



Neutral citation number: [2024] UKFTT 502 (GRC)

Case Reference: EA/2023/0516P

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

**Heard in GRC Remote Hearing Rooms, Leicester**

Heard on: 14 May 2024

**Decision given on: 13 June 2024**

**Before**

**TRIBUNAL JUDGE A. MARKS CBE  
TRIBUNAL MEMBER S. SHAW  
TRIBUNAL MEMBER M. SAUNDERS**

**Between**

**GERRY WOODHOUSE**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

The Appellant: represented himself

The Respondent: Jenny Roe, Solicitor

**Decision:** The appeal is **dismissed**.

# REASONS

## ***Introduction***

1. This is an appeal against the Information Commissioner's decision notice IC-257440-L6N2 dated 23 November 2023 ('DN').
2. On 6 August 2023, the Appellant ('Mr Woodhouse) requested from the Information Commissioner's Office information about decision notices issued to parish councils.
3. In this decision, the panel refers to the Information Commissioner as '*the ICO*' in his capacity as the public authority, and '*the Commissioner*' in his capacity as the regulator of complaints under Freedom of Information Act 2000 ('FOIA')
4. On 7 August 2023, the ICO confirmed that it held the information requested but refused to disclose it, relying on the exemption in section 21 FOIA (information accessible to the applicant by other means).
5. Later that day, Mr Woodhouse asked the ICO to carry out an internal review of its decision. The ICO did so and wrote to Mr Woodhouse on 9 August 2023 maintaining its original position.
6. The ICO later issued a formal decision notice – the subject of this appeal – on 23 August 2023.
7. Both parties agreed to the Tribunal deciding the appeal on the papers in the case rather than requiring an oral hearing. The Tribunal was satisfied, in accordance with Rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended), that it could properly determine the issues in this case without an oral hearing.

## ***The request***

8. Mr Woodhouse's request of the Council on 6 August 2023 read:

*"I wish to request a list, ideally as a spreadsheet in MS Excel format, of the names of all the UK parish councils that have received 20 or more ICO Decision Notices (for FOIA cases only) since 1<sup>st</sup> January 2014, together with the actual number of Decision Notices received by each of these parish councils."*

## ***The Decision Notice***

9. On 23 November 2023, the Commissioner issued his DN which in summary said that:
  - (a) Unlike most FOIA exemptions, the circumstances of the applicant **can** be considered, as the information must be reasonably accessible to the particular applicant.
  - (b) It is reasonable for the public authority to assume that information is reasonably accessible to the applicant until it becomes aware of any particular circumstances or evidence to the contrary.
  - (c) In response to Mr Woodhouse's request, the ICO had signposted the applicant to where to find the information on its website by providing a link.
  - (d) While Mr Woodhouse does not accept that the information is reasonably accessible to him, this seems to be based on the time it would take him to collate that information.

(e) In his internal review request, Mr Woodhouse said that searching the decision notices section of the ICO's website would be "...*unfeasibly tedious and it could easily extend to several hundreds or perhaps thousands of laborious hours of manual typing work, so s.21 cannot be properly engaged.*"

(f) However, in its response to Mr Woodhouse's review request, the ICO had explained that the search function on the decision notice section of its website could be used to find those notices sent to parish councils. The names of those councils could, the ICO said, be placed into an Excel spreadsheet to establish quickly how many decision notices had been sent to each council.

(g) The ICO told Mr Woodhouse that it had carried out a timed dip sample of 25 of the 415 entries identified by its own search. It had taken around three minutes to type the parish council names into Excel, so for 415 entries it would take just under an hour. The ICO considered this length of time to be reasonable.

(h) Mr Woodhouse had not provided any specific circumstances that mean he is unable to access the information using the website link provided together with the explanation of the search function.

(i) While it may be time-consuming to go through the search entries individually, FOIA does not require a public authority to take this into consideration when relying on s.21. In this case, the Commissioner does not consider that the time it would take to complete the exercise is so lengthy that it would render the information not reasonably accessible.

(j) In short, the ICO was entitled to rely on s.21 FOIA to refuse Mr Woodhouse's request.

### ***Appeal to the Tribunal***

10. On 1 December 2023, Mr Woodhouse sent a Notice of Appeal to the Tribunal challenging the DN.

11. The basis of the appeal is that the DN is wrong in law, and that the ICO should provide the information requested.

12. Mr Woodhouse's Grounds of Appeal are, in summary:

(a) While FOIA is '*applicant and motive blind*', lest the ICO considered his request frivolous, he contends it has a serious purpose which is greatly in the public interest.

(b) The '*tiny parish in North Yorkshire*' of which he is a resident has been found by various external reports to have multiple failings, including in governance and accountability. A particular weakness is that the council fails to publish information as it is obliged to do – leading to a significant number of FOIA requests.

(c) There are currently 22 decision notices published on the ICO's website for this council '*which quite emphatically demonstrates the council's wayward conduct over the last decade or so.*'

(d) There has been no discernible improvement in the council's conduct despite external interventions so Mr Woodhouse wonders if other small councils have similar weaknesses signifying systematic failure rather than a one-off.

- (e) The Commissioner has erred in asserting that the information requested is ‘*reasonably accessible*’ when Mr Woodhouse has assured the ICO that, due to his ‘*personal circumstances*’, it is not.
- (f) Mr Woodhouse cites the Commissioner’s published guidance about s.21(1) which says that, to engage that exemption, the public authority ‘*must assess if the requested information is **reasonably accessible to the applicant***’. He contends that no such assessment was carried out in his case as evidenced by the ICO’s extremely rapid refusal of his request.
- (g) Mr Woodhouse is a pensioner of limited means with only basic IT skills. These are insufficient to enable him to navigate or interrogate data on complicated websites such as the ICO’s, or create spreadsheets, or otherwise compile or manipulate web-data. The ICO did not take this into account in finding that the information requested is ‘*reasonably accessible*’ to him: it is not.
- (h) The ICO’s instructions lead to the search results (though 420 rather than 415 as the ICO claimed) but do not explain how to find the information requested from these. The ICO’s suggestion that the results can be used to populate an Excel spreadsheet includes no advice how to do this, nor has Mr Woodhouse ever attempted such a task previously.
- (i) If the ICO can ‘*establish quickly*’ how many decision notices relate to each council, why has it not provided this information?
- (j) If Mr Woodhouse were to engage a third party expert, he would have little confidence that the output would be ‘*meaningful or accurate*’. The thrust of FOIA is that the authority holding the information has to supply it.
- (k) ICO’s website is vast – and ICO has not complied with its own guidance by failing to provide a meaningful pointer to where the information is available.
- (l) The ICO has huge resources, expertise and web-knowledge. It could likely sort its data electronically and produce the information requested.
- (m) The time spent in pursuing this matter has been disproportionate to the simple alternative of providing the requested information.

13. Mr Woodhouse asks the Tribunal to find that the ICO and Commissioner have erred and that they were not entitled to rely on s.21(1) in this case.

## ***The Law***

### ***Section 1(1) FOIA: general right of access to information held by public authorities***

*Any person making a request to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if this is the case, to have that information communicated to him...*

### ***Section 2 FOIA: Effect of the exemptions in Part II***

*...(3) For the purposes of this section, the following provisions of Part II...are to be regarded as conferring absolute exemption –*

*(a) section 21,...*

***Section 21 FOIA: Information accessible to applicant by other means***

*(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

*(2) For the purposes of subsection (1)—*

*(a)...*

*(b) information is taken to be reasonably accessible to the application if it is information which the public authority ...is obliged by or under any enactment to communicate...to members of the public on request.*

***Sections 57 and 58 FOIA: The role of the Tribunal***

14. Section 57 FOIA entitles either the requester or the relevant public authority to appeal to this Tribunal against the Commissioner's decision notice.

15. Under s. 58 FOIA, if the Tribunal considers that the decision notice was either wrong in law or, to the extent that the notice involved an exercise of discretion by the Commissioner he ought to have exercised it differently, the Tribunal shall either allow the appeal (or substitute the decision notice) or dismiss the appeal.

16. The Tribunal can also review any finding of fact on which the decision notice was based.

***Evidence***

17. Before the hearing, the parties had submitted written evidence. This comprised an Open Bundle of 74 pages (including an Index).

***Summary of submissions on behalf of the Commissioner dated 13 February 2024***

18. In summary, Ms Roe, on behalf of the Commissioner, invites the Tribunal to dismiss the appeal for the following reasons:

(a) Mr Woodhouse has failed to set out in his grounds of appeal why the DN is not in accordance with the law.

(b) Under FOIA, s.21 is an absolute exemption and therefore not subject to a public interest test;

(c) The Commissioner did consider Mr Woodhouse's circumstances, setting out in the DN not only the legal principles but also the assistance the ICO gave Mr Woodhouse to assist him in navigating the ICO's website to find the information requested.

(d) In his grounds of appeal, Mr Woodhouse details the limitations of his technical ability. However, the ICO had provided him with instructions on how to access the information – and from the grounds of appeal it appears that Mr Woodhouse was able to carry out those instructions correctly.

- (e) All that remains is to look at each entry and count-up the numbers of DNs against each parish council. Mr Woodhouse has already carried out the part of the search that requires any level of technical knowledge, leaving just a counting exercise.
- (f) Mr Woodhouse's observation about the time it would take appears to be related to the counting exercise, not his technical ability.
- (g) The ICO would access the information in the same way via its website: it has no other quick and easy way of identifying the requested information.
- (h) The original request asked '*ideally*' for the information to be provided in an Excel spreadsheet, hence it was optional. In its internal review response, the ICO indicated to Mr Woodhouse how long it would take to type all the names into an Excel spreadsheet.

### ***Summary of submissions by Mr Woodhouse dated 27 February 2024***

19. In response to the Commissioner's submissions, Mr Woodhouse in summary says:

- (a) It is absurd that the ICO has expended so much time and correspondence not responding to the request instead of spending '*just under one hour*' to communicate the information requested.
- (b) The Grounds of Appeal clearly set out why the DN is wrong in law in relying on s.21 FOIA.
- (c) The Commissioner has not invited the Tribunal to strike out the appeal under Rule 8(3)(c) ('*no reasonable prospect of the case succeeding*') so presumably the ICO expects the appeal to succeed.
- (d) Because the ICO responded within a matter of minutes to the original request (albeit followed by a formal DN several weeks later), it is clear the ICO did not '*assess*' Mr Woodhouse's particular circumstances as its own guidance provides.
- (e) Contrary to the Commissioner's submission that Mr Woodhouse has carried out the instructions correctly, he is '*nowhere near to identifying any of the information*' requested.
- (f) The reference to a counting exercise is '*wholly misguided*' because he has no information to count. He does not have the expert capability to access the information.
- (g) The Commissioner's response has failed to advance any cogent argument that citing the s.21 exemption is fair, appropriate or lawful.

## ***Discussion***

### ***The facts***

20. The panel first considered the relevant facts of this case. Based on all the evidence the panel has seen, the panel has made the following findings of fact:

- (a) No information was provided in response to Mr Woodhouse's request.
- (b) Instead, he was given a link to access the decision notices section of the ICO website.

(c) When Mr Woodhouse explained to the ICO the limitations of his technical ability, the ICO explained how to use the search function to filter the decision notices by date and those issued to parish councils.

(d) Mr Woodhouse was able to do this and included in his Grounds of Appeal a screenshot of the results. He noted there were 420 entries rather than 415 as cited by the ICO.

(e) As Mr Woodhouse had asked for the information to be provided '*ideally*' in an Excel spreadsheet, the ICO further advised that names of the parish councils identified by the search could be typed into Excel to establish how many notices relate to each of the individual councils.

(f) Mr Woodhouse was unable to understand or implement these instructions. As a result, he regards himself as '*nowhere near*' identifying the information he requested.

### ***Error of law***

#### ***Is there an error of law in the Commissioner's Decision Notice?***

21. Having made the above findings of fact, the remaining issue for the panel in this case was whether the Commissioner made any error of law in the DN.

22. There is no question here of the Commissioner exercising his discretion inappropriately because the exemption relied upon is absolute. This means that, while Mr Woodhouse's public interest arguments appear strong, since s.21 requires no public interest balancing exercise, unfortunately those arguments are not relevant in this case.

23. The panel notes that the leading textbook on Information Rights (by Philip Coppel) treats s.21(2)(b) as a '*deeming*' provision. In this case, the panel considers this means that because the ICO is required under s.53 FOIA to publish decision notices - and does so on its website - the information sought by Mr Woodhouse's request is **deemed** to be reasonably accessible to applicants under s.21(2)(b).

24. Even if the panel is wrong about this, the panel considers that the ICO has indeed, as recognised by the Commissioner, taken account of Mr Woodhouse's limited technical ability by providing him with a link to the correct page of the ICO website, and instructing him how to use the search function. These instructions have enabled him to identify from the tens of thousands of published decision notices those 415-420 notices which have been issued to parish councils over the past decade or so.

25. In the panel's view, Mr Woodhouse was evidently able - as contended by the Commissioner - by correctly following the ICO's instructions, to undertake the only part of the exercise requiring any technical ability. This involved using the search function to filter the decision notices published on the ICO's website to identify those decisions issued to parish councils in the period from 1 January 2014 until the date of his request on 7 August 2023.

26. The panel accepts that the ICO's instructions are less clear about how to '*place the names of the parish councils into an Excel sheet*' to establish how many decision notices had been issued to each council. However, as the Commissioner contends, provision of the information in this format is optional as the request asked for this only '*ideally*'. Moreover, the panel considers it was not unreasonable - given reference in the request to such a format - for the ICO to treat Mr Woodhouse as familiar with Excel.

27. In any event, the panel regards the Excel spreadsheet issue as a red herring. For someone unfamiliar and inexperienced in collating information on an Excel spreadsheet, there is a simple alternative in this case. Scrolling through the 415-420 decisions identified by the filtering exercise readily reveals the name of each parish council that has received a decision notice over the period. The summary of each such notice also reveals whether that notice involved FOIA information (as requested) or Environmental Regulations information (which Mr Woodhouse did not seek) or both.

28. Mr Woodhouse – or someone on his behalf – could readily manually write down (or type into a Word document with which Mr Woodhouse says he is familiar), for each such decision notice involving FOIA information the name of the parish council to whom the notice was issued. By scrolling through the 400 or so decision summaries and noting the parish council’s name, where a council is found to have received more than one decision notice, it would be easy simply to note any additional decision notice(s) to that council next to its name already written or typed.

29. The panel notes that in his Grounds of Appeal, Mr Woodhouse states (at paragraph 8), ‘*I note that there are currently 22 DNs published on the ICO website for [my] council...over the last decade or so*’. This indicates that Mr Woodhouse, or somebody on his behalf, was in fact able to – and did – scroll through the ICO’s published decision notices to his own parish council using whatever technical skills were required to do so.

30. While the panel accepts that such a process would be somewhat laborious if repeated for all parish council recipients of decision notices over the past 10 years or so – and may take longer than the hour or so the ICO estimated – that does not in the panel’s view render the information otherwise than ‘*reasonably accessible*’ whether to the public generally or to Mr Woodhouse in particular.

31. In reaching this conclusion, the panel bears in mind that there is no obligation on any public authority – including the ICO – to sort published information in any particular manner. There is also no obligation on any public authority to create new information nor provide it in a particular format.

32. In this case, the panel accepts the ICO’s statement that – contrary to Mr Woodhouse’s assumption – it cannot produce the information requested ‘*at the touch of a button*’: the ICO too would have to filter, sift and collate the website search results in the same way as Mr Woodhouse or any other member of the public making such a request.

33. In short, the panel is satisfied that the information sought was and remains reasonably accessible to Mr Woodhouse and other members of the public such that the exemption in s.21 FOIA applies.

### ***Conclusion***

34. For the reasons set out above, the panel finds that the Commissioner’s DN was not wrong in law: the ICO correctly relied on the absolute exemption in s.21 FOIA.

35. Accordingly, the appeal is dismissed.

Signed:

Dated: 10 June 2024



Alexandra Marks CBE (*Recorder sitting as a Judge of the First-tier Tribunal*)