



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

Case No. EA/2014/0120

**ON APPEAL FROM:
Information Commissioner's
Decision Notice No: FS50527420
Dated: 6 May 2014**

Appellant: Colin Parker

Respondent: Information Commissioner

On the papers

Date of decision: 31st October 2014

**Before
CHRIS RYAN
(Judge)
and
MIKE JONES
MELANIE HOWARD**

Subject matter: Whether information held s.1

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

1. On 11 October 2013 the Appellant submitted to Kirklees Council (“the Council”) a request for information (“the Request”).
2. FOIA section 1 imposes on the public authorities to whom it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.
3. The Request fell into two parts:
 - a. The first part asked for information on *“the specific sections of the relevant Act(s) of Parliament setting out the definition of soliciting by street traders...”* It is not for us to speculate at this stage whether the Council might have had grounds to reject this part of the request on the basis that it sought legal advice rather than recorded information to which the FOIA applies. Or, alternatively, that the information sought was available by other means (that is, in a published statute) so that it was exempt under FOIA section 21. The fact of the matter is that the Council did attempt to assist the Appellant by responding in the way we record below.
 - b. The second part of the request asked for *“the regulations applying [the statutory definition’s] implementation in Kirklees”*.
4. On 5 November 2013 the Council responded in the following terms:

*“...Kirklees Council adopted the provisions of Part 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 at its Policy & Resources (General Purposes) Sub-Committee on 17th February 1993 with the provisions of all streets in Kirklees to become ‘consent streets’ from 1 May 1993. Please find attached a copy of those minutes.
Streets includes (sic) any road, footway, beach or other areas to which the public have access without payment.*

Kirklees Council relies on the above and subsequent laws to control and regulate street trading in the borough”

5. The basis of the appeal to this Tribunal is that the Information Commissioner fell into error in a Decision Notice dated 6 May 2014 (FS50527420) when he concluded that the Council did not hold any further information falling within the scope of the Request beyond that set out in its response.
6. The Appellant opted to have his appeal determined on the papers, without a hearing, which we think is an appropriate procedure to have adopted.
7. In his written submissions filed with this Tribunal the Appellant has criticised the Council on two counts. First, he complained that the Council had not taken into account an introductory paragraph in the letter containing the Request, which read:

“I have been directed to write to you regarding the relevant regulations and local implementation of the law guiding street trading and soliciting. This would include that aspect of the law guiding Council control of public and private areas in Kirklees.”

We reject the criticism. The Request was quite clear on its face and this “preamble”, as the Appellant described it, adds nothing.

8. The Appellant’s second criticism was that the Council should have provided *“advice and assistance to generate a shared, proper objective reading of the request”*. This, he said, would have enabled the parties to agree that what the Request sought was *“an exact description of the nature, scope or meaning of soliciting by street traders and the regulations applying to its implementation in Kirklees”*. The Appellant further criticised the Council for not *“being aware of the ambiguity in the word ‘definition’ ”*
9. It is certainly true that FOIA section 16 imposes on public authorities an obligation to provide advice and assistance to members of the public seeking information from them. But the obligation is qualified by the words *“so far as it would be reasonable to expect the authority to do so”*. In this case the Request was, as we have said, perfectly clear on its face and the Council provided a response which set out the statutory basis for the law on street trading which it had adopted. The fact that the statute contained no definition of *“soliciting by street traders”* does not justify criticism of either the disclosure made or the assistance provided. The Council provided the Appellant with the information it held falling within the scope of the Request. Its obligation was to disclose information it held, not undertake the role of the Appellant’s legal research assistant.

10. The Council in fact went further than simply responding to the Request in the manner described. After it had done so it appears to have had a further thought on the issue and wrote to the Appellant seeking clarification of what he meant by "*soliciting by street traders*" and by "*implementing it in Kirklees*". The request for clarification, made as an afterthought, was unnecessary, for the reasons we have given. It led to further communications between the parties and to the Appellant complaining that he had not been adequately advised and assisted in his attempt to track down the legal definition he sought.
11. The Council's position, (in both its correspondence with the Appellant at the time and its responses during the investigation by the Information Commissioner which preceded publication of the Decision Notice) was that it had searched for, but failed to find, any information in its possession on the legal definition in question. The Information Commissioner has summarised, in paragraph 17 of the Decision Notice, the information provided to him by the Council on the searches that it made. No evidence has been put before us which undermines what the Council has said. Its statements on the issue are both rational and credible. The Information Commissioner was therefore entitled to conclude, as he did, that, on the balance of probabilities, the Council did not hold any further information falling within the scope of the Request and that it had complied with its obligations under FOIA section 16 to advise and assist the Appellant.
12. Our unanimous conclusion, therefore, is that the appeal should be dismissed.

Chris Ryan

Judge
31st October 2014