



Appeal number: EA/2018/0174

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

ANTHONY MORRIS

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Determined on the papers, the Judge sitting in Chambers on 26 November 2018

DECISION

1. The appeal is dismissed.

REASONS

Background to Appeal

2. The Appellant made a request to Devon and Somerset Fire and Rescue Service (“the Service”) on 2 December 2017 in the following terms:

“In your draft IMRP for 2018-22 you state that ‘over 70% of incidents we attend could be fully dealt with by a crew of two’. I will be grateful if you could send me a copy of the evidence that this statement is based on, including any research papers and risk assessments”.

3. The Service replied on 4 January 2018, disclosing certain information within the scope of the request. It explained that the statement was based on an approximation of the incidents which could be handled by a smaller crew. Its response was upheld on internal review.

4. The Appellant complained to the Information Commissioner that the Service had failed to disclose additional information (the “raw data”) which he thought it must hold. The Information Commissioner issued Decision Notice FS50727840 on 24 July 2018, in which she found on the balance of probabilities that no additional information was held. She required no steps to be taken by the Service. The Appellant appealed to the Tribunal.

Appeal to the Tribunal

5. The Appellant’s Notice of Appeal dated 13 August 2018 relied on an alleged error of law by the Information Commissioner in reaching her conclusion that no more information was held.

6. The Respondent’s Response dated 27 September 2018 (amended 5 October 2018) maintained the analysis as set out in the Decision Notice.

The Law

7. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“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 he ought to have exercised his 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.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

8. The burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Conclusion

9. Whilst I can see why the Appellant considers that more information must be held by the Service, the question for me to decide is more nuanced. I must consider whether the “raw data” he seeks falls within the scope of the request he actually made.

10. Having considered the matter carefully, I find I am not persuaded that a request for evidence including research papers and risk assessments can reasonably be understood also to include within its scope the raw data which underpins such documents. The Appellant may of course wish to make a further information request which is more specifically-worded.

11. In these circumstances, I discern no error of law in the Decision Notice which is the subject of this appeal. Accordingly, this appeal is hereby dismissed.

(Signed)

ALISON MCKENNA

DATE: 26 November 2018

CHAMBER PRESIDENT

PROMULGATION DATE: 28 November 2018