



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

Case No. EA/2013/0219

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No:
Dated: 23 September 2013**

Appellant: Goring Parish Council

Respondent: The Information Commissioner

Second Respondent: Bernard Clucas

On the papers

Date of decision: 23 January 2014

**Before
CHRIS RYAN
(Judge)
and
PIETER DE WAAL
ANDREW WHETNALL**

Subject matter: Whether information held s.1

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

1. On 11 February 2013 an individual ("the Requester") wrote to the Goring Parish Council asking for:
"Details of training of the clerk or any councillor concerning Freedom of Information matters, since 1 January 2012."
The letter went on to ask for certain details of any training that had taken place.
2. The requester's letter constituted a request for information under section 1 of the Freedom of Information Act 2000 ("FOIA"). The section requires a public authority to inform any person requesting information from it whether it holds the information and, if that is the case, to disclose it unless it is excused from making the disclosure under any other provision of the FOIA, including those in Part II which render certain categories of information exempt from disclosure.
3. In fact no relevant training had taken place, although the Council has been at pains to point out that there were particular reasons for this.
4. The Council's reply to the information request, sent on 18 February 2013, stated:
"There are no records which can be made available under the FOI Act."
5. The Requester has said that he was not sure whether the reply meant that the Council had no information on the subject, or that it did hold some information but considered that it was not obliged to disclose it, possibly because one of the FOIA exemptions applied. He therefore asked the Council to conduct an internal review of its decision. But he did not draw attention to the perceived ambiguity in the response he had received.
6. In the event the Council responded that it was satisfied with the original response. The requester then complained to the Information Commissioner about the way in which his request had been handled.

7. Having investigated the complaint, the Information Commissioner issued a decision notice on 23 September 2013, which concluded that, on the balance of probabilities, it was unlikely that the Council held the requested information. However, it directed that the Council should write to the Requester clarifying the original response by confirming that it did not do so. This direction reflected the Information Commissioner's view that the Council had not complied with its obligation under FOIA section 1(1)(a) to state whether it holds requested information.

8. In the course of reaching his conclusion the Information Commissioner recorded his finding of fact that no relevant training had been undertaken. He added:

"14 Goring Parish Council also confirmed that despite the council minutes (5/3/12) highlighting a training need no training was undertaken between 1 January 2012 and 11 February 2013, the date of the request."

9. On 20 November 2013 the Council submitted a Notice of Appeal to this Tribunal, accompanied by Grounds of Appeal. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.

10. The Grounds of Appeal raised the following two points:

- a. Paragraph 14 of the Decision Notice, quoted above, was said not to present a fair picture as it did not go on to explain that the Clerk to the Council had explained to the Information Commissioner during the course of the investigation that the reason he had not attended training during the relevant period was because one course had occurred when he was on holiday and the second at the time when his mother died.
- b. The Information Commissioner did not take into account the fact that, when asking for an internal review, the Requester had not explained what element of the Council's response he considered deficient.

11. In the Information Commissioner's Response to the Grounds of Appeal he invited the Tribunal to strike out the first ground of appeal on the basis that it had no reasonable prospect of succeeding. No such order was made at the time but we are satisfied that it discloses no ground of appeal. The Council does not assert that the Decision Notice reflects an error of law or that it represents the exercise of a discretion by the Information Commissioner. It records a finding of fact which the Council has accepted is true. The first

ground therefore discloses no ground for appealing the Decision Notice. The appeal process is not designed to enable those affected by a Decision Notice to participate in re-drafting its terms in order to make it more reflective of their particular concerns.

12. The second ground of appeal must also fail. The Information Commissioner was entitled to conclude that the Council's response was ambiguous. It clearly was, and FOIA section 1 does not suggest that the Requester's conduct after submitting an information request has any relevance to the public authority's obligation to disclose whether or not it holds requested information.
13. In light of those findings we conclude that the Decision Notice discloses no error of law or incorrect conclusion of fact and that the appeal should therefore be dismissed.
14. Our decision is unanimous.

Chris Ryan

Judge
23 January 2014