



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Appeal No. EA/2014/0194

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50531575
Dated: 15th. July, 2014

Appellant: Maureen Comber ("MC")

Respondent: The Information Commissioner ("the ICO")

Before

David Farrer Q.C.
Judge

and

Paul Taylor and Jean Nelson
Tribunal Members

Date of Decision: 13th. February, 2015

Date of Promulgation: 19th February 2015

The Appeal was determined on written submissions.

Subject matter: Whether the Appellant's request was vexatious for the purposes of FOIA s.14

Cases: Dransfield v ICO and Devon County Council [2012] UKUT 440

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 13th day of February, 2015

David Farrer Q.C.

Judge

[Signed on original]

The Decision

Introduction

1. At and for a considerable time before she made the request which gives rise to this appeal, MC was a British Horse Society county access officer for Hampshire. For many years, in dialogue and correspondence with the county council ("HCC"), she promoted public rights of way, particularly riders' access to the countryside.
2. With others, she had particular concerns as to ownership of and access to Broxhead Common, part of which had been fenced off many years ago by the landowner. MC has strong views as to the legal status of the common and the removal of some eighty acres from registration by order of the Court in 1975. HCC reported thirty - one communications from her on the subject of Broxhead Common in seven years together with a further twenty - six from persons who, HCC believes, have links with her. She apparently sustained continuous exchanges as to Broxhead with HCC for around twenty years leading up to the request. In a letter of 15th. March, 2012 HCC stated that her demands on the Countryside Team

were unreasonable and were affecting the quality of its service to others. In a further letter dated 31st. October, 2012, responding to questions as to the removal of the eighty acres from the Register and the lack of any application to fence them, the HCC Head of Information Compliance, Judith Downing, referred to the strain that such continuing inquiries placed upon its resources and indicated that it would treat further communications of the same nature on the same issues as unreasonable and respond accordingly.

3. MC also contributed to a website which vigorously publicised the issue of Broxhead Common. She applied to the Land Registry to alter its records as to title to the eighty acres and lodged a complaint against it when it declined to do so. The Independent Complaints Reviewer rejected her complaint and provided a very full report setting out her conclusions. This was completed in September 2014, nearly a year after the request. MC also contacted the Rural Payments Agency and DEFRA on the same subject as well as her MP.

The Request

4. By e mail of 29th. October, 2013 MC made the following request - *“Please will you send me a list of those who make up Area Team North? In fact a pro forma of who does what in the Countryside Department of HCC would be most useful so perhaps it could be included as part of the whole”*.
5. On 6th. January, 2014, long past the date for its response, as noted in the Decision Notice, HCC sent MC a detailed structure chart showing the different roles in the North Area Team and Countryside Department. MC immediately asked for the names of team members since only their functions were specified. Judith Downing replied on 31st January, 2014, referred at length to the extent and self-generating nature of previous correspondence from MC and stated that HCC treated her request, specifically in so far as it required names, as vexatious, in accordance with s.14. She indicated that HCC would not respond to correspon-

dence on the same topics which raised no new point. HCC later declined to perform an internal review of the decision to treat the renewed request as vexatious.

The Complaint to the ICO

6. MC complained to the ICO on 18th. February, 2014, suggesting that HCC was covering up a criminal offence relating to the removal of the eighty acres from registration and supplied false information. She asked the casework team to investigate the matter. She accused HCC of issuing threats regarding vexatious behaviour. Her complaint was evidently and properly treated as a complaint as to the treatment of her request of 29th. October, 2011 as vexatious.

The Decision Notice ("the DN")

7. The ICO stated that this complaint fell under FOIA s.14 rather than reg.12(4)(b) of the Environmental Information Regulations, 2004. The Tribunal agrees; the names of county council staff are not environmental information as defined in reg. 2(1).
8. He reviewed HCC's account of its dealings with MC over the previous twenty years (the frequency and general content of which MC does not contradict). They were clearly and extensively set out in a letter of 13th. June, 2014 from Judith Downing to the ICO, to which was attached a spreadsheet of MC's contacts with HCC, together with those of others thought to be collaborating with her. The ICO referred specifically to the Broxhead Common exchanges and concluded that any continuing dispute on the status of the Common could only be resolved by further order of the Court. He considered HCC's interpretation of MC's purpose, namely to enable her to address future representations to particular members of the countryside team. He concluded that HCC had correctly treated the request as vexatious.

The Appeal

9. MC appealed on several grounds. She stated that HCC formerly provided the type of information requested to volunteers like herself. Prior to the request she had not corresponded with HCC since exchanges in February and October, 2012. The ICO was wrong to associate her request with previous inquiries regarding Broxhead Common and asserted that she had no need of such further inquiries since she was better informed on this subject than either senior or junior HCC staff. She needed to address junior officers in her role acting for the British Horse Society. She surmised an “ulterior motive” in HCC’s response to her request, which was proportionate and could not properly be characterised as vexatious. In belittling the public interest in this request the ICO, quite mistakenly, linked Broxhead Common to the request. It had “nothing to do with it”. She emphasised that she had all the information that she needed on that subject.

Our Reasons

10. We are guided in our decision by the approach indicated in *Dransfield v ICO and Devon County Council [2012] UKUT 440*. The Tribunal is aware that the Court of Appeal has recently considered *Dransfield* and will in due course give judgment upon it. However, its authority binds the Tribunal unless or until it is overturned and we apply its guidance to the determination of this appeal.

11. Our starting point is the nature of the request, which, viewed in isolation, appears a modest and quite reasonable inquiry, albeit one of very limited value to the public. Given the comprehensive picture of the structure of the various teams and partnerships provided by HCC in response to MC’s request, it is far from obvious why she or any other inquirer should need to know the name of a fairly junior individual member of staff, as distinct from the role which each performed. A reasonable inquiry can be addressed to an office even if the name of the holder is unknown. Moreover, the officers concerned were not those designated to answer

public requests for information. HCC's belief as to the purpose of the request is perfectly plausible, though we make no finding as to its correctness.

12. Such a request cannot, however, be viewed in isolation, given the previous history of correspondence and the relentless and repetitive pursuit by MC of questions of countryside access, particularly, of the issue of the eighty acres removed from Broxhead Common, as to which HCC, whatever the rights and wrongs of the matter, could plainly add nothing to what it had already said.

13. MC's protestation that the request had nothing to do with Broxhead Common is hard to accept. When requesting an internal review of the decision of HCC conveyed on 31st. January, 2014, she referred expressly to alleged failures to answer questions as to Broxhead Common (paragraph 6) and to false representations as to the facts with regard to Broxhead Common amounting, in her opinion to "*no less than criminal fraud*" (paragraph 14). Further, her complaint to the ICO following the refusal of an internal review, requested an investigation into a cover-up of a criminal offence involving the removal of the eighty acres from the register. The Tribunal considers that HCC was entitled to regard an apparently independent request for names as part and parcel of the Broxhead Common campaign.

14. It is apparent that no useful purpose could be served by persisting in sterile arguments to which HCC's response had long been clear. If there was a case to bring, then it must be for a court to resolve it. The seemingly endless emails and letters to HCC had no practical value but were disproportionate and unreasonable. The modest pause before the request does not alter that assessment.

15. HCC argues that they placed an unreasonable burden upon it to the detriment of other members of the public seeking the assistance of the Countryside Department (to use a compendious term). The Tribunal accepts that this is probably cor-

rect. We take account of the sheer length of the correspondence, as carefully logged by HCC.

16. This is not a case in which the requests or other approaches by MC involved personal invective but the repeated, wholly irrational and forensically nonsensical accusation of theft and fraud by HCC does not assist her appeal.

17. We take no account of correspondence from others said to be linked to MC. Her personal contribution to the burden on HCC was highly significant by itself.

Our Decision

18. We have no doubt that HCC was justified in its reliance on s.14. This request, viewed in its proper context, was vexatious, taking the overall view of the matter advocated in *Dransfield*.

19. We therefore dismiss this appeal.

20. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

13th. February, 2015.