



FIRST-TIER TRIBUNAL – GENERAL REGULATORY CHAMBER:

Information Rights

Tribunal Reference: EA.2016.0090
Appellant: Tony Dignan
Respondent: The Information Commissioner
Registrar: R Worth

Decision

Refuse to extend time to admit notice of appeal

Notice of appeal received and explanation

1. The notice of appeal was received on 4 April 2016, 5 weeks and 3 days outside the 28 day statutory time limit (over 100% late). I regard that as a very serious breach of the time limit for lodging an appeal with the Tribunal.
2. The explanation given lacks force. Mr Dignan says that his request was on behalf of Mooreland and Owenvarragh Residents Association – I see that the Association is recorded in the named “complainant” on the decision notice as well as Mr Dignan. Whilst Mr Dignan’s work prevented him from being able to complete a notice of appeal against the decision, on the information given it is difficult to accept that other people involved in the Association were unable to assist Mr Dignan in completing the notice of appeal and submitting it on time.

Strength of grounds of appeal

3. Very strong grounds of appeal may mean that, despite a very serious breach of the time limit, it is in the interests of justice to admit an appeal. Mr Dignan’s grounds are not strong.
4. Section 6 of the notice of appeal makes it clear that Mr Dignan asks the Tribunal to order disclosure of the financial detail which has not yet been placed into the public domain; the other parts of the information have now been provided to him. He also wants certain parts of the decision notice rewritten.
5. The appeal process is not for rewriting decision notices, an appeal can only be allowed if the decision notice was not in accordance with the law – s.58 of the *Freedom of Information Act 2000*. Therefore the parts of his grounds of appeal where he argues that the decision notice should be rewritten are not valid. What remains, then, is whether the financial detail currently withheld should be disclosed into the public domain.
6. The public authority’s letter to Mr Dignan dated 26 August 2014 is incorrect to state: “The key issue is that an exemption based on commercial confidentiality does not exist under FOI but is permissible under EIR.” is incorrect. The *Freedom of Information Act 2000* at s.43(2) allows a public authority to withhold information “if its disclosure ... would, or would be likely to, prejudice the commercial interests

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of any person (including the public authority holding it)”. However, not much turns on that as, under the Environmental Information Regulations 2004, there is an assumption in favour of disclosure which does not exist under the Freedom of Information Act 2000.

7. The information sought is actual and estimated cost and the reasons for those costs. The price placed by a company on aspects of delivering goods/services is clearly commercial. It is reasonable to conclude that, at the time of providing the financial information to the public authority, the commercial body provided the information in confidence, albeit with the knowledge that at some point they may be disclosed under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. Therefore Mr Dignan’s argument that regulation 12(5)(e) does not apply to the financial detail is very weak.
8. In an appeal the Tribunal must assess the public interest balance as it was at the date of refusal. In this particular case it would mean that the public interest balance is to be weighed as it was on 11 July 2014 (initial refusal) or 26 August 2014 (refusal following internal review). Mr Dignan’s arguments that the redevelopment has evolved since those refusals therefore carries little, if any weight. A news article on the BBC’s website records that as of 17 September 2015 construction had not started on the redevelopment. In those circumstances, it is reasonable to conclude that the financial figures being worked on by anyone making a tender for work at the redevelopment were commercially sensitive as the project was still in its proposal/development stage.
9. Mr Dignan’s ground that the intention to publish figures in the future means that the public interest is greater now is, in my view, misconceived. I believe that the intention to publish figures in the future gives any commercial body greater expectation of confidentiality until that future date has arrived.

Effect on Information Commissioner’s Office

10. I take account of the fact that there is little prejudice to the Information Commissioner’s Office in accepting the appeal – other than adding an additional appeal to the number of appeals they are dealing with.

Decision and reasons

11. There remains however a strong need to enforce compliance with the rules, pursuant to the overriding objective. Mr Dignan does not begin to refute the conclusions reached in the Information Commissioner’s Office decision notice.
12. Overall I conclude that it is not appropriate to extend the time limit for appealing. Mr Dignan’s appeal is dismissed as out of time.

This decision was made by the Tribunal’s Registrar. A party is entitled to apply in writing within 14 days of the date of this document for this decision to be considered afresh by a Judge.



R Worth
Registrar, dated 12 April 2016