not have cited section 40(1), but instead with regard to recorded information about why the Council had concluded the complainant was the instigator the response should have been that this information had already been provided in a letter dated 29 June 2019 from the Council. The Commissioner therefore considered that the scope of his investigation is to determine whether any further recorded information is held in relation to parts [1] to [4] of the request.

- [7]** The Commissioner maintains the position set out in the DN which records the detail of his investigation and the Appellants suspicions along with the Councils' evidence in rebuttal. The Commissioner carefully considered all available evidence and on the balance of probability came to the conclusion that the Council held no further information within the scope of the request. The Appellant now appeals against the DN. The Commissioner opposes the appeal and invites the Tribunal to uphold the DN and Strike Out the appeal as having no prospect of success.
- [8]** Ms Garvey on behalf of the Respondent sets out clearly the material factual matrix and the Applicable Law in relation to the test when determining whether or not information is held the Commissioner and this Tribunal applies the normal civil standard of proof, on the balance of probabilities and refers to the application of the civil standard required as set out by the Tribunal in *Linda Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072; 31 August 2007).
- [9]** Having read all the evidence before me I am satisfied the Commissioner carried out a thorough investigation on the facts and I am not persuaded that the Appellant has provided any or adequate material evidence that supports the contention that the Commissioner erred in his application of the required standard of proof in coming to his decision as is clearly set out in the impugned Decision supported by the Response to the Grounds of Appeal, dated 12 June 2023 and am persuaded in all the circumstances before me that the appeal has no prospect of success.
- [10]** Accordingly, I must dismiss this appeal.

Brian Kennedy KC

31 July 2023.