



**IN THE FIRST-TIER TRIBUNAL**

**Appeal No EA/2016/0058**

**GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**R K PIGGOTT**

**Appellant**

**And**

**THE INFORMATION COMMISSIONER**

**Respondent**

**Hearing**

Held on 4 August 2016 at Fox Court, London

Before Roger Creedon Dave Sivers and Judge Taylor.

**Decision**

We dismiss the appeal for the reasons set out below.

## Reasons For The Decision

1. On 8 September 2014, the Appellant made a lengthy request to Hastings Borough Council ('the Council') in relation to a planning application, subsequent to an earlier information request. (See pages 213 to 217 of the bundle.)
2. On 23 January 2015, the Council gave a response to each of the questions posed. On 11 May 2015, the Council notified the Appellant of the outcome of its internal review. This stated that the Council had '*indicated that there is no additional recorded information in relation to any of the points.*' It also explained that other public authorities may have the requested information and identified them for the Appellant. (See document of at page 190 of the bundle).
3. Matters progressed with the Information Commissioner ('IC') investigating the Appellant's complaint.
4. On 26 November 2015, the Council informed the IC:  
  
*'...There has been numerous email exchanges with Mr Piggott in relation to this request some of which was quite confusing and we had to ask Mr Piggott for clarification on several occasions...Mr Piggott's request was based on many questions and statements and not information that is held by this local authority. Hastings Borough Council has never been able to pin down exactly what information Mr Piggott was seeking, we have provided our meeting notes of that day, both hand written and typed we still believe this is our recorded information. The boundary in discussion was agreed by the then landowners, East Sussex County Council, we still believe Mr Piggott's questions would be better directed to them.'*
5. In his Decision Notice (Ref. FS50592080), the IC found that the Council had provided the Appellant with all information that it held within the scope of the request. □The Appellant now appeals to the Tribunal.

### **Tribunal's Remit**

6. The Tribunal's remit is governed by section 58 of the Freedom of Information Act 2000. This applies to environmental information appeals as a result of regulation 18 of The Environmental Information Regulations 2004 ('EIR'). This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or whether he should have exercised any discretion he had differently. The Tribunal is independent of the IC, and considers afresh the Appellant's complaint. In this case, our remit is limited to considering whether the Council complied with requirements under EIR in responding to his request. Matters related to the underlying dispute that the Appellant has (whether concerning 'trespass torts' or a 'boundary dispute') or concerning the handling of his complaint are outside our remit.
7. We have received a bundle of documents ('Bundle'), and submissions from the parties, all of which we have considered even if not specifically referred to below. We do not have within the bundle a 'Notice of Appeal'<sup>1</sup> and therefore assume that the Appellant has not completed one. However, we have been provided with a letter from the Appellant to the Tribunal of 7 March 2016, which sets out his case.

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<sup>1</sup> This is a form usually completed by an Appellant containing their grounds of appeal.

## Law

8. This appeal concerns EIR because the request relates to a planning matter that concerns land.
9. (We note that the Appellant has raised a concern that the EIR was not of relevance here, and that the IC had wrongly categorised his complaint as concerning a planning application. In case the Appellant's concern is that the EIR related to planning law, and is not within our remit, we note that:
- a) Broadly speaking, the EIR is legislation governing an individual's right to access information from a public authority where it is 'environmental information'. Environmental information is defined in regulation 2(1) to include:
- “any information in written, visual, aural, electronic or any other material form on (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.. (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements”.*
- b) both the EIR and Freedom of Information Act 2000 are within this Tribunal's remit, and the Tribunal needs to first consider which is the relevant Act to apply when considering an appeal concerning requests for information.<sup>2</sup> )
10. Public authorities are under a general duty under the EIR to disclose information where it is requested under regulation 5. This provides:

***“Duty to make available environmental information on request***

*5. - (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request...”*

11. The requirement to provide information that is held relates to '*information in written, visual, aural, electronic or any other material form*'.

## Our Task

12. We must therefore consider whether the IC's decision that the Council did not hold any information covered by the Appellant's request, beyond that already provided, was correct. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities.

## Our Findings

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<sup>2</sup> See page 15 of the Bundle at para III.

13. The Appellant's request is helpfully set out with the Council's response at the Annex to the Decision Notice. *(See pages 9 to 13 of the Bundle. We adopt the same labels.)*
14. We note that in the Appellant's Reply of 12 April 2016, he stated that he had requested '*full disclosure of documents relating to Olive Lodge [and] also Stone Court development, known now proven to be held by Hastings Borough Council.*' This is not an accurate summary of his request and is not considered further in this decision.
15. Much of the Appellant's request constituted requests for opinions or recollections from the Council. Whilst the Council seems to have made a laudable effort to answer them, we note that to the extent that they did not already 'hold' relevant information at the time of the Appellant's request, the EIR did not require the Council to do anything more than respond that the information was not held. In particular, Requests B, E, F, G, H, J, and K are matters that seem to ask for opinions or recollections. As regards Request J, the Council asked the Appellant what plan he was referring to, but does not seem to have received a response. *(See page 190 of the Bundle.)* As regards Request O, the Council provided the meeting notes available to it. *(See paragraph 4 above.)*
16. In any event, as regards all Requests A to O, the Council has stated it holds no information other than what has been provided. *(See paragraph 2 above).* The Appellant has provided no convincing evidence that suggests to us that the Council does hold any further material that is pertinent to his requests. Therefore, we find that on the balance of probability, no further information is held.
17. We are satisfied from a review of the bundle that the Council went to sufficient effort to seek to advise and assist the Appellant in accordance with regulation 9 EIR.
18. We note the IC's submissions include that: '*the Appellant's grounds are complex and go into considerable detail regarding matters which are of obvious and longstanding concern to him but they are matters focussing on his boundary dispute over his property; they are not matters which are within the jurisdiction of the Commissioner, or this Tribunal, to rule upon.*' We accept this.
19. We unanimously dismiss this appeal.

**Judge Taylor**

11 August 2016