



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

Case No. EA/2014/0005

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50516553
Dated: 10 February 2014**

Appellant: DR ALI AL-HAKIM
Respondent: INFORMATION COMMISIONER
Heard at: MANCHESTER HMCTS CENTRE
Date of hearing: 30 JUNE 2014
Date of decision: 25 JULY 2014

Before

ROBIN CALLENDER SMITH
Judge

and

MALCOLM CLARKE and MARION SAUNDERS
Tribunal Members

Attendances:

For the Appellant: Dr A Al-Hakim
For the Respondent: Written representations from Mr M Thorogood,
Solicitor for the Information Commissioner

Subject matter: FOIA

Whether information held s.1

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 10 February 2014 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Dr Al-Hakim (the Appellant) believes that there is a piece of information held by Transport for Greater Manchester (TfGM) which will explain how a particular bin store came to be built.
2. He is convinced that this information is being deliberately withheld from him and that the Commissioner's conclusion, that TfGM does not hold it, is wrong.

The request for information

3. On 11 March 2013, the Appellant wrote to TfGM and requested information in the following terms:

All the communications (paper, electronic and documented telephone discussions) within Metrolink and between Metrolink and their contractor, between the contractor and the [redacted] pizza proprietor regarding the building of a bin store at [redacted] Road station, which led to building the bin store at the site, instead of the indicative site of a Cycle parking on the station map before the building (a copy of the original plan/drawing was later requested on 28 March 2013). Any prior consultation before the decision to build the bin store with the council, residence or commercial bodies in the area.

4. TfGM responded on 10 April 2013 and provided the Appellant with some of the information in the form of correspondence between him and TfGM, correspondence between TfM-MCC-MPACT and a road plan. The Appellant, in asking for an internal review, stated:

I feel certainly there [is] some recent communications between Manchester city council planning department and the Metro link/contractor. The emails chain is not complete specifically regarding the finding out of the owner of the Bin and the nature of the complaint regarding some damage caused by the contractor. I also some couple of years ago I have made some contact regarding this issue [with a named individual in the advanced planning group]. The above is only an example and I await for confirmation of your final disclosure.

5. TfGM responded on 19 June 2013:

[Redacted] was asked to retrieve all communications from TfGM's Stakeholder database which made reference to the bin store. The documentation supplied by [redacted] as part of this review did not reveal any correspondence or documentation in addition to those previously supplied by [redacted] in her original response.

I also met with [redacted] to discuss the content of your email to me dated 30 April 2013 in which you brought [redacted] email (dated 9th May 2011) to my attention. Miss W confirmed to me that she did not have any associated email correspondence with either [redacted] or MPT on this topic. Upon receipt of the email she did discuss the matter internally with TfGM's stakeholder team who were aware of your concerns and were tasked with dealing with your complaint. [Redacted] was able to supply copies of the land registry information about the ownership of the site of the bin store obtained by GMPTE in January 2010, and additional photographs of the bin store supplied by MPT which I have enclosed for your attention.

6. TfGM stated it did not hold any additional information other than that already supplied to the Appellant.

The complaint to the Information Commissioner

7. The Appellant contacted the Commissioner on 25 September 2013 on the basis that some correspondence he had asked TfGM for had been omitted and the information provided to him had been selective and false.

8. The Commissioner investigated the matter, considered representations made by the Appellant and TfGM and concluded that although it was possible that TfGM had not provided all the information at the time of the request, it had been disclosed at the internal review stage. TfGM did not hold any additional information relevant to the request.

The appeal to the Tribunal

9. The Appellant's Ground of Appeal remained, in substance, the points he made again in greater detail at the oral hearing of his appeal. They are summarised briefly here:
 - A commercial refuse bin belonging to a neighbouring pizza shop next to the Appellant's property was left – around the day of refuse collection – in an old bin store on TfGM land.
 - A TfGM contractor had built a new bin store “outwith the TfGM land on an unregistered piece of land” which was detrimental to the Appellant as the owner of his property. It was also detrimental to the public as a whole because it was situated between the Burton Road Metro link and a public pathway, it was causing serious problems and – visually – it was an eyesore.
 - The Appellant was determined to find out how this bin store came to be built.
 - None of the information or emails supplied to him answered that question. He did not believe that a contractor would have been able to build the bin store [pictures of it reveal that it is moderately sizeable wooden structure] without authorisation from some department and with someone actually paying the cost.

- The bin store seem to have been built by the contractor for the pizza shop and not – as had been suggested – for the residential community as a goodwill gesture.
- He wanted to know specifically who authorised the contractor to build the bin store, who paid for the cost building it and who now owned the structure.
- He believed that TfGM had failed to reveal all the relevant correspondence in relation to this. He also believed that he had been provided with emails that were only partial in the information they revealed.
- He believed bin store was a statutory nuisance and, to take effective action in respect of this, he needed all the information in relation to it.

The questions for the Tribunal

10. Did TfGM hold information in relation to the Appellant's request that it had failed to disclose to him?

Evidence

11. We considered carefully all the information disclosed to the Appellant and to the Commissioner in respect of his investigation.

12. There is an email dated 3 December 2012 from the Stakeholder and Communications Manager of that sector of TfGM to the Appellant which includes the following:

Having discussed this matter with our contractor I confirm that a bin storage facility was in place prior to our works taking place in this area (see picture below). During the course of our works, the bin storage

facility already in situ was rendered unusable due to the changes in ground levels. A temporary structure, requiring no planning permission, was erected as a direct replacement for the former facility. This was a good will gesture on behalf of our contractor, intended to assist local residential properties which seem to use this facility.

[The contractor] for Metrolink works in this area do not intend to remove the newly installed bin store facility. TfGM do not intend to instruct [the contractor] to remove the bin store facility. Should you have issues or concerns relating to the storage bins and general refuse disposal in this area, we advise that Manchester City Council's environment team would be best place to advise you.

Conclusion and remedy

13. It was clear to the Tribunal, at the oral hearing of this appeal, that the Appellant has become extremely distressed by what he is convinced is a cover-up about how this bin store came to be built.
14. That distress is not just because the bin store appears to have been built in mysterious and unexplained circumstances but because he cannot believe that the information he is seeking does not exist.
15. Looking at the volume and the totality of the information that has actually been disclosed to the Appellant we have concluded, as did the Commissioner, that everything that does exist in relation to the Appellant's request has, on the balance of probabilities, actually been revealed to him.
16. The information in the email quoted at Paragraph 12 above explains the origin of the new bin store.
17. Also it is clear from the information disclosed that a senior TfGM manager had also questioned the legitimacy of the replacement store, sharing the Appellant's concerns, demonstrating that TfGM were not trying to hide anything in this respect.

18. We note that the Metrolink Stakeholder Engagement team had a standard procedure for recording individual interactions on a general database. Some of individuals had since left TfGM. TfGM could not confirm whether any of those individuals had held such information on personal computers.
19. There is nothing in the documentation we have seen – which is comprehensive – to suggest that any information relevant to the Appellant’s request has been deleted or falsified.
20. TfGM can only disclose to the Appellant information, in relation to his request, that it does hold. It has done this. It can do no more.
21. The jurisdiction of the Tribunal is limited to deciding what information exists, not either whether the decision to build the store was correct or whether it was properly authorised.
22. For all these reasons the Appellant’s appeal fails and is dismissed.
23. Our decision is unanimous.
24. There is no order as to costs.

Robin Callender Smith
Judge
25 July 2014