



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

Appeal Reference: EA/2017/0201

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50633646

Dated: 12 July 2017

Decided without a hearing

On: 16 January 2018

Before

JUDGE ROBERT GOOD

TRIBUNAL MEMBER(S) MRS ANNE CHAFER AND MR DAVID SIVERS

Between

STEVE FITZGERALD

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Subject Matter:

Freedom of Information Act 2000 (FOIA)

Section 1 (Whether Information Held)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

Factual background

1. The appellant, Mr Steve Fitzgerald has a longstanding complaint with Babergh District Council (the Council) about the way in which they have dealt with a complaint he made about a neighbouring property (the property). His complaint concerned their use of their garden, the erection of sheds and their keeping of chickens and other poultry.
2. His complaint is that the tenants of the property, owned by the Council, had erected an outbuilding or buildings without planning permission, that they had used these buildings and their garden to run a poultry business, and this had affected his property in respect of its value, his ability to rent out the property, the noise, the smell and infestation of rats.
3. Mr Fitzgerald is dissatisfied with the way the Council dealt with his complaint. In particular, he suggests that the Council may have telephoned the tenants to warn them of an 'unannounced visit' and he believes that the gardens on this estate were designated allotment gardens.

Request, decision notice and appeal

4. On 6 May 2016 Mr Fitzgerald made a request under FOIA in the following terms:

BF1090

- a. What is the council's policy on the phone calls associated with complaints?
- b. Do you have a policy of documenting conversations or recording conversations of phone calls?

BF1055

- c. Is it still classified as an allotment garden as when it was first built?
- d. If it is now classified as a residential garden when was the status changed?

5. The Council responded on 4 August 2016 by saying that, in respect of their reference BF1090 "There is no written policy on documenting conversations or recording conversations of phone calls"; and in respect of their reference BF1055 "It is unlikely that the garden at [the property] was ever classified as an 'allotment garden'. There is nothing to indicate that [the property] has ever been anything other than a home and associated residential garden since it was built."
6. Mr Fitzgerald complained to the Information Commissioner under Section 50 of FOIA. In a decision notice dated 12 July 2017 the Commissioner held that on the balance of probabilities the information requested was not held by the Council and rejected Mr Fitzgerald's complaint.
7. Mr Fitzgerald appeals to this Tribunal stating that he has notes of calls made by the Council in the past and that they should have a system which would make the recording of calls possible and that their investigation into the use of the property was inadequate. He has provided material in support of his appeal, which is now contained in the appeal bundle.
8. All the parties have agreed that this decision should be made without an oral hearing and relying on the written material provided. The Tribunal

considered this request, the wishes of the parties and the information in the documents which number 138 pages and decided that it should proceed to determine this appeal.

Conclusions

9. There is nothing in the appeal bundle which causes the Tribunal to doubt the Commissioner's conclusion that the Council does not hold the information requested.

10. While it may be the case that Council officers make notes of the content of certain telephone conversations, the reported searches do not reveal any Council policy. The Council make the point that any policy would require approval by a Council Committee and the search of Council minutes did not reveal any such policy. This was the case with all the searches undertaken by the Council in this respect. Mr Fitzgerald says that it would be good practice to record all calls and it is likely that the Council has the ability to do this. However, the request concerns disclosure of policies relating to the recording of telephone calls. The Tribunal agrees with the Commissioner that such policies do not exist.

11. It is Mr Fitzgerald's belief that the garden of the property was designated as an allotment garden. The Council's search of records, including going back to the acquisition of the land on 30 August 1945, does not show this to be the case. (See ICO Decision Notice paras 20-22)

12. It is more likely that, if the land was subject to covenants, these would be in the form of restrictions, preventing the tenant or owner from certain activities or uses of the land, rather than a requirement to use the land for a particular purpose (in this case as an allotment). In addition, any such covenant would appear on the tenancy agreement or on the title deeds. Mr Fitzgerald indicates

that his property was initially rented and was then purchased from the Council. He has not suggested that there was any such requirement in the tenancy agreement or title deeds of his property. The Tribunal agrees with the Commissioner that there is no document which reveals this designation.

13. In the circumstance, the Tribunal unanimously upholds the Commissioner's decision and dismisses the appeal.

Signed:

R Good
Judge of the First-tier Tribunal

Date: 16 January 2018