



Neutral citation number: [2024] UKFTT 449 (GRC)

Case Reference: EA/2023/0439

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

Heard: On GRC - CV Platform

**Heard on: 5 April 2024 on the papers.
Decision given on: 4 June 2024**

Tribunal:

Brian Kennedy KC and Specialist Panel members, Marion Saunders and Miriam Scott.

Between:

MATTHEW CLARK

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

Decision: The appeal is dismissed.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("FOIA") against his decision notice of the Commissioner dated 11 September 2023 Ref. IC-240627-F6W4 ("the DN") which is a matter of public record.
2. The Appellant requested information about planning applications for Heavy Goods Vehicle Operating Centres. North Yorkshire County Council (the "council") refused the request as manifestly unreasonable under the terms of regulation 12(4)(b).
3. The Commissioner's decision was that the council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request but that it breached regulation 11 by failing to conduct an internal review within 40 working days.

Request and Response:

4. On 20 March 2023 the Appellant wrote to North Yorkshire County Council (the "council") and requested the following information:

"...all planning permissions for Operator centres applied for and also granted from March 2020 to March 2023."

5. The council responded on 21 April 2023 and disclosed some information.
6. On 29 April 2023 the complainant asked the council to review its handling of the request.
7. On 29 June 2023 the council issued its internal review response. This confirmed that the council was relying on regulation 12(4)(b) (manifestly unreasonable) to refuse the request on the grounds that complying with the request would impose a significant and disproportionate burden on the council's resources.

Legal Framework:

8. Section 14 FOIA:

(1)Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2)Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable

interval has elapsed between compliance with the previous request and the making of the current request.

9. Regulation 12(4)(b) – manifestly unreasonable:

4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(a) it does not hold that information when an applicant’s request is received;

(b) the request for information is manifestly unreasonable;

10. Licences for Operating Centres are issued by the Traffic Commissioner. Guidance regarding the application of The Goods Vehicles (Licensing of Operators) Act 1995 in respect of licences states:

“Under section 7 it is an offence to use a place in any Traffic Area without authority from the traffic commissioner to use that site as an operating centre for heavy goods vehicles (Section 5(4)(b) does not preclude a traffic commissioner from taking action against an operator for any associated breaches). An operating centre is the base or centre at which a heavy goods vehicle is normally kept. The site must be specified on the licence. Section 23(6) makes it an offence to contravene any condition attached to an operating centre.

Commissioner’s DN:

11. The Commissioner was satisfied that the Council’s planning systems do not have the functionality to readily search, retrieve and extract the specific requested information. He is also satisfied from the council’s explanations that there is no contradiction between there potentially being a need for Operator Centres to satisfy planning conditions and there being no quick route to identifying planning applications which relate to Operator Centres. The council has confirmed that:

“The Council records planning permissions against a location only, not a use category. There is no statutory expectation to record planning applications in a way that need to be searched other than against the property permission that is being applied for”.

12. The Commissioner is therefore satisfied with the council’s explanation that going through the information in order to respond to this EIR request would impose an unreasonable burden upon it. His conclusion is, therefore, that the request is manifestly unreasonable and so the exception provided by regulation 12(4)(b) is engaged.

13. Regulation 12(4)(b) is subject to a balance of public interest test.

14. The Commissioner is satisfied that, in this case, the balance of the public interest lies in the exception being maintained.

Grounds of Appeal:

15. The Appellant stated that the appeal only concerns Harrogate District Council and not all Districts. He stated the Council confirmed on the 20th of January 2023 that they do not hold any planning applications for HGV Operator Centres. (email: R Braithwaite 09/02/2023). This was in relation to the Council's response to decision notice EA/2021/0187. Therefore the search that the Council refer to as being costly, would be on only 5 to 6 weeks of data from 20th January 2023 (email: R Braithwaite 09/02/2023) to March 2023.

16. The Appellant argued that under EIR, the Council cannot neither confirm nor deny. The Appellant makes reference to EA/2021/0187. The Appellant refuted the costs calculations.

Strike Decision dates 12th January 2024:

17. The Commissioner applied for the appeal to be struck out under rule 8(3)(c) (no reasonable prospect of success) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

18. The Commissioner submits that none of the grounds of appeal have any reasonable prospect of success and that the outcome sought by the appellant is outside the scope of the tribunal's jurisdiction.

19. The public authority in this appeal ('the Council') relies on regulation 12(4)(b) EIR on the grounds that complying with the request would impose a significant and disproportionate burden on the council's resources.

20. In considering the grounds of appeal the Tribunal took account of the fact that the appellant is a litigant in person and has dyslexia.

21. Part of the grounds of appeal are that complying with the request would not impose a significant and disproportionate burden for, amongst others, the following reasons:

5.1. The Council's response appears to suggest that they would have to search all the databases under the new unified Council. The request only concerns Harrogate District.

5.2. The Council has already confirmed that they hold no relevant data prior to 20 January 2023. The search for this request would be limited to data from 20 January 2023 to March 2023.

22. In relation to 5.1 the Commissioner argues that the Council have maintained throughout their correspondence that the request was handled using information held by Harrogate Borough Council as it was before it merged to become North Yorkshire Council. The Commissioner provides extracts from the correspondence which support this.
23. In response the Appellant refers to an e-mail dated 18 August 2023 which he submits shows that the Council understood the request to relate to all areas under the control of the unitary North Yorkshire council.
24. In relation to 5.2 the Commissioner argues that this relates to an earlier request to the Council and therefore has no bearing on the current decision notice.
25. In his reply to the strike out Application the Appellant makes clear that his argument in 5.2 is that the Council searched for the same information for a different time period as a result of the previous tribunal decision in EA/2021/0187. That decision covered 2.5 decades 'incurred no cost implications'. He states, *"The search would have been identical to the current request as the request is for the same information but covering a different but significantly shorter time period"*.
26. The Tribunal took the view the question of the burden that would be imposed by the search is a factual issue which is better considered at a hearing by a full tribunal on a detailed consideration of the papers. It is not appropriate in a Strike out application to conduct a mini trial on the basis of the papers presented a Judge sitting alone (without further input from the Public Authority) cannot conclude that there is no reasonable prospect of the tribunal finding that the request would not impose a significant and disproportionate burden and it is therefore not appropriate to strike out the claim.
27. The Tribunal has accepted that the outcome specified on the grounds of appeal does not accurately reflect the powers of the Tribunal ('for the Council to comply with information rights law and cease applying exemptions incorrectly') but, in layman's terms, it broadly reflects what the tribunal is able to do, i.e. to consider whether the public authority was entitled to withhold the requested information under the exception relied upon under EIR. The Tribunal did, and does not, consider that this supports an argument that the appeal has no reasonable prospects of success. On this basis the Tribunal have already dismissed the Strike out application and the appeal has come to the three panel Tribunal for hearing. In the event the hearing is on the papers. The Appellant (we have been informed on the date of hearing; 5 April 2024 is unfortunately in hospital).

Appellant Final Submissions:

28. By way of his final submissions, the Appellant stated that the Council could have carried out the below actions to identify planning applications:

*“NYC could have asked the Planning Department if planning permission is required for an Operator Centre Licence either currently or historically.
Failing a positive response to the above the NYC could have provided a spreadsheet of current Operator Centre Licence holders from the TCO [Transport Commissioners Office] and use that list as a filter on the address or business name to search the planning application database. The Public Access search engine allows for this kind of search.
I had a look at the search engine on the NYC planning portal in more detail with a specific focus on the advanced search facility. Within this under Application Details there is a subsection called Application Type. Application Type captures all types of planning types and defines them as sub-categories to assist in filtering a search request like my own.”*

29. On considering the long history and chronology of the issues between the parties and the evidence before us at this hearing, the Tribunal are satisfied that it is appropriate to decide the appeal on the papers.
30. The Tribunal have sympathy for the Appellant in his quest and we recognise the proper motive for the request and note that the public authority and the Commissioner did so also. The evidence and the facts before us clearly demonstrate, the Commissioners’ comprehensive investigation involved an in-depth and wide scrutiny in both the reasons for the application of the exception claimed (see paragraphs 10 – 34 of the DN) and the investigation also properly and thoroughly considered the balancing factors in the Public Interest Test as required under the EIR (see paragraphs 36 – 48 of the DN). The Tribunal are not persuaded that there is any error of law, or in the Commissioners’ exercise of his discretion within the DN.
31. In our own consideration of the evidence, we endorse and adopt the Commissioners findings as set out in the DN and make the following observations;
32. The request was very wide in that it covered applications for, but not granted planning applications. There is no requirement for any of the terms suggested to be included in a planning application. Whilst the applicant was able to identify 73 licenses granted within the area within the request, he did so by obtaining the information from the Traffic Commissioner. There was no requirement on the Council to hold that list even if it had been sent to them.
33. The information for the 73 sites can be accessed by any member of the public through the planning portal. In that respect, if it exists, it is already in the public domain.
34. Under EIR the Council is obliged to provide all of the information it might hold and to ensure that this was accurate it would require a full search of planning applications. We have no reason or any credible or independent qualified evidence to challenge the estimates arrived at by the Council who find are best placed to assess these estimates.
35. Regarding Public Interest, the Commissioner acknowledged that the Appellant has a valid purpose for wanting the information. Again, we indicate that we accept this

but find that there is little further public interest in the information above the general interest of transparency and accountability. The Council confirmed to the Commissioner in the course of his comprehensive investigation that they do not need to access the requested information to meet their statutory responsibilities.

36. The Appellant's final submission makes suggestions as to what the Council should have done and could do but does not address the findings of the DN.
37. The Tribunal agree with the Commissioner (and we can follow his rational in the DN) that to carry out further searches would place a significant burden on the public authority and even if these searches were carried out it appears that they are not available in a readily accessible format and there are no reasonable grounds to accept that they would provide the Appellant with the information he seeks in any event. Even if they were, we find on balance, for the reasons as identified by the Commissioner in the DN, that it is not in the public interest to require the Council do so. Accordingly for all the above reasons, we must dismiss the appeal.

Brian Kennedy KC

Date: 9 April 2024.

Promulgated on: 4 June 2024