

IN THE FIRST-TIER TRIBUNAL Case No. EA/2014/0248 + 0249 + 0250
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Subject matter: FOIA

Vexatious or repeated requests s.14

Cases: *Information Commissioner v Devon CC & Dransfield* [GIA/3037/2011].

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 10 September 2014 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr and Mrs C Jephcott (the Appellants) were the parents of a premature baby which was born 35 years ago and passed away within hours of its birth in February 1980.
2. Some years later it became apparent that the health authority involved had retained some of the deceased infant's tissue for examination. The Appellant wanted to have that tissue interned with the remains of the deceased child.
3. At that stage it became apparent that the Register of Burials contained an incorrect entry. It named the deceased as the father rather than the infant.
4. That error was subsequently rectified by a Statutory Declaration in 2006.
5. The Appellants have remained unhappy about that rectification. They have tried to ascertain whether or not the burial plot relating to their deceased child contains those remains or not.

6. They made a series of information requests to three public authorities: Wolston Parish Council, Brandon and Bretford Parish Council and Wolston, Brandon and Bretford Joint Burial Committee.
7. These complaints have been handled by the same solicitor and the appeals from the Information Commissioner's three decisions in respect of them have been linked for the purposes of these appeals.
8. These have been dealt with – by agreement of all the parties – on the papers before the Tribunal.

The requests for information

9. In respect of 16 requests to Wolston Parish Council (WPC) between 10 December 2013 and 24 March 2014 the requests were for information about burial procedures and the authority's structures, legal arrangements and statutory functions.
10. In respect of the 11 requests to the Brandon and Bretford Parish Council (BBPC) these were for information about the Council's structures, legal arrangements and statutory responsibilities.
11. In respect of the Wolston, Brandon and Bretford Joint Burial Committee (WBBJBC) the Appellants submitted a request on 24 September 2010 for information regarding its burial procedures, structures, legal arrangements and statutory functions. The WBBJBC subsequently responded to that request 4 March 2014. The Appellants disputed that the public authority had provided a complete response to their request.
12. They subsequently submitted nine further requests between 13 March and 24 March 2014 on the same theme as the request to which they had had a response from WBBJBC on 4 March 2014.
13. None of these three public authorities has an internal review mechanism for decisions under FOIA.

14. Given the number of information requests involved in this series of linked appeals it is not proposed to set them all out in any further detail save the first request on 10 December 2013:

With reference to and in accordance with Freedom of Information legislation we write requesting information.

We have, in 11.06.2011, made formal written complaints to Wolston Parish Council regarding the handling of matters in which [a named Councillor] was involved in, related to and party to.

Our complaints were handled by [same named Councillor].

Please kindly provide (in printed paper format) information of the motions that were passed by Wolston Parish Council which permitted and allowed [same named Councillor] to handle formal complaints, which involve and relate to himself, himself, and which also permitted and allowed him to do so without the need for him to declare "prejudicial interest" whilst he handled formal complaints, relating to himself, himself.

Please also provide (also in paper printed format) information on the legislative/constitutional/formal authorisation that gives Wolston Parish Council member[s] power to handle complaints, involving and relating to themselves, themselves, and information of the legislative/constitutional/formal authorisation that gives Wolston Parish Council powers to give powers to members of Wolston Parish Council to handle complaints involving and relating to themselves, themselves.

Please provide (in printed paper format) information of the legislative/constitutional/formal authorisation that gives Wolston Parish Council power to permit a Wolston Parish Council Member, with prejudicial interest, to handle complaints involving and relating to themselves, themselves, without the need for any such involved member to declare "prejudicial interest" at any proceedings relating to the complaint and the handling of the complaint.

Please kindly provide information (in printed paper format) as to what has given [named Councillor] power to handle formal complaints, involving himself, himself.

15. The annex to the WPC decision notice (FS 50529145) sets out all the information requests made in that case set out over eight A4 pages. The BBPC decision notice (FS 50533115) sets out all the information requests made in that case over four pages. The WBBJBC decision notice (reference FS 50535571) sets out all the information requests made in that case over three A4 pages.

16. All three of those annexes are publicly available documents as part of the Decision Notices – available under those reference numbers – from the Information Commissioner’s website.

17. The three public authorities applied s.14 FOIA to the requests on the basis that they were vexatious.

The complaints to the Information Commissioner

18. The Information Commissioner accepted that it was unusual for public authorities involved in this matter to apply s.14 to every request received, including the initial requests. The context, however, in the case of WPC was that there had already been protracted correspondence with the Appellants since 2006.

19. It had, for instance, told the Appellants on 5 August 2011 that their continued correspondence bordered on harassment which would mean they would receive no further replies to any correspondence and that was reinforced with a further letter to them in 2012.

20. In terms of WBBJBC the Information Commissioner accepted that the Appellants had been corresponding since 2006. He decided that with regard to their request dating back to 2010 – which had received a response which the Appellants considered incomplete – it needed to be considered separately in accordance with s.1 FOIA but required no further action by the public authority.

21. The Information Commissioner, having examined the volume of the requests, considered their context and also considered the resources available to the three public authorities, concluded that s.14 had been properly applied to the information requests by the public authorities.

The appeals to the Tribunal

22. The specifics of the Appellants' appeals are set out in detail in their Grounds of Appeal for each of these appeals. The essence of their points is summarised in their letter to the Tribunal dated 19 December 2014. They contend:

- (1) That Mr Jephcott is not dead, has not ever been registered as dead or recorded as dead or reported as dead. His personal information and data has been processed to forge or fabricate a burial certificate.
- (2) The Information Commissioner failed to see the difference between a letter concerning the making of complaints about breaches of the code of conduct and a letter making a FOIA request. The Appellants believed that it was improper for the Information Commissioner to do this.
- (3) The Appellants believed it was improper that the Information Commissioner had failed to provide a named Councillor's reaction to receiving their original 11 June 2011 letter.
- (4) They wished the Tribunal to note that "processing personal information or data" belonging to someone who was not dead for a "fictional burial certificate" for the burial of that living person was actually or factually "processing personal information or data" and that such processing of personal data was subject to the provisions of the Data Protection Act 1998.
- (5) Forging or fabricating a burial certificate for a living person, they contended, was a breach of the Data Protection Act.
- (6) The Appellants' complaints against public authorities for breach of code of conduct and breach of Data Protection Act matters still stood and remained unresolved. The Information Commissioner was using s.14 FOIA to assist in the non-compliance of codes of conduct and the Data Protection Act.

- (7) The Information Commissioner should not be applying section 14 to anything that section 14 did not apply to. He should not be forging or fabricating personal information or data. He should not be forging or fabricating a burial certificate for someone who was not dead and who had never been registered as dead and should not be “peddling a forged/fabricated/fictional burial certificate” for the benefit of anyone else.
- (8) Burial certificates were proper legal documents issued by the proper authorities. The Information Commissioner should not be “issuing/peddling/launders” “improper/corrupt” documents and should not be using his powers to allow parish councillors, parish clerks, solicitors or others to do so.
- (9) It was not right for a living person to be made to live on “Death Row” while “delighted parish clerks and councillors, solicitors, IC officers, and the IC himself, bandy a burial certificate about” which they all pre-prepared or prepared themselves for the live or living person.

Conclusion and remedy

23. In respect of all three appeals there are some common points on which the Tribunal makes findings which are set out below.
24. The Appellants’ concerns about the process for correcting errors in respect of an issue as sensitive and personal as a burial certificate that has been mis-issued (but then corrected) is clear on the face of the papers considered by the Tribunal.
25. While the Tribunal has great sympathy with the Appellants’ circumstances giving rise to their concerns, those concerns did not permit the Appellants to launch a series of information requests under FOIA aimed at the three public authorities without objective consideration of the volume of those

requests, how the requests would be handled, and the impact they would have on the three public authorities.

26. In terms of the WPC (and the WBBJBC) requests, and the fact that the Appellants' correspondence began in 2006, it is significant in the general context to all of these requests that the Appellants were warned that their continued correspondence bordered on harassment, a warning that was repeated again in 2012.
27. The Upper Tribunal decision in *Information Commissioner v Devon CC & Dransfield* [GIA/3037/2011] identified that a vexatious request was one which was a "manifestly unjustified, inappropriate or improper use of FOIA" and reminded decision-makers that they should adopt an "holistic and broad approach" to the determination of whether a request was vexatious or not, emphasising the attributes of manifest unreasonableness, the responsibility and – especially where there had been a previous course of dealings – the lack of proportionality that typically characterised vexatious requests.
28. The Upper Tribunal suggested that there were four broad issues or themes which could be examined not as a checklist but rather as a reminder of the issues which might identify vexatiousness of requests.
29. These four "identifiers" relate to the burden on the public authority and its staff, the motive of the requester, the value or serious purpose of the request and any harassment or distress of and to the staff in the public authority.
30. The Upper Tribunal decision, which is binding on this First Tier Tribunal, also pointed out that although FOIA was normally "motive blind", in relation to s.14 decision-makers could not "sidestep" the question of the underlying rationale or justification for the request.

What might seem an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority [34].

31. This observation applies particularly to the Appellants' information requests to all three of the public authorities.
32. In terms of the WPC requests, the public authority in this case employed a clerk who worked 20 hours a week. During the period December 2013 to March 2014 it is clear that there were many weeks when half of the clerk's contracted hours were taken up with dealing with the Appellants' 16 FOIA requests.
33. The Tribunal notes that the clerk reported feeling "stressed and harassed" by the volume of those requests.
34. The Information Commissioner's overall view that the burden on WPC had been "significant" and "detracted from other areas of work" appears to the Tribunal to be a completely reasonable conclusion.
35. The Tribunal finds that there was only a limited public interest in the matters being pursued by the Appellants. The Tribunal accepts that the underlying issues mattered to them personally but, more generally, the burial records had already been corrected by a Statutory Declaration on 12 July 2006, the solicitor for the public authorities had expressed regret for the error in a letter dated 5 August 2011, and the Appellants had received a copy of the Statutory Declaration and resolution on 4 March 2014 after the request was made to WBBJBC.
36. Continuing with information requests in these circumstances appears to be for no other reason than to satisfy the Appellants' personal agenda against these public authorities. That is not a legitimate use of FOIA in those circumstances.
37. In terms of BBPC, the clerk at that public authority worked three hours a week to deal with administrative issues and it appears that the demands of responding to the Appellants' correspondence during the relevant period meant that she had to work an additional unpaid hour. That clearly caused

her to have a “feeling of worry” and to have felt “intimidated” particularly after the clerk felt as if the Appellants treated her as lying. She apparently “dreaded” picking up the post and felt powerless to stop what was clearly a barrage of letters.

38. The harassment caused by the 11 FOIA requests justified the public authority’s decision to rely on s.14 and to treat them as vexatious. In terms of motive and value or serious purpose, the personal agenda of the Appellants overshadowed any intrinsic value that might have existed in their requests.

39. The WBBJBC’s position was that it employed a clerk who worked four hours a week.

40. Evidence had been submitted to the Information Commissioner that the clerk felt subject to “psychological warfare” as a result of the volume of the information requests from the Appellants, that the clerk felt sick when she received further letters and that there was “worry and heartache”. The clerk said that she felt a “victim” and the Information Commissioner had seen correspondence from the Appellants describing the clerk and the authority as “inappropriate, unethical, disrespectful and dishonest”.

41. Again, the Tribunal finds that the level of harassment caused by the Appellants’ requests and by their conduct crossed the threshold of reasonableness and that any motive, value or serious purpose that might have been associated with the requests were undermined by the Appellants’ pursuit of their personal agenda.

42. For all these reasons, in all three appeals detailed above, the Tribunal is satisfied that s.14 FOIA was correctly applied and that all three appeals must be dismissed.

43. Our decision is unanimous.

44. There is no order as to costs.

Robin Callender Smith

Judge

15 February 2015