



FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER

Appellant: Masood Akhtar	Tribunal Ref EA/2011/0237
Respondent: The Information Commissioner	
Second Respondent: Blackburn with Darwen Borough Council	

DECISION NOTICE

1. This appeal fails for the following reasons.
2. In 2005 and again in 2008 and 2009, Mr Akhtar was troubled from time to time by noise and vibration coming from a neighbour's house. Sometimes the problem was music; at others, the source appeared to be a washing machine or a fan. He reported the difficulties to Blackburn with Darwen Borough Council ("Blackburn"). Their environmental protection department chose to deal with them informally and did not serve a noise abatement notice. This has led to successive requests for information citing the Data Protection Act, the Freedom of Information Act and the Environmental Information Regulations and ultimately to these proceedings. Mr Akhtar has felt the need to engage successive firms of solicitors. Blackburn claim to have responded, in the course of eight months, to 23 individual pieces of correspondence containing a request for over 65 points of information and say that the "resource involved in appeasing the complainant is not sustainable".
3. At an earlier case management hearing, the Tribunal attempted to resolve a dispute which seemed now to be increasingly remote from the original problem of noise levels. The original appeal form supplied to Mr Akhtar did not invite him, as it should have done, to state the result he was seeking from the proceedings. The Tribunal invited Mr Akhtar to produce a list of all that he was now looking for. He did so. The Tribunal joined Blackburn as a party and sent the list to Blackburn in the hope that settlement might be

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reached (see page 115, para 7(e)). Blackburn replied (pages 91-92) to the effect that most of the documents had been supplied. Some had not been because either the information was not held or the information contained third party personal data. Solicitors for Mr Akhtar (pages 101-103) disputed these conclusions and asserted that they wished to see original hand written notes rather than the transcriptions on Blackburn's electronic Flare system. The solicitors asked for an order for costs against Blackburn for unreasonably defending the claim.

4. That attempt at securing agreement has obviously failed. We must now therefore turn to decide the appeal. The starting point must be not the requests currently made by Mr Akhtar's solicitors but the original request for information dated 24 May 2010. This is in six paragraphs and a copy appears at page 2 of the bundle. By the time of the Information Commissioners' decision, only paragraphs 3, 4 and 6 were in dispute (page 52 para 16, page 34 para 33).
5. By the time of the case management hearing, para 3 had also fallen by the wayside. This was a request for Blackburn's internal guidelines dealing with statutory nuisances. Originally, the Information Commissioner's Office (ICO) accepted a submission from Blackburn that no such policy existed. Since then, a 2007 document which includes material which would cover statutory nuisances has been discovered by Mr Akhtar on the council's website. See paras 20-22 of the ICO response at pages 25-27. At the case management hearing Mr Akhtar agreed that there was no need to pursue this any further (pages 112, 114 and page 37 para 53). That leaves paragraphs 4 and 6 of the request.
6. Paragraph 4 reads:-

“Please forward a copy of any minutes, reports, papers or internal correspondence dealing with my complaints of 2005, 2008 and 2009.”
7. Somewhat obscurely, the ICO decision notice states that during the investigation the ICO had agreed with Mr Akhtar that the scope of issues that should be considered under paragraph 4 was limited to whether Blackburn held:-

“An email requesting that two officers from Pendle Borough Council give statements in regards to the environmental complaint.”

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The ICO approach emerges from paras 29-35 of the decision notice (pages 6-7). Blackburn had sent an email, now deleted, asking a neighbouring borough council who provided a shared out of hours service with them for witness statements. Mr Akhtar told the Tribunal at the case management hearing that he no longer pursued this issue (He had said as much to the ICO – see page 203). The emails came to prominence only because they were said to be the only information contained within the para 4 request which, according to the ICO view, did not fall to be treated as Mr Akhtar’s “personal data” and thus disclosable to him only under Data Protection Act rules. The issue which Mr Akhtar asked the tribunal to address in respect of para 4 was whether the ICO had been correct to approach this material under the Data Protection Act.

8. This challenge comes somewhat late in the day. Mr Akhtar had previously insisted that a subject access request for identical or similar information made in January 2010 should be dealt with under the Data Protection Act. The ICO later made an assessment of Blackburn’s handling of that request under reference RFA0298482.
9. We have not seen all the material provided. It is plain, however, that there are no public documents such as minutes of council committees involved. Information would seem to us to be personal data of the type protected by the Data Protection Act and we accept the submissions made on this point by the ICO at pages 104-111.
10. That leaves as the remaining area of dispute para 6 of the request in which Mr Akhtar asked “to view the property file” in respect of his home. Mr Akhtar explains that he means the property file held by the department dealing with environmental health. He is not concerned with anything that might be held by the council tax department.
11. Blackburn refused this request. They told the ICO that their property file was held electronically on its Flare system. All such systems have strict rules concerning access and the Flare system rules did not extend to members of the public. The ICO was not satisfied with this response and required Blackburn to disclose the information on the property file to Mr Akhtar in an alternative format such as a print out or by email. Blackburn now say they have done this to the ICO’s satisfaction.

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12. Mr Akhtar's point now in relation to the paragraph 6 request is that the ICO's decision focuses only on the Flare system file. He maintains that there is also in existence a paper file relating to his home and he wants that disclosed as well.
13. To resolve this issue we carefully considered Mr Akhtar's evidence at pages 44-45 and the evidence of Mr Allen, who is Blackburn's head of service for public protection, at page 278. We accept Mr Allen's evidence that there is no paper file in respect of Mr Akhtar's home address and the environmental protection team have not kept paper files for a number of years. He is in a position to know the authority's policy and we cannot conceive of why he would make such a statement if it were untrue. If anything, Mr Akhtar's evidence supports this because he says that when, at a meeting, he asked one of Blackburn's employees "Did you bring the file?" she replied "Some". That is exactly the reply which would be given if an employee had downloaded from electronic storage some of the material available. It is most unlikely that an employee would bring "Some" of a hard copy file when it is so much easier just to bring the entire file. It is true that, contrary to an earlier impression that had been given, original notebooks are securely archived after the contents have been transferred to the Flare system in case the originals are needed for court hearings. We have read the suggestions made on Mr Akhtar's behalf that these notebooks might contain more information including a possible visit to the premises on 3 March 2009. We have also read the Flare records reproduced in the bundle (including pages 272a and 272b, originally accidentally omitted by the ICO). The Flare records seem to us to provide a coherent and detailed catalogue of events. We did not accept the criticisms made. In particular the events recorded on 2 and 4 March do not suggest anything significant occurring on 3 March; and it seems to us a weak point that a note beginning "Yesterday..." means that some other note from the day before giving additional information is likely to exist.
14. It may be that we are trespassing into DPA territory, but we are satisfied from the material before us that Flare system gives a full account of the information held on the hard copy notebooks. There is no hard copy file. We therefore consider that the ICO treated part 6 of the request correctly in ordering the disclosure of the Flare file.
15. In Mr Akhtar's response (see for example paras 35, 48, 50 and 133) he criticises a number of shortcomings in Blackburn's handling of his request for information and asks that the

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ICO decision notice be amended accordingly. There have been mistakes and delay in Blackburn's response to the information request. The extent to which these form part of the decision notice is a matter of judgement and proportion. We consider that the ICO handled procedural issues fairly at paras 47-49 of the decision notice. We do not regard the notice as erroneous or exercising a discretion in any way in which we would take a different view. Nor would any purpose be served by elaborating in the detail requested by Mr Akhtar.

16. This decision was made without a hearing. All three parties had consented to that procedure and we were satisfied that we could properly determine the issues without a hearing.

Signed:	NJ Warren	Date:	23 August 2012
	Chamber President		
Member:	J Blake		
Member:	Dr M Clarke		