



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0256
Appellant: James D Harris
Respondent: The Information Commissioner
Judge: NJ Warren

DECISION NOTICE

1. On 12 April 2013 Mr Harris made a request under the Freedom of Information Act (FOIA) to the Caerwent Community Council (Caerwent). He later complained to the Information Commissioner (ICO) against Caerwent's handling of his request and now appeals to the Tribunal against the ICO decision notice. The ICO has applied for the appeal to be struck out. Mr Harris has made representations opposing the application.
2. The original request was for "copies of the hand written notes for March/April Community Council meetings".
3. I pause to observe that FOIA is a statute imposing a burden on public authorities to provide information to the public. It is not a statute dealing with what lawyers call "the discovery of documents". It seems to me to be at least doubtful whether the request satisfied the requirement in Section 8 FOIA that it should identify the information sought.
4. Caerwent's practice is for handwritten notes of meetings to be written up into draft minutes. The next monthly meeting of the Community Council approves a set of minutes. Once this has been done, the handwritten notes are destroyed. At the time of the original request, Caerwent say that the handwritten notes for the March meeting had already been destroyed following the meeting on 11 April 2013. Caerwent refused to disclose the handwritten notes for April on the ground that they were information intended for future publication and therefore exempt under Section 22 FOIA. Those notes were destroyed on 10 May, the day following the May meeting.
5. The ICO decision notice reviews and comments on document storage policies. It also makes reference to the criminal offence under Section 77 FOIA of destroying any record held by a public authority with the intention of thwarting disclosure under the Act.

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6. In his notice of appeal Mr Harris says that the outcome he seeks is a prosecution under Section 77. Mr Harris cannot obtain this from the Tribunal. The Tribunal has no power to order, direct or initiate criminal proceedings. This part of Mr Harris' case must be struck out on the ground that it is outside the Tribunal's jurisdiction.
7. I have tried to explore the rest of Mr Harris' case to discover if there is a point within the Tribunal's jurisdiction which it can effectively consider. Certainly, the Tribunal cannot conduct a review of Caerwent's communications policies; nor can it interfere with the practice of taking minutes. At one point Mr Harris suggests that the March handwritten notes were not destroyed immediately after the April meeting but it is not possible to construct a rational argument to that effect from the material he has provided.
8. In my judgement, in the circumstances of this case, there is no prospect of the Tribunal, when conducting an investigation under Section 58 FOIA, of concluding that the ICO decision notice was faulty. The response to the appeal of the ICO is, in my judgement, unanswerable. I would be doing no one any favours by prolonging this litigation. The right thing for me to do is to bring it to an end by striking out the remainder of Mr Harris' case on the ground that it has no reasonable prospect of success.

NJ Warren

Chamber President

Dated 10 January 2014