



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

**Case No. EA/2014/0006**

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50491919, dated 11.12.13

**Before**

Andrew Bartlett QC (Judge)  
Anne Chafer  
Andrew Whetnall

**Determined on the papers**

**Date of decision:** 23 December 2014

**Appellant:** BERNARD CLUCAS

**1<sup>st</sup> Respondent:** INFORMATION COMMISSIONER

**2<sup>nd</sup> Respondent:** GORING-ON-THAMES PARISH COUNCIL, formerly  
Goring Parish Council

**Subject matter:**

Freedom of Information Act 2000 – whether information held

## **DECISION OF THE FIRST-TIER TRIBUNAL**

Our decision is that no further action by the Respondents is required, and this appeal is now concluded.

### **REASONS FOR DECISION**

#### **Introduction**

1. This appeal has been concerned with requests to a Parish Council for information about its consideration of how it had handled an earlier information request.
2. Our initial decision, issued on 4 June 2014, upheld the appeal and identified the respects in which the Council had failed in its duties under the Freedom of Information Act ("FOIA"). This decision is supplementary to our initial decision.
3. In our initial decision there was one matter we were unable to conclude, for which we gave further directions. This related to Mr Clucas's information request made on 5 July 2012.
4. The subject matter of Mr Clucas's request of 5 July 2012 was the Council's investigation or consideration of its failure to deal correctly with his original information request which he had made in January 2012 for information about allotment sites. He wrote to the Council on 5 July 2012, under the heading "Freedom of Information Act - Failure of Service". He asked for "copies of the confidential minutes for each occasion the matter was considered in confidential session, with any other associated material considered at the time."
5. The Council responded the same day, stating that confidential minutes were the subject of an exemption (which was not specified) and would not be provided. The Council wrote to him again on 13 November 2012 (in two separate letters) enclosing the confidential minutes of a meeting of 5 March 2012. In January 2013 Mr Clucas complained to the Information Commissioner concerning the extent of information provided in response to his July request and other matters. The Commissioner's Decision Notice FS50491919 did not satisfy Mr Clucas, and he appealed to the Tribunal.
6. Ground 1 of the appeal was that, in relation to the request made on 5 July 2012, the Commissioner was wrong to find that the Council held no further information. We upheld this ground. We directed (in broad terms) as follows:

- a. that the Goring Parish Council be joined as a party to the appeal;
- b. that the Council inform the Information Commissioner to what extent it still held the information referred to in paragraphs 16c and 20 of our initial decision, and provide the missing information to Mr Clucas and/or issue a refusal notice as appropriate;
- c. that the Commissioner state his position on the adequacy of the Council's response; and
- d. if the parties were unable to agree, that the matter be referred back to us with the parties' proposals for final determination of the appeal.

The information which was the subject-matter of the Tribunal's directions

7. The information referred to in paragraphs 16c and 20 of our initial decision consisted of Council documents, files and letters that were mentioned in the confidential minute of 5 March 2012 as having been examined by two Councillors as part of their consideration of how the earlier request had been dealt with, and an interview with the clerk to the Council, for which there should be a note.

The parties' positions and our decision

8. So far as the interview is concerned, the Council has stated, after inquiries, that there is no note of it. There is no evidence to contradict this statement. We therefore accept it.
9. On 20 June 2014 the Council supplied to Mr Clucas what it said was all the information held in the files which were examined, with the exception of-
  - a. items which it said were exempt under FOIA s21 (information accessible by other means), and
  - b. items which it said were exempt under FOIA s40 (personal data).
10. The s21 items were papers printed from the internet in the period 2007 to 2009. The s40 items were communications to or from private individuals interested in having an allotment or in investigating potential allotment sites. The Council submitted that no further remedial action was required.

11. As regards the s21 items, the Commissioner took the view that s21 did not apply (except to items already supplied to Mr Clucas).
12. As regards the s40 items, the Commissioner accepted that, where redaction to protect personal information was not practical, they should be withheld. Where redaction was practical, they should be supplied in redacted form.
13. It seems that some Council minutes were also examined by the two Councillors. The Commissioner asked the Council to clarify its position on these. The Council replied on 24 July 2014 that "all the minutes were considered".
14. In documents dated 8 and 12 August 2014 Mr Clucas wrote to the Tribunal, expressing the view that, as regards the multitude of documents produced by the Council, while they related to the original information request, they had no bearing on the investigation or consideration of the Council's failure to deal correctly with the original request. In his view, the same appeared to be true of the documents produced to the Commissioner, as described to him.
15. Having considered the documents, we agree with Mr Clucas's view, as regards those documents.
16. Mr Clucas states that the Council has failed to list legal advice which it obtained in January 2012 about charging for information. We do not understand him to be seeking any specific relief concerning this.<sup>1</sup>
17. Mr Clucas refers to the Council's failure to provide the minute of 13 February 2012 until during the appeal. We have already stated in our first decision at paragraphs 19 and 21 that we upheld this point.
18. Mr Clucas refers also to the Council's failure to provide the minute of 5 March 2012 minute promptly. At paragraphs 29-31 of our initial decision we rejected the complaint that this was not sufficiently stated in the Commissioner's Decision Notice.
19. Paragraph 1 of Mr Clucas's email of 20.10.14 understandably raises a query about the 28 further documents from a newly found folder, no details of which have been provided to him. We received these on 2 December 2014 and have considered whether there are any that should be disclosed to him. Having done so, we find that they have no bearing on the investigation or consideration of the Council's failure to deal correctly with

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<sup>1</sup> Legal advice would in any event normally be protected from disclosure by the FOIA s42 exemption.

the original request, and are not relevant to this appeal. The reasoning set out in paragraphs 14-15 above applies to these documents.

20. Mr Clucas has drawn to our attention two newspaper articles about the appeal and a mention of it in the Council's minutes of 8 September 2014. While we understand his concerns, we note that the articles make clear that there were failures on the part of the Council and we do not consider that it would be appropriate for us to take any steps in relation to them, or in relation to the minutes. The Council wrote to the Tribunal about the articles on 26 November 2014, and Mr Clucas responded on 14 December 2014. We do not consider these matters are relevant to our decision.
  
21. In the circumstances our judgment is that no further action by the Respondents is required, and this appeal is now concluded. This follows in particular from our finding in paragraph 8 above and the reasoning in paragraphs 14-15 above.

Signed on original:

/s/ Andrew Bartlett QC, Tribunal Judge