



Appeal number: EA/2016/ 0261

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

PAUL MARSH

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Dr HENRY FITZHUGH
Mr DAVE SIVERS**

Determined on the papers, the Tribunal sitting in Chambers on 15 March 2017

DECISION

1. The appeal is dismissed.

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REASONS

Background to Appeal

2. The Appellant made a request to Dorset County Council (“the Council”) for the identity of a party who purchased land from the Council. The Appellant is concerned that the Council did not have the legal power to dispose of this land.

10 3. The Council disclosed some information in response stated that further information was not held. The Appellant complains that the Council has not provided the information that he requested.

15 4. The Respondent issued Decision Notice FS50611729 on 12 September 2016, in which it was held that the Council had provided all relevant information which it held. The Respondent required no further steps to be taken by the Council.

Appeal to the Tribunal

20 5. The Appellant’s Notice of Appeal dated 30 October 2016 relied on grounds of appeal that the information provided by the Council was misleading because it referred to the wrong parcel of land. The Appellant referred to the existence of other Council records concerning the decision to dispose of the land in 1990, which had not been provided but which he submitted would answer his information request. He therefore submitted that further information is held by the Council and should be disclosed.

25 6. The Respondent’s Response dated 5 December 2016 maintained the analysis as set out in the Decision Notice.

30 7. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising 52 pages, including submissions made by both parties, for which we were grateful.

The Law

8. S. 1 (1) of the Freedom of Information Act 2000 (“FOIA”) provides that a person making a request for information is entitled to be informed by the public authority whether it holds the information and, if so, to have it communicated.

35 9. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“If on an appeal under section 57 the Tribunal considers -

5 *(a) that the notice against which the appeal is brought is not in accordance with the law, or*

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

10 *the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

15 *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

10. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Conclusion

20 11. The Decision Notice records at paragraph 14 the information provided to the Respondent by the Council, including details of the records searches it had undertaken (see pages 28 and 40 of our bundle) for the identity of the person to whom the land was disposed. The Appellant asserts that the Council must have a record of the name of an individual or individuals who acquired the land but has provided no evidence to
25 support his assertion.

12. The Council states that its records show the land transaction as being with “The Talbot Marriage Settlement” and that it holds no further information within the scope of the request. It has offered the Appellant access to its records and referred him to a historical archive.

30 13. There does seem to have been some confusion in the Council’s records as to whether the land disposed of for no consideration or leased for £800. There is also some confusion about the date of disposal. The Council attempted to clear up the confusion and, as the Council disclosed its records in respect of both possible transactions (see page 14 of the bundle), the confusion did not affect the conclusions
35 of the Decision Notice.

40 14. The Appellant’s request was “*who acquired field 5165.62...when it was disposed of by the Council as part of the Talbot Settlement*”. We understand the disposal to which he refers to have taken place in 1993 or 1994. As such, we regard the further Council documents referred to by the Appellant and apparently created in 1990 to fall outside the scope of the particular request with which this appeal is concerned. It would of course be open to the Appellant to make a fresh request for the information from 1990.

15. Our suspicion is that the land in question was acquired by the trustees of a private trust. This would explain why an individual person is not named in the Council's records. A search of the Land Register would presumably confirm whether the land is now held by the successor trustees, and that is a matter the Appellant may wish to investigate.

16. Be that as it may, the Respondent concluded on the balance of probabilities that the Council had disclosed all information falling within the scope of the request. She did so in reliance upon the evidence provided by the Council, which the Commissioner preferred to the bare assertions made by the Appellant.

17. We are not persuaded that the Respondent's Decision Notice was wrong in its conclusions and, in all the circumstances, we now dismiss this appeal.

(Signed)

ALISON MCKENNA
PRINCIPAL JUDGE

DATE: 10 April 2017