



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2014/0113

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50528725
Dated: 8 April 2014

Appellant: Alan Miller
Respondent: The Information Commissioner
2nd Respondent: Financial Reporting Council
Heard at: Field House, London
Date of Hearing: 2 September 2014

Before

Chris Hughes
Judge
and
Dave Sivers and David Wilkinson
Tribunal Members

Date of Decision: 10 October 2014

Attendances:

For the Appellant: In person
For the Respondent: No attendance
For the 2nd Respondent: Michael Lee (instructed by Sophie Devlin)

Subject matter:

Freedom of Information Act 2000

REASONS FOR DECISION

Introduction

1. Mr Miller has sought information from the Financial Reporting Council (FRC), a company limited by guarantee about a Statement of Recommended Practice (SORP) being prepared for a sector of the financial services market. A SORP is guidance for a particular sector which supplements accounting standards of more general applicability. On 19 November 2013 he asked the FRC for:-
 - “a copy of all comments ... in connection with the SORP detailed above...”
 - “a copy of any communications including any emails or meeting notes between the FRC and the IMA [Investment Management Association] in connection with the SORP...”
 - “a copy of any documents, procedures or other information setting out the process by which a SORP...”
2. The FRC declined to provide the information on the basis that, because the information requested did not relate to functions delegated by the Secretary of State, FOIA did not apply to the information requested. On review it upheld this approach. Mr Miller appealed to the Information Commissioner (“ICO”). The ICO in his decision upheld the approach of the FRC finding that the statutory scheme which brought FRC within the scope of FOIA only did so for certain functions and not for its functions with respect to SORPs.

The appeal to the Tribunal

3. Mr Miller appealed against the decision notice. He submitted that the functions of the FRC with respect to the overseeing of audit involved judgements of the integrity of auditors. That decision involved a consideration of the professionalism of auditors and how they implemented or deviated from the accounting standards. The proposed SORP would be one of those standards implemented by many auditors. The FRC artificially separated its roles in order to ensure that many of its closely interwoven activities fell outside the public scrutiny afforded by FOIA. In his appeal he argued that the FRC and IMA were too closely involved with each other, that there was much informed criticism of the SORP and that there was a clear public interest in disclosure of the information requested about how the SORP came to be drafted.
4. The ICO and FRC opposed the appeal, relying on and providing further explanations of the grounds set out in the decision notice.

The question for the Tribunal

5. Whatever the merits of the trenchant criticisms of the FRC made by Mr Miller, the issue before the Tribunal is a pure question of law, whether the activity the FRC undertook in engaging in the formulation of the SORP was as a public body within the ambit of FOIA.

Legal analysis

6. The FRC is not, as a whole, a public authority within FOIA. It has certain functions of the Secretary of State delegated to it and along with this delegation the exercise of those functions is subject to FOIA.
7. The relevant statutory authority is the Statutory Auditors (Amendment of Companies Act 2006 and Delegation of Functions etc) Order 2012 (SI 2012 No 1741) which designates the FRC for the purpose of the discharge of the Secretary of State's functions with respect to Part 42 ("Statutory Auditors") of the Companies Act 2006. Section 1252 of the Companies Act which deals with the delegation of the Secretary of State's functions under Part 42 provides:-
 - (1) The Secretary of State may make an order under this section ("a delegation order") for the purpose of enabling functions of the Secretary of State under this Part to be exercised by a body designated by the order.
 - (2) ...
 - (3) A delegation order has the effect of making the body designated by the order designated under section 5 of the Freedom of Information Act 2000... .
8. Section 7 of FOIA makes provision for public authorities to which FOIA has limited application and provides by S7(5):-

"(5) An order under section 5(1)(a) must specify the functions of the public authority designated by the order with respect to which the designation is to have effect, and nothing in Parts I to V of this Act applies to information which is held by the authority but does not relate to the exercise of those functions."
9. In order to determine what parts of the FRC's activities are within scope of FOIA it is necessary to consider the provisions of Part 42. These deal with the eligibility of individuals and firms to be auditors, qualifications, supervisory bodies, provision of information, enforcement, constitutional provisions with respect to Auditors-General, registers of auditors and third country auditors. There is no power to consider and authorise SORPs. There is therefore no power which can be delegated to FRC with

respect to SORPs in Part 42 and therefore no duty under FOIA with respect to information held in connection with this function of FRC.

10. Mr Miller has argued for an unsustainably wide interpretation of the law. The delegation of functions is precise and clearly demarcated and does not cover SORPs.
11. This is hardly surprising; the FRC is an influential body but it is not a public body, it is a company discharging certain specific public functions and only certain of these are subject to FOIA. Part 15 of the Companies Acts makes provision for accounts and reports of companies. Within that part s464 deals with accounting standards. In addition to its Part 42 responsibilities the FRC has by the 2012 SI been made the prescribed body for issuing accounting standards. However this delegation of functions has not been made subject to FOIA. The function of overseeing the development of SORPs as supplements to accounting standards is not a statutory function, and certainly not one subject to FOIA.

Conclusion

12. The Tribunal is therefore satisfied that the ICO was correct in his legal analysis and accordingly the appeal is dismissed.
13. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 10 October 2014