



Appeal Number: EA/2013/0046

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

BETWEEN:

Appellant: Ross Straker

Respondent: The Information Commissioner

Second Respondent: Metropolitan Police Commissioner

Decision by: Robin Callender Smith
(Tribunal Judge)

Dated: 21 January 2014

RULING

1. The Application

- (1) The Second Respondent applies for an order in respect of costs against the Appellant under rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules"), on the basis that the Appellant acted unreasonably in both bringing and conducting proceedings.
- (2) The Second Respondent seeks to recover all costs incurred in successfully defending the Appellant's appeal against the Information Commissioner's Decision Notice ref: FS50464697 dated 7 February 2013. A costs schedule was attached with the application.

- (3) The total costs claimed amounted to £9,149.60 of which £7,793.60 comprised of nearly 29 hours in-house legal counsels' work and the balance for work by independent Counsel instructed in the appeal.
- (4) The Second Respondent argues that it was unreasonable for the Appellant to bring the appeal in the light of a detailed Decision Notice from the Information Commissioner setting out why the Appellant's request for information was vexatious. It referenced the relevant leading case to support that conclusion. The appeal against that decision had an accusatory tone is accusatory and focussed on an imagined conspiracy theory. The Appellant's failure to address the findings of the Decision Notice demonstrated that the Appellant did not actually understand the purpose of the appeal process. It was unreasonable to put the ICO, the Tribunal and the Second Respondent to the expense of dealing with an appeal without understanding the purpose of the appeal.
- (5) The Appellant had been unreasonable in the conduct of proceedings, something recognised by the Tribunal at Paragraph 34 of its judgement where it observed that "the tone of much of the Appellant's correspondence in the course of these requests became quickly accusatory and contained implied threats against those who he considered to be involved in his imagined conspiracy. Officers were accused of lying, serious dishonesty was alleged against the MPS, MPS staff were accused of manipulating police officers, a detective inspector was accused of "lying over the telephone" and trying to "muzzle" Sir John Stanley MP, another detective inspector is accused of lying, a member of the MPS is accused of letting his daughter steal his dog and so on."
- (6) The Second Respondent stated that it was clear from the oral hearing that the Appellant had "no understanding of the purpose of the appeal process or the purpose of the hearing. He repeatedly sought at the hearing to explain the detailed background to his FOIA requests, and was entirely unable to address the question of vexatiousness, despite a clear explanation from Judge Callender Smith at the start of the hearing." It was unreasonable for someone to ask for an oral hearing without understanding what the purpose of that hearing actually was.
- (7) The Second Respondent recognised that costs were discretionary and exceptional, and that this discretion is exercised in an otherwise costs neutral

environment and appreciating that the public should not be deterred from bringing proceedings in Tribunals for fear of costs orders, (as confirmed in *Royal Mail Group Ltd v Information Commissioner* (EA/2010/0005)).

- (8) The Second Respondent pointed out, in recent decisions considering Rule 10, that the Tribunal had explained that the meaning of "unreasonable" in rule 10 was defined as being "not in accordance with reason, irrational" (as defined by the Oxford English Dictionary) as distinct from the precise administrative law definition of the word, connoted by *Wednesbury* unreasonableness (see *Seevaratnam v Charity Commission for England and Wales* [2009] UKFTT 393, adopted in *Royal Mail* [17]-[19]).

Unreasonableness "must depend on the facts of each case, there being no hard and fast principle applicable to every situation" (*European Environmental Controls Ltd v The Office of Fair Trading*, CCA/2009/0002).

- (9) On that basis the Appellant's actions in both bringing and conducting these proceedings were irrational, illogical and unreasonable in the most plain meaning of those words, to the extent that they justified an order that the Appellant should pay the Second Respondent's costs occasioned by the appeal.

2. The Response

- (1) In his five-page response to this costs application (dated 17 December 2013) the Appellant reiterated the background to the information request repeating - for the first four pages – all the elements of his original and unsuccessful appeal.
- (2) On the final page, however, he explained that he had not intended to be a nuisance or vexatious or attention-seeking. He had simply wanted to find out what had happened to his dog, Wooky. He accepted that he had been found to be "obsessive" in his requests for information and stated he would no longer seek information from the police in the matter.

3. Ruling and Reasons

- (1) The Second Respondent has properly recognised that – in making this application - costs are discretionary and exceptional.

- (2) The discretion in relation to costs is exercised in an otherwise costs-neutral environment. The public should not be deterred from bringing proceedings, particularly in the Information Rights Tribunal, for fear of costs orders.
- (3) Public authorities have the ability in FOIA and the EIRs to refuse to provide information when they believe requestors have crossed the line into vexatiousness particularly in relation to repetitious and the tone of requests. The Second Respondent correctly believed the Appellant in this matter had crossed that line. That approach was upheld by the Information Commissioner and the Tribunal.
- (4) The Second Respondent will also recall that the Appellant's father (who attended the appeal hearing with the Appellant's mother) asked whether he could assist the Appellant because [redacted].
- (5) The Appellant accepts the characterisation of his repeated requests and their tone as – ultimately – vexatious.
- (6) This was not, however, a case where certain aspects what was done by those within the Second Respondent's service were completely without criticism. As Paragraph 12 of the Tribunal's decision noted (in respect of the Information Commissioner's Decision Notice)

Notwithstanding that the MPS had sometimes provided the Appellant with inconsistent responses to his previous requests for information, the requests in question could fairly be seen as obsessive given that the underlying issues surrounding the Appellant's concerns about his missing dog and the MPS' alleged involvement had been the subject of several investigations (both internal to the MPS and external).

- (7) While the Second Respondent has been put to the expense of preparing for and attending the appeal this is not a case where it would be fair, just or proportionate to award costs against the Appellant. He has accepted the Tribunal's decision that his requests were vexatious.
- (8) To put other Appellants – particularly unrepresented ones in this jurisdiction – at risk of being discouraged from pressing matters at least to the first level of formal appeal with a costs order of around £9,000 would require more than existed in this appeal particularly with an Appellant with [redacted].
- (9) I have considered whether there should be a token order of costs against the Appellant but am not persuaded that even that would be appropriate.

For all these reasons the Second Respondent's costs application is dismissed.

Robin Callender Smith
Tribunal Judge

21 January 2014