



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

Case No. EA/2015/0109

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS 50570570
Dated: 21 April 2015**

Appellant: DAVID LAMB

Respondent: INFORMATION COMMISSIONER

On the papers at: FIELD HOUSE, LONDON

Date of hearing: 13 OCTOBER 2015

Date of decision: 30 OCTOBER 2015

Before

ROBIN CALLENDER SMITH
Judge

and

ALISON LOWTON and NIGEL WATSON
Tribunal Members

Written representations:

For the Appellant: Mr David Lamb.

For the Respondent: Ms Elizabeth Kelsey, Counsel instructed by the Information Commissioner.

Subject matter: FOIA 2000

Absolute Exemptions

Information accessible by other means s.21

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 21 April 2015 and dismisses the appeal.

REASONS FOR DECISION

Background

1. Mr David Lamb (the Appellant) wanted to know information about Liverpool City Council's parking policy.
2. On 14 November 2014 he asked – as part of a larger request – about the following:
 - (1) The City Council's policy on which vehicles may park in 'residents' only' parking bays in the Outer Controlled Parking Zone (OCPZ) zone K, specifically in relation to (a) pay-and-display ticket holders, (b) motorcycles, (c) disability 'blue badge' holders and (d) social housing landlords contractors.
 - (2) If there has been any change in policy since the City Council leaflet "Parking in the Outer Controlled Parking Zone" was issued in 2005 please provide (a) the minutes of (or the link to) the City Council meeting at which the change was approved and (b) the title of the central government legislation or guidance that brought about the change or changes.
3. The Council responded on 12 December 2014 disclosing some of the information and relying on the fact that the remainder of the information was already publicly available, and therefore exempt under section 21 (1) FOIA. It completed an internal review on 6 January 2015 and maintained its position.

The complaint to the Information Commissioner

4. The Appellant complained to the Commissioner on 8 February 2015, contesting the Council's response to his information request as detailed above.
5. The Commissioner upheld Liverpool City Council's response and found, after investigation, that it had correctly applied the provisions of s.21 (1) FOIA to the Appellant's request.

The appeal to the Tribunal

6. In his appeal to the Tribunal the Appellant's Grounds of Appeal made the following points (in summary):
 - (1) It was not reasonable for the Commissioner to support the proposition that the City Council did not hold the record of who made – and when they made and why they made – a decision to change the policy on the lawful enforcement of its parking policy.
 - (2) It was not logical or acceptable to argue that information was published and available by other means while at the same time stating that the information was not published and was not available.
 - (3) Any decision made by the City Council to change its policy on lawful enforcement of parking regulations should have been made or approved by elected councillors at a minuted meeting. It was unacceptable and possibly unlawful for an undocumented change of parking enforcement policy to be made “behind closed doors” by Council officials.
 - (4) The information that he was requesting in (2) of his request must be held by the Council. That was because the Council's position in relation to (1) of his request was that it would be “formally recorded” shortly.
 - (5) The decision to allow disability badge holders to park in *residents' only* parking bays had been taken 18 months or more ago but the published parking policy document had not yet been amended to include it. As a result, holders of disability badges were parking in residents' parking spaces – suggesting they had been informed by the City Council that they could do so – but residents had never been informed of the change or when or how it came about.

Conclusion and remedy

7. The Tribunal can understand the Appellant's perplexity. He believes that the Council should hold this information.

8. The reality is that, with the benefit of the Commissioner's review of the situation, it is clear that the Council does not – as a matter of fact - hold the information.
9. The Council has explained that its current policy is, indeed, to allow disabled badge holders to park within residents' bays but that this concession is not yet set out in its policy documents although it intends to make the amendment as soon as possible.
10. To the extent that its published policy is available then that is covered, correctly, by section 21 (1) FOIA. It has not yet been updated and, because that is the case, the Council cannot provide to the Appellant any further information.
11. The Council stated to the Commissioner that it held no information in relation to (2) of the Appellant's request. The expectation by the Appellant that the Council might hold some record of this change is not unreasonable.
12. Nonetheless, that is not the case in this instance. That is a matter for the Council.
13. This Tribunal is only concerned about whether the information exists in a form that can be supplied to the Appellant because it is held by the Council.
14. It finds, on the balance of probabilities, that it is not held by the Council.
15. For these reasons the Appellant's appeal is dismissed.
16. Our decision is unanimous.
17. There is no order as to costs.

Robin Callender Smith

Judge

30 October 2015