



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0182
Appellant: Edward Williams
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. On 18 December 2013 Mr Williams made a request for information under the Freedom of Information Act (FOIA) to London Councils, a cross party organisation representing London Councils which is a “public authority” for the purposes of FOIA. The request concerned the activities of POPLA (Parking On Private Land Appeals). London Councils refused the request on the ground that, although it held the information, it did so on behalf of the British Parking Association. By virtue of Section 3(2)(a) FOIA, the duty to disclose the information did not apply.
2. Mr Williams complained to the Information Commissioner (ICO). On 22 July 2014 the ICO sent a notice to Mr Williams referring to FOIA, to a case reference number and to Mr Williams’ FOIA request. The notice said that the ICO was unable to make a decision on his request for a ruling because POPLA is not a public authority and the public therefore has no rights of access to information from POPLA or from the British Parking Association. The letter went on to say that as the information which Mr Williams had requested had now been released his case was being “closed”.
3. It is common ground that the information requested by Mr Williams is now in the public domain.

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4. Mr Williams has appealed to the Tribunal. He is anxious to establish that POPLA is subject to FOA.
5. The ICO submits that the Tribunal has no jurisdiction to entertain the appeal because “no decision notice has been served”. It has been suggested that Mr Williams should either ask for a decision notice or contemplate judicial review proceedings in the High Court.
6. I do not accept this submission.
7. It is not in doubt that Mr Williams has made a request for information to a public authority and has made an application to the ICO under Section 50 FOIA for a decision.
8. The ICO is then under a duty to make a decision by virtue of Section 50(2) unless any of the following sub paragraphs applies:-
 - (a) The complainant has not exhausted the public authority’s complaints procedure.
 - (b) Undue delay.
 - (c) The application is frivolous or vexatious.
 - (d) The application is withdrawn or abandoned.
9. If the ICO wishes to invoke any of these exceptions then he must notify the complainant that he has not made a decision. The notice must specify which of the grounds under Section 50(2) FOIA are relied on. There is no free standing discretion not to make a decision. The language of Section 50(2) is mandatory.
10. It is not suggested that the notice received by Mr Williams relies on any of the statutory exceptions.
11. Is it then a decision notice? I see no reason why it is not. It may not follow the ICO’s usual format; it may not have gone through the ICO’s usual procedure for decision notices. It is, nonetheless intended to be the ICO’s final communication to

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Mr Williams on his complaint. A decision not to intervene still carries all the characteristics of a decision, especially in the statutory context of a duty to decide.

12. Having regard to GRC Procedural Rule 2, however, I do not think it would be right to ask the ICO to proceed to prepare a response and to join in the litigation.
13. As I have indicated, the information requested by Mr Williams has now been released into the public domain. This means there is nothing left to argue about. In technical language, the proceedings have become “academic”. Mr Williams may say that he wants a ruling on the status of POPLA but the Tribunal cannot give such a binding ruling. Moreover, it is well settled that in these circumstances the correct thing for the Tribunal to do is to refuse to give a decision on the ground that the point is now “academic”.
14. This being so, Mr Williams has no prospect of success in his appeal. In my judgement the proper thing to do is to bring it to an end now on that ground under Rule 8. I would be doing no one any favours by allowing it to continue.

NJ Warren

Chamber President

Dated 13 August 2014