



ON APPEAL FROM:

**The Information Commissioner's Decision Notice No:
FS50511576**

Dated: 6th. January, 2014

Appeal No. EA/2014/0035

Appellant: David Gawan ("DG")

Respondent: The Information Commissioner ("the ICO")

Before

David Farrer Q.C.

Judge

and

Rosalind Tatam

and

Melanie Howard

Tribunal Members

Date of Decision: 20th. August, 2014

Date of Promulgation: 27 August 2014

The appeal was determined on the papers

Subject Matter

Environmental information Regulations reg. 5(1)

Whether the authority held the requested information.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 20th. day of August, 2014

David Farrer Q.C.

Judge

[Signed on original]

REASONS FOR DECISION

The Background

1. This appeal arises from DG's understandable concerns as to the activities of a neighbour who was believed to be operating a car repair business, involving the use and storage of substantial equipment, in a nearby house. If he was, issues both of health and safety and of breach of planning control arose.
2. In or about March, 2013 he contacted Warwick District Council ("the Council") to report these developments. Letters and telephone calls followed.

The Request

3. On 14th. June, 2013 he wrote a letter headed "The Freedom of Information Act" to an officer of the Council, posing a question as to the status of Warwickshire Trading Standards and then making the following request for information :-

"Health and Safety Executive" One presumes that upon (a council officer's) contact either by telephone - e - mail a representative visited the said site and thus made out a report ? I request a copy - under the said act of their visit.

Environmental Health Team Their representative, as far as I am led to believe, visited the site on or around the 20th. of March 2013, Mr. Jeremy

Wright, my member of parliament did not confirm or deny that this statement is correct. One presumes he has given a written report. Once again under the said act, I request a copy of the report.”

4. Replying on 17th. July, 2013, (outside the statutory time limit), following an earlier acknowledgement of the request, the Council stated that when alerted to this problem, its Environmental Health Department (“EHD”) had referred the matter to the Health and Safety Executive (“the HSE”), the enforcing authority, that it had received no report from the HSE and therefore did not hold the requested information. DG immediately complained to the ICO.
5. By letter dated 12th. August, 2013, the Council indicated that it maintained its position following an internal review.

The Decision Notice

6. Although this matter had proceeded up to this point on the footing that it fell within the FOIA jurisdiction, it is quite plain that the disputed information was “environmental information”, as defined in regulation 2(1) of the Environmental Information regulations 2004 (“the EIR”). Since the sole issue was whether the Council held the information, nothing turned on the point. The test under EIR regulation 5(1) is the same for present purposes as under FOIA s.1(1.).
7. The Council informed the ICO that there had been no visit by an EHD officer on 20th. March, 2013 but that a planning officer had visited the

relevant property because of the apparent commercial use and reported the matter to EHD. EHD had passed it to the HSE via a telephone call since it had no jurisdiction to deal with it. It had no copy of an HSE report, had no reason to receive one and had not investigated the matter itself. The planning issue remained with the Council's planning department which pursued the matter and generated a substantial quantity of documents in relation to it.

8. The ICO concluded, on a balance of probabilities that the Council held no report within the scope of the Request. He judged that it had no reason to hold an HSE report and that the matter was not within the competence of the EHD, hence it would not have produced a report in the first place.
9. DG appealed. The relevance of his grounds of appeal to the sole issue for adjudication by the Tribunal is unclear. However, he expressed disbelief as to various statements made by officers of the Council so it is clear that he disputes claims that the Council held no report. of the kind requested.

Our Reasons

10. The Tribunal is concerned solely with the question whether the Council holds a report of either of the categories referred to in the Request. Whether it should have acted differently in relation to DG's neighbour's apparent breaches of planning control is not for it to determine.
11. We see no reason whatever why the Council should hold a copy of either category of report. The EHD does not handle health issues arising from

commercial use of a domestic property; that is a matter for the HSE. The HSE deals with such complaints without reference to the district council. It does not report back to it.

12. Unlike the Chamber President when he dealt with the application to strike out, we have been provided with and have read the two extensive files held by the Council relating to this matter. They are unquestionably and exclusively planning department files, recording the aspects of this commercial activity which impinge on planning, specifically enforcement decisions. They include a wealth of correspondence, much of it from DG. They have no relationship to the types of report requested.

13. For these reasons we uphold the Decision Notice.

14. Like the ICO, we repeat the Council's advice that DG make a FOIA request to the HSE.

15. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge.

20th. August, 2014