



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0230

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50509279
Dated: 15 October 2013

Appellant: RAMESH RAMSAHOYE
Respondent: INFORMATION COMMISSIONER
On the papers at: FIELD HOUSE, LONDON
Date: 12 MARCH 2014
Date of decision: 2 APRIL 2014

Before

ROBIN CALLENDER SMITH
Judge

and

JACQUELINE BLAKE and GARETH JONES
Tribunal Members

Attendances:

For the Appellant: Mr Ramesh Ramsahoye
For the Respondent: Ms Michele Voznick, Solicitor for the Information Commissioner

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

Case No. EA/2013/2030

Subject matter: FOIA 2000

Whether information held s.1

Cases:

Linda Bromley v Information Commissioner and Environment Agency
(EA/2006/0072); *Tony Wise v Information Commissioner* (EA/2010/0173).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 15 October 2013 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant, Mr Ramesh Ramsahoye, asked the General Teaching Council for Wales (GTCW) for a specific page from the statutory legislation governing the induction of secondary level teachers where it was stated that induction formed part of the professional qualification to teach.
2. The context for this request is that the GTCW issued him with a Qualified Teacher Status certificate dated 1 August 2009. The certificate stated the Appellant "has attained qualified teacher status (QTS) to teach in Wales".

The request for information

3. On 19 March 2013 the Appellant requested from the GTCW (original emphasis)

I hereby request the following information held by GTCW:

.....

The specific page from the statutory legislation governing the induction of secondary level teachers where it is stated that induction forms part of the professional qualification to teach, or where there are words to that effect, or having the same meaning. Please do not send a full copy of the legislation. I am asking for one page from the document only.

4. The GTCW responded to the request on 27 March 2013. It referred to an earlier letter to the Appellant dated 27 July 2012 – not part of this appeal - where it had confirmed the requirements for completion of the statutory induction period. The letter continued by saying that GTCW did not have responsibility for Induction regulations in Wales and directed the Appellant to request such information - about the legislation - from the Welsh Government directly.
5. An internal review was requested on 3 April 2013. The GTCW responded on 12 April 2013. It repeated the advice to contact the Welsh Government, and stated that it did not have responsibility for the Welsh statutory legislation relating to the induction programme.
6. There was brief further correspondence between the Appellant and GTCW. The Appellant made a complaint to the Commissioner about how his request for information had been handled.

The complaint to the Information Commissioner

7. The Commissioner investigated the complaint and issued his Decision Notice on 15 October 2013. He held that the GTCW had complied with section 1(1) FOIA and that it did not hold the information requested.

The appeal to the Tribunal

8. The Appellant, in his Grounds of Appeal, makes the following points (which have been summarised):
 - (1) The findings concerning the functions of GTCW, as made by the Commissioner, have no bearing on GTCW's obligation to disclose the requested information.
 - (2) That GTCW does hold the requested information and it is not entitled to refer the Appellant to a different public authority who also holds to the information as a way to evade its duty under FOIA.

- (3) There was not a proper internal review carried out by GTCW and the Commissioner erred by accepting that one had been conducted.
- (4) That – if no page existed within the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005 where it is stated that induction forms part of professional qualification – then the GTCW was “at liberty not to provide the information requested” but only in circumstances where it stated that the reason why it could not provide the information was that the information is not to be found within the text of the 2005 Regulations.
- (5) The Commissioner did not apply the civil standards of proof (the balance of probability) correctly.
- (6) That, given the volume of past correspondence between the Appellant, GTCW and DfES it was inconceivable that 'the answer' was not stored by GTCW.
- (7) That no searches were conducted.

The questions for the Tribunal

9. Was the information requested by the Appellant held by the GTCW at the time of the request?

Conclusion and remedy

10. The Tribunal notes that the Appellant had been in correspondence with the GTCW seeking a certificate confirming that his qualifications (a BA Hons degree and a PGCE) were covered by the Directive.
11. He maintained that the GTCW was required to issue a certificate to fully qualified teachers pursuant to Article 50, 1, and Annex VII, 2 of the Directive. The GTCW has not issued the Appellant with the requested certificate on the basis that the Appellant has not completed a statutory period of induction in Wales.
12. His view is that the requirement to complete the statutory induction is one for Newly Qualified Teachers. If an individual is already a Newly Qualified

Teacher then they have rights of access to the teaching profession. The Appellant is of the opinion that the GTCW required the statutory induction to form part of the professional qualification. He maintains there is no basis in law for that stance.

13. The Tribunal has to determine on the balance of probabilities (as did the Information Commissioner) whether the requested information was held by the GTCW.

14. The Tribunal notes its own case law has addressed the problem of whether information is held on a number of occasions and, in particular in the context of whether there would be a statutory requirement for the information to be held by a public authority, in *Wise v Information Commissioner* (EA/2010/0173) at [22]

In reaching that conclusion, we have taken into account the lack of a reason or duty to hold the information requested and the inherent likelihood that no such information would therefore have been held by LPA. If, for example, the information requested had related to a statutory function of LPA, we would have required more evidence to persuade us that the information was not held because that would have been inherently more unlikely.

15. The Decision Notice records that the functions relating to Induction and issuing of certificates is administrative in nature and there is no decision-making powers. It is clear from the information in this appeal about Induction to the GTCW – and appeals arising from that process – that such appeals are rare and the assessment is based on the documents provided for the purposes of the appeal.

16. On the basis of previous correspondence provided by the Appellant between the Welsh Government (and by reference to the complaint to the Information Commissioner) it is clear that there is disagreement about the provisions under the Directive and the Regulations. The Welsh Government has explained its interpretation of how the Directive and the Regulations require to be read together. The Appellant disagrees.

17. The Tribunal is only concerned with whether the GTCW held the requested information for the purposes of FOIA. It is not enough for the Appellant to contend that – because there has been voluminous correspondence – the GTCW must hold “the answer”.

18. On the basis of the explanations by the GTCW about its functions the Tribunal is satisfied that, on the balance of probabilities, the Requested Information was not held by it at the time of the request and that it has complied with s.1 (1) of FOIA.

19. Our decision is unanimous.

20. There is no order as to costs.

Robin Callender Smith
Judge
2 April 2014

Paragraph removed from page 3 on 3 April 2014.