Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2008/0053
Information Commissioner's Ref: FS50125204

Determined on papers by teleconference held on 5 September 2008

Decision Promulgated

16 September 2008

BEFORE

CHAIRMAN

MURRAY SHANKS

and

LAY MEMBERS

ROSALIND TATAM

HENRY FITZHUGH

Between

MR AND MRS BEDI

Appellant

and

INFORMATION COMMISSIONER

Respondent

Decision

The Tribunal finds that the Appellants have no reasonable grounds of appeal and the appeal is accordingly struck out.

Reasons for Decision

1. On 19 March 2005 Mr and Mrs Bedi requested the London Borough of Hounslow under section 1 of the Freedom of Information Act 2000 to supply them with details of all the council's employees, including the department they work for, the head of department, their email addresses and their direct telephone and fax numbers. The council refused to comply with the request on grounds of cost but, following an adverse decision by the Information Commissioner, they re-considered the request. On 23 June 2006 the council issued a refusal notice relying on sections 31 and 40 of the Act. The Bedis complained to the Commissioner again under section 50 and the Commissioner, in a decision notice dated 25 June 2008, upheld the council's position so far as it related to staff other than heads of department, relying on section 36 of the Act ("Prejudice to effective conduct of public affairs") which the council had raised in the course of the Commissioner's investigation.

2. The Bedis' grounds of appeal to this Tribunal are set out in their letter dated 27 June 2008. The Commissioner says the letter discloses no reasonable grounds and that the appeal should be struck out. The Bedis were given an opportunity to put in written submissions on the point (as they did) and the issue has been decided by the Tribunal on the papers without a hearing.

3. The relevant provision of the Act is section 58(1):

> If on any appeal under section 57 the Tribunal considers-
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> (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,
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> the Tribunal shall allow the appeal or substitute [another notice]; and in any other case the Tribunal shall dismiss the appeal.

Thus it is only if there are grounds for saying that the decision notice dated 25 June 2008 was not in accordance with the law or involved a wrong exercise of a discretion that the Bedis would have a viable appeal. By rule 9(1) of the Tribunal's

rules of procedure the Commissioner can apply to the Tribunal to strike out an appeal if "…the notice of appeal discloses no reasonable grounds of appeal".

4. There are five grounds of appeal relied on in the Bedis' letter of 27 June 2008. The first is that the decision was taken by a Deputy Commissioner and that it "overruled" an earlier decision taken by the Information Commissioner himself. It is clear that the decision did not "overrule" the earlier decision. The earlier decision was that the council had wrongly relied on section 12 of the Act ("Exemption where cost of compliance exceeds appropriate limit") and that they should reconsider the matter in accordance with the Act within 30 days. It is that reconsideration which led to the refusal notice dated 23 June 2006 which is the subject of this appeal. The Tribunal is quite satisfied that the Deputy Commissioner had authority to issue the decision notice in question on behalf of the Commissioner by virtue of para 5 of Schedule 5 to the Data Protection Act 1998 which is cited in the Commissioner's Reply.

5. The second ground of appeal is that the Deputy Commissioner failed to direct the Bedis to the statutory instrument which entitled him to "overrule the decision made by his superior". As will be clear, we are satisfied that the premise of this complaint is false. In any event, there was no requirement for the Deputy Commissioner to refer to the statutory provision giving him authority to act.

6. The third ground of appeal is that there has been undue delay in arriving at the decision. Although there is no time limit for a section 50 decision in the Act, we are bound to say that two years seems to us an inordinate amount of time for a decision of this kind to be reached. The Commissioner submits in his Reply however that delay in reaching a section 50 decision is not a valid ground of appeal under section 58. This submission is clearly correct in our view: section 58 looks only to the content of the decision notice and not to how quickly it was issued.

7. The fourth ground of appeal relied on is a failure to direct the Bedis to the statutory provision entitling the Deputy Commissioner to cause such delay. There is, of course, no such provision and this complaint does not give rise to an arguable appeal.

8. The fifth ground of appeal is that the Deputy Commissioner failed to advise the Bedis of such delay. We are not in a position to say whether or not the Bedis were

advised about the delay but, even assuming they were not kept properly informed, that would not provide an arguable basis for an appeal.

9. The Tribunal therefore concluded that none of the points raised in the Bedis' letter dated 27 June 2008 discloses any reasonable grounds of appeal. The Tribunal considered an additional point raised in their submissions to the Tribunal dated 15 August 2008 which might potentially have given rise to a ground of appeal. Paragraph 7 of the submissions states: "…the Council has asserted…that both appellants have been unnecessarily vexatious in the past. Both appellants refute this and put the Council to strict proof". It is correct that the Commissioner's decision notice refers to and appears to accept the council's evidence to the effect that the Bedis had acted vexatiously towards it in the past when considering whether the council could rely on section 36 (see paras 32, 33 and 44 of the Commissioner's decision notice in particular) and it is correct that on an appeal the Tribunal can review any finding of fact on which the notice is based. But in this case even if the Bedis were able successfully to challenge the council's evidence about this, we do not consider that it would make any difference to the correctness of the Commissioner's decision on section 36, which is not (or should not be) dependant on any finding as to what the Bedis as individuals might do with the information requested, but rather on the use members of the public in general might make of it.

10. In all the circumstances we are satisfied that the Bedis have no viable appeal in this case and that their notice of appeal should be struck out.

11. Our decision is unanimous.

Murray Shanks

Deputy Chairman Date: 16 September 2008