



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS50882224**

Appeal Reference: EA/2020/0280

**Heard over the CVP platform
On 24 May 2021**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

ROGER CREEDON & EMMA YATES

Between

CHRISTOPHER STEVENS

Appellant

and

INFORMATION COMMISSIONER

First Respondent

Appearances:-

Appellant: in person

First Respondent: did not appear

DECISION

The appeal is dismissed

REASONS

Background

1. A large horse chestnut tree protected by a tree preservation order grew on land with no registered owner immediately adjacent to Mr Stevens' former home.

He felt that it created a hazard to his family. He had formerly removed fallen leaves and debris but since 2017 his health has prevented him from doing so. He wished to have it felled and applied for planning permission to remove it. Some of his neighbours (who valued its contribution to the attractiveness of the area) did not want it removed or cut back. The parish council opposed the felling. Rother District Council (the Council) refused the application to fell the tree and Mr Stevens appealed that refusal to the Planning Inspectorate. He has made complaints about a district councillor whom he asserted had improperly worked with one of his former neighbours and the Parish Council to prevent the felling of the tree in breach of their personal duty under the Equalities Act 2010. He has asserted that the Council in considering the question of permitting the felling of the tree failed in its duties under the Equalities Act 2010.

2. There has been substantial correspondence and by a letter of 30 September 2019 responding to the claim that it breached its duty a senior lawyer at the Council set out its position:-

Dear Sir:-

Tree Preservation Order -1 Blenheim Court ("1998 TPO")

I refer to your previous numerous emails and letters, in particular those of the 9th and 10th September in respect of the above matter. You have also made numerous EIR and FOI requests of Rother District Council which are being handled separately.

.....

Your more recent correspondence has now introduced issues under the Equalities Act 2010. The Council has had regard to their Public Sector Equality Duty in relation to your recent applications to fell the tree, and on each occasion has declined your application following a balanced and reasonable evaluation. The Council has made constructive suggestions, originating from the Council's Equalities Officer, following your concerns that there may be practical difficulties in undertaking works to clean your path of leaves and conkers from the tree. These suggestions included the use of local voluntary organisations to assist in the task. I understand you made J unreasonable demands on the frequency of that help. It would appear that given your refusal to engage meaningfully with any proposals to resolve your concerns over the Autumn debris, choosing instead to seek applications to have the tree felled. The fact that the suggested reasonable adaptations are not to your liking are not evidence that the Council has failed to consider the equality issues as you allege. Given your appeal, it will be a matter for the Inspector to decide, having regard to all material considerations in the context of determining such an appeal, whether the Council's refusal to grant the application should be upheld.

For the avoidance of any doubt in moving this matter forward, can I make the Council's position clear in that we will not enter into any more correspondence to address similar or substantially similar points. If you remain concerned about the lawfulness of the 1998 TPO, it is of course open to you to seek your own independent legal advice in this regard. The Council's position is that the 1998 TPO was confirmed

as an unopposed Order in March 1999 and remains in force. I note you have raised this matter in your recent appeal against the felling refusal, which include many of the issues you raise in your lengthy correspondence, and again, the Council will deal with those issues in the context of defending the appeal.

The request

3. On 13 September 2019 Mr Stevens wrote to the district councillor seeking information about contact between the councillor and a resident in Blenheim Court. Within two hours the councillor replied:-

Dear Mr Stevens

I have been advised that there is no requirement for me to respond to your request.

Regards

4. On 19 September the Council replied to him:

Thank you for your request received on 13 September 2019 relating to information about correspondence held by Cllr [redacted]. We aim to respond to your request for information within 20 working days from receipt of your request, in accordance with the requirements of the Environmental Information Regulations.

5. 14 October the Council replied supplying the correspondence it held passing to and from the councillor in relation to the tree, with personal details redacted.
6. Mr Stevens had complained to the Council about the conduct of the councillor in connection with the tree, the Independent Person who considered the complaint rejected the complaint. Mr Stevens complained to the Information Commissioner (ICO) about the handling of his request for information. She asked the Council to deal with his concerns as a request for an internal review.
7. The Council in its internal review concluded that all information held had been supplied to Mr Stevens, subject to redaction of personal information in accordance with regulation 12(5)f.:-

"[It has] established that all relevant information to the enquiry held by the Council by way of email, electronic or paper document has been provided to [you]. It appears reasonable that personal information has been redacted from the material and the Council correctly applied the exemption in order to achieve this. It does however appear that the content of the interactions is largely unredacted and therefore the Council has provided as much information as it could."

The Information Commissioner's decision

8. The ICO then considered Mr Stevens complaint and investigated the handling of it by the Council. The Council confirmed that it was now relying on

regulation 13(1) only since the withheld information was the personal information of the individual with whom the councillor had corresponded. She set out the duty to supply information under EIR and reviewed the steps the Council had taken to establish what was held, concluding that all the information held had been identified (DN 22-28). She considered the provisions of GDPR and concluded that the withheld information was personal data which could only be processed *lawfully, fairly and in a transparent manner in relation to the data subject*. She considered the lawful grounds upon which it could be processed and identified Article 6(1)f of GDPR as the only provision which could be applicable which would allow the disclosure where:-

processing is necessary for the purposes or the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject and which require protection of personal data

9. She noted the Council's argument that there was no legitimate interest furthered by the disclosure and that since the information was the personal information of the individual, disclosure was not necessary, the withheld information related only to the data subject's private life.

10. The ICO concluded:-

43. On the basis of the extensive communications the Council has received from the complainant, it considers the complainant would likely contact the data subject directly if the withheld information was to be disclosed to him.

44. In this case, the Commissioner considers that disclosing the withheld personal data to the requester is neither necessary or justified to satisfy the information request and the requirements of the EIR. In the circumstances of this request, the Commissioner does not accept that the complainant, or the public in general, has a sufficient legitimate interest that would override the prejudice to the rights and freedoms of the data subjects and therefore she finds that disclosure of the withheld information would be unlawful.

45. The Commissioner's decision is that Rother District Council has correctly applied Regulation 13 of the EIR to the information it is withholding from the complainant.

The appeal

11. In his appeal Mr Stevens explained the outcome of the appeal he wanted as:-

(i)The release of ALL information held by Rother District Council in relation to us and the ongoing dispute regarding a TPO which is now awaiting a Planning Inspectorate Appeal. This is made under EQA legislation as we have formally lodged an appeal on the grounds of s15; s20; s21; s26 & s27 EQA 2010.

(ii) The complete disclosure of email, letter, text correspondence between Councillor [name redacted] and [name redacted].

(iii) All SAR data to be released.

(iv) The disclosure from the ICO its s149 PSED EQA 2010 duties and how they have been discharged.

12. It should be noted that only the second of those four categories of information is a matter which the tribunal can address in this appeal.

13. He raised a number of issues which may be summarised as his grounds for appeal:-

- Inadequate investigation as to whether more information was held
- Inadequate investigation into the deletion of the original records relating to the tree preservation order
- Failure to acknowledge that the information was already known and therefore regulation 13(1) did not apply
- Disclosure was necessary to meet his rights under EIR since he had sufficient interest arising from his health and the equality duty owed to him

14. In resisting the appeal the ICO noted that the first two grounds, relating to how she had conducted her investigation were not matters which could be the subject of an appeal. She noted that Mr Stevens accepted that the withheld information related to personal data and relied on her reasoning in the decision notice.

The hearing

15. In the hearing Mr Stevens argued that the issue was whether the Council had discharged its Equalities Act duties. He considered that it had not, it had constantly stated that it had done so but provided no evidence. He argued that the Council had caused a horrible environment for his family, they had been left with a horrible situation. He considered that the district councillor and the neighbour "both knew of my family's difficult situation". The neighbour had harassed and victimised him. The Council had applied for costs in the planning appeal. He considered that his appeal was a protected act and felt that the Equalities Act was useless. He felt that the decision by the Council on his complaint against the district councillor was "bizarre". He considered it improbable that the only correspondence between the neighbour and the district councillor was what had been disclosed, he claimed that the neighbour was "well-versed" in planning and would have known how to object. He argued that there had been "cherry-picking" to avoid showing a lot more information. He wanted "anything which provides insight into what the district councillor and the neighbour were doing". He wanted to know if there was any other correspondence showing an intention to cause his family harm.

He knew that they had been trying to get other people to object “and cause us problems”. He asserted “there is more to this than meets the eye”. He wanted to know to know the substance of what was said “but also the identity”. He did not believe the Council had “had due regard to our issues – that was absolutely not true”, “we do not find Rother District Council credible”.

16. He argued that “both parties claim it is about amenity, they forgot about our health, they knew about it, there was something personal to cause us problems. It shouldn’t be this hard to get Council members to act in accordance with the Code of Conduct for councillors.”

Consideration

17. It is clear that Mr Stevens feels that he has been poorly treated by the Council, the district councillor, and his neighbour. He feels that the Council has not shown how it has discharged its equality duty to him, nor has the ICO or her barrister. He ascribes many of the difficulties he has experienced to the negligence or breach of duty of others and considers others are acting in bad faith.

18. However while he is profoundly suspicious of those whom he perceives as against him and appears to consider that under the Equality Act 2010 he is entitled to what he specifies he needs (it is noticeable that he entirely discounts or ignores explanations given by the Council as to how it has approached its duty such as that given in the letter of 30 September 2019, paragraph 2 above) he has not established any grounds to overturn the decision of the ICO.

19. The powers of the tribunal are set out in s58 FOIA:-

58 Determination of appeals.

(1) If on an appeal under section 57 the Tribunal considers—

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

20. While he expressed suspicion of the Council and feared suppression or destruction of other correspondence he produced no evidence to support this. The disclosed material was brief and related to the issue of how to object to a planning application, there was no indication of any other correspondence and the exchange appeared to be a self-contained whole. The council explained the

steps it took to check for correspondence which the ICO properly considered to be adequate. The ICO was entirely correct to accept the explanation given. There is therefore no evidence to indicate that there is any further material to be found.

21. The undisclosed material are the personal details of the individual with whom the councillor corresponded. While Mr Stevens argues that it is necessary for these to be disclosed to him to enable him to pursue his legitimate interest he repeatedly claimed that he knows who the other person is.
22. The ICO correctly noted the distinction between disclosing the name to Mr Stevens (who already knows it) and disclosing it under EIR - which is to disclose it to the entire world. This is an entirely private matter, there is no public interest in disclosing the personal information under EIR. Given that Mr Stevens already knows the identity of the individual there is no conceivable way in which disclosing the name under EIR can advance his legitimate interest.
23. This appeal is entirely misconceived.
24. The appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: 13 June 2021

Promulgated: 22 June 2021