



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

Appeal No: EA/2015/0002

BETWEEN

JAMES CUSACK

Appellant

and

INFORMATION COMMISSIONER

Respondent

Tribunal

Brian Kennedy QC

Alison Lowton

Narendra Makanji

Hearing: 5 May 2015, 18 February 2015.

Location: Fox Court London.

Decision: **Appeal Refused.**

Subject Matter: Disclosure of information under Section 1(1) of the Freedom of Information Act 2000 ("FOIA") and reliance by the Public Authority, the Walsall Council ("the Council"), on the fact that they do not hold the specific requested information.

Introduction:

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("the DN") dated 8 November 2014 (reference FS50533465), which is a matter of public record.
2. A paper hearing took place on 5 May 2015 the parties having agreed to this form of hearing. The Tribunal has been provided with a paginated (1- 188) and indexed Open Bundle ("OB"), along with a hand written letter (3 pages) to the Tribunal dated 24 February 2015 from the appellant. We also have the usual pleadings of the DN, the grounds of Appeal and the Commissioner's Response much of which, for the sake of completeness, we repeat herein as there is little

by way of issue between the parties on most of the factual matrix or legal issues in this appeal.

Background:

3. On 9 September 2013 the Appellant wrote to the council in the following terms: *"I would like a letter saying at no time have the council anyone involved with the council in any way received from Vodafone payment in any way, in the past or any agreement for payment in the future, or for any work done by Vodafone i.e. digging up the pavement to connect cables and how do Vodafone pay for the electricity used"*.
4. On 10 October 2013 the Council responded [**pages 22 to 23 OB**]. The Council confirmed that no money is received from Vodafone in relation to their works on the highway. It then went further to explain how the organisation undertakes work and the licensing involved.
5. On 17 December 2013 the Appellant made a further request to the Council in the following terms: *"I want an answer to the following only. That at no time in the past or present has anyone who is involved with the Walsall Council at any time received payment from Vodafone in relation to the mast sited at Waverley Avenue."*
6. The Council responded on 6 January 2014 [**pages 24 – 25 OB**]. The Council advised that their records show that they have no recorded information about any payments received from Vodafone relating to a mast in Waverley Avenue, other than a planning application fee.
7. Following an internal review the Council responded on 25 February 2014 upholding its initial responses [**pages 26-28 OB**].
8. The appellant subsequently complained to the Commissioner about the Council's response to the request.

The Commissioner's Investigation and DN:

9. In his letter dated 9 May 2014, the Commissioner set out the parameters of his investigation: whether the Council handled the Request in accordance with the FOIA and had appropriately searched for any information within the scope of the request. In doing so he has indicated that he would be asking the Council to revisit the request [**pages 32 to 34 OB**].
10. The Commissioner subsequently issued his DN on 8 November 2014 concluding that, on the balance of probabilities, the Appellant has received all recorded information that falls within the scope of the requests [**pages 1 - 5 OB**].

The Commissioner's Response to the Grounds of Appeal:

11. From his consideration of the Appellant's grounds of appeal ("the Grounds") the Commissioner has understood the Appellant's concerns to be that the Council has failed to answer his "*straightforward request*" is. The tribunal agrees with this interpretation as being reasonable in the circumstances.
12. Generally, the commissioner relies on the DN in setting out his findings and the reasons for those findings. On matters such as this one, where a Public Authority ("PA") has provided all the recorded information that falls within the scope of the Requests, the only issue for the Commissioner (and the Tribunal) is whether the Public Authority, the Council herein, has provided all the recorded information it holds relating to payments from Vodafone to the council.
13. The Commissioner investigated whether, on the balance of probabilities, the Council had provided all the recorded information within the scope of the appellant's requests.
14. During the course of the Commissioner's investigation, the Council provided him with information, which it considered fell within the scope of the request, **[see paragraph 16 of the DN]**.
15. The Commissioner argues that it is clear from the evidence that the Council has carried out thorough and reasonable searches for the information requested. The Commissioner argues that he was entitled to rely upon the explanation given by the Council of the searches carried out by the council to satisfy himself, on the balance of probabilities, that reasonable searches had been carried out by the Council and that the Appellant has now received all recorded information falls within the scope of the requests **[see paragraphs 13 – 20 of the DN]**.

Reasons:

16. The Tribunal accepts and adopts the Commissioner's reasoning throughout the DN. In fact the Appellant does not argue to any significant degree that the Commissioner is flawed in his reasoning. Rather he seems to argue that the Commissioner has been misled. The Appellant argues not against the reasoning per se except to say that it cannot be right because the Council must have some further information within the scope of the request. As is often the case in this type of appeal, the grounds are based not so much by a demonstration that that the Commissioner's reasoning is wrong, in fact or in law, but that the facts, as the Appellant sees it suggest to them that the PA must be withholding information and facts from the Commissioner in the course of his investigation.
17. Essentially the Appellant is arguing that the further requested information should or must exist. In his letter of 24 February 2015, the Appellant again does not criticise the Commissioners' investigation or conclusions per se but in effect argues the Council were receiving money from Vodafone for their masts and in some way covertly supporting and benefiting from the presence of their masts. We see no evidence to support the contention that this is so or that the Council

holds any further information within the scope of the requests from the Appellant than the Council have already provided.

- 18.** For the reasons above and in all the circumstances of this case we find that on the balance of probabilities the Council do not hold any further information within the scope the requested information. We find the Commissioner was correct and the DN should stand. Accordingly we refuse the appeal.

Brian Kennedy QC
Tribunal Judge

5th June 2015.