



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

Appeal No: EA/2013/0034

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50470827
Dated: 18 February 2013**

Appellant: Ronald Hunter

Respondent: The Information Commissioner

Heard on the papers: Field House

Date of Hearing: 1 July 2013

Before

Hughes

Judge

and

FitzHugh and de Waal

Tribunal Members

Date of Decision: 5th July 2013

Subject matter:

s.14 Freedom of Information Act 2000

Cases:

Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440

(AC) *Dransfield*

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 18 February 2013 and dismisses the appeal.

Dated this 5th day of July 2013

Judge Hughes

[Signed on original]

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings "Mr Hunter" made requests to the Department for International Development ("DfID") for information on 28th of June 2012 and 21 July 2012.

The request for information

2. The first request read:-

"By way of this e-mail I am making a formal freedom of information request that you provide the specific legislation that prohibits any UK citizen or UK organisation from accessing the £13 billion funds allocated to the Department of International development, to assist in resolving UK issues such as unemployment."

3. The second request was lengthy and detailed (over a page long) and related to the business case for UK foreign aid. It quoted from the business case and went on:-

"As these are unaudited can you advise the margin of error on these tables and as these are part of your submission to the public, regarding how their money is spent, can you advise why the terms of reference given to the auditors is not expanded from the legal requirements to include such important KPIs

2 perhaps you could explain the huge and sudden increase in intangibles during 2009– 10 (table 3 row 22 from £614 to£24,602

3 it is worth noting that on table 5 the FTEE has reduced in the fiscal year ended 31 March 2012 by 5 or 0.3%-compare that to civil service reductions, armed service reductions, emergency service reductions to name a few and this department is immune to the cuts being suffered elsewhere.is there a rational explanation as to why the "pain is not shared" or is it just positive discrimination?

.....

7 noted £1.6 million net capital expenditure was not achieved and accounts qualified as such

Interestingly enough, the list of countries being assisted excluded the UK, where there are many deprived areas, who would be delighted and would welcome the actual pound notes presented in these accounts"

4. On 26 July 2012 DfID replied to Mr Hunter indicating that the department considered the requests to be vexatious under s14(1) of FOIA and as such they were not obliged to comply with the request and would not be processing it any further.
5. Mr Hunter complained on 29 July 2012 and DfID carried out an internal review responding to Mr Hunter on 10 August 2012. In that reply DfID stated:-

"I note that prior to submitting formal requests under the Act, you have written frequently to DfID and others over recent months to express your views on the subject of overseas aid provided by the UK government. We dealt with this in routine correspondence. In response to persistent e-mails from you about DfID support for International development and questions on how to apply for funds from DfID to spend on development in the UK, we wrote to you on 1 February 2012 to say that the matters you are writing about were not within DfID's remit and we considered the correspondence closed. I note that you have continued to send a large volume of e-mails to DfID and others on this issue since then. I consider your request now made under the Act to be in furtherance of your views that DfID should spend funds in the UK rather than on international development, an issue we have already replied to you on. I also considered that the volume, frequency and nature of all relevant correspondence received from you may be taken into account when considering whether requests under the Act are vexatious.

While you are obviously entitled to your views on overseas aid and at liberty to write to anyone you consider appropriate in furtherance of them, I consider your use of the Freedom of Information Act in the present case to constitute part of an ongoing correspondence campaign in support of your views on the UK government's International development policies, rather than requests for information that DfID could reasonably be expected to hold and respond to. As such, I consider that it would not be an appropriate use of DfID resources to process your request in the circumstances and that doing so would indeed cause unjustified distraction to DfID and diversion of resources away from dealing with non-vexatious requests.

I have furthermore taken account of your e-mail of 29 July 2012 at 08:16 in which you state "...should I just have multiple others asked the same question and make the same complaints to their MPs and councillors, using DfID's valuable resources?". I consider this to be a further indication of the vexatious nature of your request and evidence of your intention to use the Act to further a campaign at the expense of DfID's administrative resources."

6. The letter went on to detail some 13 further requests for information under FOIA sent by Mr Hunter subsequent to Mr Hunter's e-mail of 29 July (in a period of 10 days) and confirmed that the DfID was aggregating these new requests with the previous requests and considering them all vexatious.

7. On 10 August 2012 Mr Hunter replied indicating his dissatisfaction:-

"Thank you for your response, but I'm sure that you will understand that it is totally unacceptable and that I will lodge a complaint. It is my position that asking the legal reason for a UK national or organisation not to access UK funds totalling £13 billion is perfectly reasonable and given that there are 2.6 million unemployed and not a matter of national security adds weight to the request.

Alternatively I can ask my MP to submit a request which merely extends the timeline. As someone who merely challenges the status quo it is reasonable to highlight and request further details of fraudulent activities or is that standard of financial discipline acceptable to DfID?"

The complaint to the Commissioner

8. The same day he wrote to the Respondent in these proceedings ("the Commissioner") complaining. The Commissioner issued his decision notice on 18 February 2013. In the decision notice he analysed the requests and their context in the light of the guidance he has published on the subject of vexatious requests. He noted the lengthy correspondence in which Mr Hunter had objected to the UK Aid budget and concluded that the two requests were an extension of previous correspondence. Mr Hunter had been made aware of different views on both of the issues raised by the two requests before the requests were made, and Mr Hunter was attempting to use the Act in order to receive a response from DfID on matters they had previously stated they would no longer engage with him.

9. Using his published criteria, the Commissioner concluded that the requests were excessive, that the tone and language displayed in some of his e-mails would be considered harassing by a reasonable individual working at DfID and that these harassing comments could reasonably be linked to the request. He considered that complying with the request would invite further correspondence in a similar vein and that this would impose a significant burden on DfID. He considered that the first request under consideration lacked a serious purpose given that it was clear that investments in UK projects was beyond DfID's remit, and that the request of 21 July 2012 was a continuation of the previous correspondence and also lacked serious purpose.
10. In conclusion the Commissioner found that both requests could be seen as part of an ongoing campaign with no discernible sense of objectivity, which was obsessive and harassing, lacking significant value and representing a significant burden to DfID. The Commissioner therefore concluded that both requests were vexatious.

The appeal to the Tribunal

11. Mr Hunter appealed to this Tribunal on 21 February 2013. In his appeal he did not in any way seek to address the arguments advanced by DfID in rejecting his request or the reasons set out by the Commissioner in his Decision Notice explaining why he agreed with DfID. He argued that he had asked a very simple question and then set out a series of points which he (presumably) considered to demonstrate that his view on the merits of International Development spending was correct. Insofar as an argument could be discerned it was that the appeal was based on the proposition that since Mr Hunter was right with respect to International Development he should be entitled to replies to his FOIA requests from DfID, which was wrong.
12. In his response to the appeal the Commissioner relied on the reasoning in his Decision Notice. He also analysed the recent Upper Tribunal case of *Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AC)* "Dransfield" which addresses the question of when a request is vexatious. He drew attention to the following key points in the decision:-

- the consideration whether there was an adequate or proper justification for the request - with respect to this issue the Commissioner concluded that it was difficult to see how information requests would assist Mr Hunter in pursuing his concerns in any practical way
- that the resource burden is properly considered a relevant factor in determining whether a request is vexatious the point of S14 was to protect the resources of public bodies - in his appeal Mr Hunter had stated "*it costs the average household £600 per annum for foreign aid - that surely buys me an answer to a simple question*"
- whether the request was vexatious in the sense of being manifestly unjustified, inappropriate or improper use of FOIA - given the enormous volume of correspondence on related issues which had not shifted Mr Hunter's approach, the Commissioner was of the view that the requests were an inappropriate and/or improper use of FOIA.

The questions for the Tribunal

13. The issue for the tribunal was whether, given the undisputed history of dealings between Mr Hunter and DfID set out above, the requests were manifestly unjustified.

Analysis and conclusion

14. Mr Hunter has pursued a relentless campaign of correspondence with DfID putting forward his critique of policy. He has not been assuaged by responses from DfID and will not be so satisfied unless policy changes. He has explicitly stated that he is concerned to challenge the status quo rather than shown any interest in the information (with respect to the first request under consideration it is of course already in the public domain in the shape of the relevant Acts of Parliament). He has been told repeatedly by DfID that the Department understands but does not share his view and that they do not intend to pursue the correspondence. He has attempted to harass the DfID by attempting to persuade the Equality and Human Rights Commission to investigate DfID for racial discrimination because it does not grant aid to communities in the UK. On a proper consideration of the requests and their

circumstances in the light of *Dransfield* it is clear that these requests have no proper purpose – they are an abuse of the statutory right to information.

15. Mr Hunter does not want information, he wants to pursue an argument and to disrupt the proper functioning of DfID by wasting its time. The requests are plainly vexatious and the Commissioner came to the only possible conclusion.

16. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 5 July 2013