



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

Appeal Reference: EA/2019/0167

**Decided without a hearing
On 30 January 2020**

Before

JUDGE ANTHONY SNELSON

Between

MR MARK DOYLE

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

DECISION

The decision of the Tribunal is that the appeal is dismissed.

REASONS

Introduction

1. On 29 May 2018 the Appellant, Mr Mark Doyle, wrote to the London Borough of Hillingdon ('the Council') requesting information under the Freedom of Information Act 2000 ('FOIA') as follows:

Under FOI please supply the following information.

**Parking Scheme WOODHOUSE CLOSE HAYES UB3 1NJ Zone HY5 Op 9am-10pm
Everyday**

How many parking tickets have been issued and how many have been paid since the introduction in February 2017.

How many paid permits have been issued

What was the cost of introducing the scheme

What has been the net financial benefit or moreover deficit to Hillingdon council in the first 12 months since this scheme was introduced.

2. The Council replied on 29 June 2018 as follows:

As I understand it you are seeking to know:

Q1. How many parking tickets have been issued and how many have been paid since the introduction in February 2017.

LBH response: A total of 19 Penalty Charge Notices have been issued in Woodhouse Close between 27th February 2017 and 29th June 2018.

Fifteen of these Penalty Charge Notices have been paid.

Q2. How many paid permits have been issued

LBH response: A total of 13 no. residents parking permits have been issued.

Q3. What was the cost of introducing the scheme

LBH response: The cost to implement the signs for the scheme in Woodhouse Close is £350.

Q4. What would have been the net financial benefit or moreover deficit to Hillingdon council in the first 12 months since this scheme was introduced.

LBH response: Parking management schemes are introduced to support residents and not with any financial targets in mind. However, in the case of HY5, since the scheme was introduced total income of £1540 has been received from PCNs that have been issued or permits that have been purchased. As the cost of implementing the signs for the scheme was £350, this equates to an overall financial benefit of £1190.

3. Mr Doyle was dissatisfied with the answer but, in a letter of 7 August 2018 sent following a review, the Council confirmed that its position was unchanged.

4. Mr Doyle immediately complained to the Respondent ('the Commissioner') about the way in which the Council had dealt with his request.

5. The Commissioner proceeded to carry out an investigation. This took the form of considering the information supplied by Mr Doyle in support of his case and the Council's responses to a number of questions formulated by the Commissioner.

6. On 21 December 2018, while the investigation was underway, the Council provided further information to Mr Doyle in these terms:

The relevant Managers have specified each and every item of expenditure incurred as follows:

(1) Signage - £350 (as stated in the Council's response). This includes road markings.

(2) Statutory advertising.

Statutory Notices were published in the Uxbridge and London Gazette on 9th December 2015 and 8th February 2017. The cost of each Notice was as follows:

9 December 2015

Uxbridge Gazette - £543.20

London Gazette - £209.00

8 February 2017

Uxbridge Gazette - £248.40

London Gazette - £127.60

However, the Notices encompassed 11 different schemes. Therefore, the cost attributed to Woodhouse Close is 1/11 of £1140.20 = £103.65.

(3) Stationery Costs

Residents Permits - £8.97 (38 x £0.236)

Visitor Vouchers - £29.33 (100 x £0.293)

I can confirm that no additional contractor costs were incurred and that the Council does not make any internal recharges for the time of any of its staff (including Legal Services).

Therefore, the total cost to the Council would be £491.55 (£350.00 + £103.65 + £8.97 + £29.33). The Council also received £640 income from paid permits.

The Council confirms that these are the total costs incurred in the Parking Scheme.

7. By a decision notice dated 9 April 2019 ('the DN') the Commissioner determined, on a balance of probabilities, that the Council did not hold information in addition to that already disclosed. She also found that the Council had (by a very small margin) failed to comply with its obligation to respond to the request within the statutory timeframe.
8. In the DN, paras 60-64 the Commissioner addressed three further matters. First, she noted Mr Doyle's complaint that the Council had breached FOIA, s77, which makes it a criminal offence to deface, block, erase, destroy or conceal any information to which a requester is entitled, and found that there was no case to answer. Second, she observed that, as had already been explained to Mr Doyle, she had no jurisdiction to consider cases under "external legislation" or to refer public authorities for investigation. Third, she referred to concerns raised with the Council about the quality of its internal review, noted assurances which it had given about steps to be taken to address the concerns and voiced the hope that improvements would be seen.
9. By a notice of appeal dated 13 May 2019, together with a 10-page attachment, Mr Doyle challenged the DN on a number of grounds.
10. In submissions dated 27 June 2019 prepared by Khatija Hafesji, counsel, the Commissioner joined issue with the appeal and defended the DN.

11. In an eight-page document of 23 October 2019 Mr Doyle responded to the submissions of 27 June 2019.
12. In an email of 28 November 2019 Mr Doyle drew attention to a further FOIA request and the Council's response, sent on 27 November 2019. His thesis was that that response called into question the truthfulness of its response to the request under consideration in this case. The Tribunal had set a deadline of 26 November 2019 for submission of evidence and it appears that the Commissioner has not been invited to comment on the late material.¹
13. The matter came before me for consideration on paper, the parties having agreed that it should be decided without a hearing. I had before me the open bundle of documents (327 pp) and Mr Doyle's bundle of additional documents (425 pp).

The applicable law

14. The Freedom of Information Act 2000, s1(1) enacts a general right of access to information held by public authorities. 'Information' means information recorded in any form (s84).
15. In *Bromley and Information Commissioner v Environment Agency* EA/2006/0072, the Information Tribunal held that any question under reg 12(1) and (4)(a) is to be decided on a balance of probabilities, adding:

Our task is to decide ... whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.

16. The appeal is brought pursuant to the Freedom of Information Act 2000, s57. The Tribunal's powers in determining the appeal are delineated in s58 as follows:

(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 [she] ought to have exercised [her] 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.

¹ Mr Doyle also argued that the timing of the response - one day after the expiry of the deadline for evidence in this case - was "no coincidence".

Analysis and conclusions

17. I am satisfied, for the following reasons, that the Commissioner's decision was correct.
18. First, Mr Doyle bases his case in part on matters which are not within the Tribunal's jurisdiction and therefore cannot be considered. I am confined to considering an appeal under FOIA, s57. In particular, I have no power to entertain a complaint under s77, which provides for a criminal liability enforceable, if at all, in the Magistrates' Court.
19. Second, Mr Doyle's challenge seems to be based at least partly on a mistaken understanding (commonly encountered) that FOIA attaches to *any* information, rather than to information in a recorded form (*i.e.* for present purposes, some form of document). A public authority is under no obligation to *create* documents in response to requests for information.
20. Third, Mr Doyle misunderstands in three further ways the legal framework within which a dispute as to whether a public authority 'holds' relevant information is to be decided. (a) Mr Doyle is plainly wrong in objecting to the 'balance of probabilities' test. That is the civil standard of proof. I am not aware of any decided case (at any level) in which any other standard of proof has been adopted. (b) Mr Doyle is equally wrong in praying in aid a 'public interest' test. Not surprisingly, there is nothing in the statute prescribing such a test as a means of determining a simple factual question, namely whether or not relevant information is 'held'. (c) The 'public law principles' and the 'Nolan principles' which Mr Doyle cites are also inapplicable. These are concerned with standards of conduct; self-evidently, they cannot help on whether a particular body 'holds' particular information.
21. Fourth, the evidence of the searches which the Council claims to have conducted within three departments (summarised in the DN, paras 22-25) is not only rational and plausible but also in keeping with the documentary material disclosed.
22. Fifth, the evidence vindicates the Commissioner's view that the searches carried out were reasonable and proportionate. The law does not set a higher standard of diligence than that.
23. Sixth, the information supplied by the Council (in documents disclosed and/or in answers voluntarily supplied) is not shown to be dubious (despite the fact that Mr Doyle's figures, based on his estimates, disagree). That disagreement, which I am in no position to resolve on the papers, does not call into question the credibility of what has been disclosed and does nothing to undermine the Council's denial of any material non-disclosure.

24. Seventh, Mr Doyle's argument that there *ought* to be further documents, even if it has substance (as to which, on the evidence, it is not possible for me to form a confident opinion), is nothing to the point.
25. Eighth, nothing in the voluminous evidence in the two bundles put before me suggests the existence of relevant undisclosed documents.
26. Ninth, it is not *likely* (as already explained, I must decide the case on a balance of probabilities) that, despite the fact that the disclosed information (including documents) is internally consistent, there is some other document or body of documents in the Council's possession which tells a materially different story.
27. Tenth, Mr Doyle's theory of deliberate suppression is deeply improbable, for three reasons. (a) As already explained, I do not consider it *likely* that there are any relevant documents to suppress. (b) It is also not *likely* that a Council official (or more than one) would commit the serious misconduct alleged, which would put him/her/them in obvious jeopardy. (c) The theory becomes all the more improbable when one looks for a plausible motive for the deception alleged. I have stood back to remind myself (as perhaps Mr Doyle would benefit from doing) of the narrow scope and tiny scale of the request: it is about one local parking scheme, involving an exceedingly modest outlay, affecting a small number of people and constituting an infinitesimally small part of the Council's Borough-wide function. Seen in its proper context, the theory of manipulation and skulduggery can only be seen as fanciful.
28. Eleventh, the additional evidence which Mr Doyle seeks to put in by means of his email of 28 November 2019 is out of time and it would not be fair to admit it. He could have applied for time to be extended. If the Registrar had granted the application, no doubt she would have permitted the Commissioner to raise further inquiries with the Council and then deliver representations to the Tribunal as necessary. As things stand, the Commissioner has not been given any chance to respond. I have considered whether to adjourn the matter but have decided that it would not be appropriate to do so. That would delay justice and add to the burden on the Council, the Commissioner and the Tribunal (three hard-pressed public authorities). The case is anything but complicated (despite the mass of paper generated). Putting off the outcome any further would not be in keeping with the overriding objective (see the First-tier Tribunal (General Regulatory Chamber) Rules 2009, rule 2).²
29. For all of these reasons, I conclude that the Commissioner's finding that the Council did not hold the further information sought was in accordance with the law. Accordingly, there was no breach of the duty to disclose.

² It may help if I add that, had I admitted the late material, I would have rejected Mr Doyle's surprising claim that it demonstrated that the information disclosed in answer to the request of 29 May 2018 was "incomplete" and "knowingly misleading" and indicative of "deliberate and systematic withholding of information." I would have found in the new material no shred of evidence to substantiate these florid assertions.

Outcome and postscript

30. The appeal is dismissed.
31. Freedom of information disputes often spark strong feelings, particularly on the part of complainants who sincerely believe that their requests have not been properly addressed. Public authorities must expect to receive robust letters and messages on occasions. But I am somewhat troubled by Mr Doyle's tone which, in places, seems to me to come close to the dividing line between legitimate challenge and outright abuse. He would do well to be mindful in future of the need to avoid crossing the line; those who do may put themselves at risk of their request for information being defeated by a defence under FOIA, s14.

(Signed) Anthony Snelson
Judge of the First-tier Tribunal

29 February 2020
Promulgated date: 04 March 2020