



IN THE MATTER OF AN APPEAL TO Appeal No. EA/2015/0017
THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

BETWEEN:

JOSEPH BALDWIN
Appellant

-and-

THE INFORMATION COMMISSIONER
Respondent

Date of Promulgation: 27th July 2015

Before
Melanie Carter
(Judge)

and

Alison Lowton
Melanie Howard

1. This appeal relates to various information requests made by Mr Baldwin, the Appellant to Kent County Council (“the Council”) between June and September 2014. The requests sought documentation concerning the care provided to the Appellant’s father at Oakhurst Court Nursing Home, and certain related matters. The wider background to the requests is that the Appellant had cared for many years for his father at his home and that his father had died shortly after being moved to the Nursing Home. There had been an Adult Protection investigation carried out by the Council in 2010, which involved the consideration of allegations against the Appellant, The Appellant had sought to uncover what he believed to be mishandling of his father’s care by both the Council and Nursing Home and overall to clear his name.

2. The Appellant's requests for information were refused by the Council on the basis that they were vexatious within the meaning of section 14(1) of the Freedom of Information Act 2000 ("FOIA"). The Council's refusal was upheld by the Information Commissioner "the Commissioner" in a decision notice ("DN") of 5 January 2015. The Appellant has appealed to the Tribunal. Our task is to determine whether the DN is in accordance with law.
3. The Appellant's notice of appeal did not set out clear grounds of appeal. The Commissioner did not attend the hearing.
4. The Tribunal having taken into account all of the representations and evidence and heard in person from the Appellant, has decided to refuse the appeal.

BACKGROUND

5. On 6 June 2014, the Appellant wrote to the Council, asking for the following information:

"1. All information regarding Oakhurst court nursing home.

2. Document – adult meeting Dated 15th June 2010.

3. All letters Documents relating to family.

4. Any other information that you have continually denied me."

6. In light of the history of requests, the Council had informed the Appellant in a letter of 20 February 2014 that any further correspondence on this subject would be placed on file, with no further action to be taken by the Council. On that basis, the Council did not initially respond to the Appellant's request of 6 June 2014. However, given that the request fell within the scope of FOIA, the Appellant complained to the Commissioner who in turn asked the Council either to provide the requested information, or to issue a refusal notice.
7. The Council responded in a letter of 28 July 2014. Taking the requests in turn:
 - (1) As to request 1, the Council stated that it had previously advised the Appellant (in letters of 1 May 2012 and 8 August 2013) that it did not hold any Oakhurst Court Nursing Home files relating to the Appellant's father and his care.

- (2) As to request 2, the Council noted that it had already advised the Appellant (in a letter of 10 September 2013) that it did not hold any information about a meeting on 15 June 2010 save for an apparently erroneous reference to such a meeting in the minutes of another meeting of 25 June 2010 (as the Council had explained to the Appellant in a letter of 14 October 2013).
- (3) As to request 3, the Council pointed out that it had already provided the Appellant with “*all the information we hold relating to your family to satisfy previous requests for information under both [FOIA] and the Data Protection Act 1998*”. The Council observed that, on previous occasions, the Appellant had complained that the Council should not have provided the Appellant with information concerning other family members. The Council also referred to a letter from the Commissioner dated 29 October 2013, which concluded that the Commissioner would not take any further regulatory action in relation to certain data protection concerns that the Appellant had raised.
- (4) As to request 4, the Council observed that while it had previously withheld certain information from the Appellant relating to the Appellant’s father and the Adult Protection investigation that had been carried out, it had now released all such information in its possession to the Appellant. The Council’s letter concluded by noting that “*all information that we hold relating to your father and the Adult Protection investigation has now been released to you. Any further requests for the same information will be considered both repeat and vexatious under sections 14(1) and 14(2) of [FOIA]*” .
8. The Appellant responded on 30 July, disputing the Council’s response to his original request, and making a series of further requests. These included (i) information regarding “*care at home, and Goldsboro care agency’s [sic], which would be all care notes, E-MAILS exchanged between them and Kent County Council, telephone calls, and any other information that you hold*”, (ii) all information exchanged between the Council and Surrey County Council (specifically emails, telephone calls and faxes) and (iii) information exchanged between the Council and Tonbridge Primary Care Trust between 2007 and 2010 (“*telephone calls, faxes, E-MAILS, meetings, everything*”).

9. On 31 July 2014, the Appellant further supplemented his requests, asking for copies of all correspondence between (i) the Council and Kent and Sussex Hospital, concerning the period when the Appellant's parents were being treated at the latter, (ii) the Council and "*Kent police*", and (iii) the Council and "*all members of my fathers [sic] family that I do not already have*". On 20 August 2014, the Council responded to various letters from the Appellant including those of 30 and 31 July 2014. The Council set out its view that the latest requests were both "*repeat and vexatious*" and were therefore refused under sections 14(1) and 14(2) of FOIA. The letter noted, in particular, that "*[a]ll of your requests are about the same underlying issue (namely the Adult Protection investigation) and several requests have asked for similar information. We have told you at least twice (20th February 2014 and 28th July 2014) that all previously withheld information has now been provided to you and we are not prepared to copy every record held (again) to reassure you of this*". The Council went on to note that the Appellant's requests, together with "*numerous complaints*" which the Appellant had previously made to the Council's social services, the Local Government Ombudsman, the Commissioner and the Appellant's local Member of Parliament, showed an "*unreasonable persistence*" and represented an attempt to "*reopen an issue which has already been comprehensively addressed by [the Council] and has been subject to independent scrutiny*".
10. This letter crossed with a letter from the Appellant dated 19 August 2014 to the Council, this time requesting "*the dates that I approached you for information, how much the information cost, how long this took and how many letters I sent you*". This information was said to be relevant to the issue of costs in a clinical negligence claim with which the Appellant was involved. The Council responded to this letter on 23 September 2014, enclosing various information summarising the Appellant's previous requests. The letter noted, for instance, that the Appellant had written to the Council on "*15 separate occasions regarding your 9 FOIA requests submitted to date*", as well as "*11 letters and 4 telephone calls*" relating to subject access requests. The letter also estimated that the Council had spent in excess of 150 hours dealing with the Appellant's various communications. The Appellant wrote to the Council again on 1 September 2014 seeking further information concerning his clinical negligence claim. He also requested an internal review of "*you not allowing me access to the various documents that exist*". The Council responded to the internal review request by letter

of 25 September 2014. The Council declined to revisit the request, which (as it had informed the Appellant) it considered to be vexatious, and invited the Appellant to raise any further grievances directly with the Commissioner.

11. Following the Commissioner's investigation and exchanges with the Council as to the basis for its *refusal*, the Commissioner proceeded to issue the DN upholding the Council's refusal.

APPELLANT'S ORAL SUBMISSIONS

12. The Appellant's submissions at the hearing were essentially as follows:
 - a) It had been grossly unfair that he had been arrested by those entities which had caused the neglect of his father; he now had an unjustified criminal record (caution).
 - b) He was sure there had been an Adult Protection meeting on 15 June in relation to which the Council had not produced any documentation despite his requests; his sister had phoned him soon after and told him there had been two meetings. Also, Robert Atkinson from the Council had said there had been two meetings. In the event, the Council had not denied to the Commissioner that there had been a meeting on that date but had told the Appellant that there had been no minutes of this meeting taken. The Appellant did not accept this as he asserted that minutes would have been taken in the normal course of events. He was not able however to produce any evidence to substantiate that assertion.
 - c) He had been provided with 2 inches of information whereas the Council had admitted its files amounted to 14 inches; he did not accept the Council's explanation that this contained duplicate documents and included the file covers but did not indicate to the Tribunal on what basis this was not accepted.
 - d) The Appellant drew attention to a letter from Kent police in the bundle which the Council had not previously supplied. This he said showed that not all information had been provided. The Tribunal noted however that the Council had informed the Appellant that the police letter was not one it had seen before or alternatively if Social Services had been privy to it, no copy had been retained on file.

- e) He also drew attention to documents he considered relevant, ultimately provided by the Local Government Ombudsman, again which the Council had not provided directly to him. The Tribunal took the view that the documents considered at the hearing (see below on this) had likely been properly withheld by the Council.
 - f) The Appellant accepted he had made many requests but these had been necessary as he had not been provided with information he was entitled to, had been misled and it was in the public interest for him to get to the truth.
13. The Tribunal took the above submissions to be an overall assertion that the Council and the Commissioner in turn had been incorrect in determining that the many requests he had made supported a finding that his latest requests were vexatious; rather they were justified persistence in the light of what he perceived to be a combination of negligence and cover-up by both the Council and the Commissioner.

LEGAL FRAMEWORK

14. The general right of access to information under FOIA is expressly limited by operation of a number of provisions including section 14 of FOIA which is concerned with “*Vexatious or repeated requests*”. It provides:

“(1) Section 1(1) does not oblige a public authority to comply with a request if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

15. The scope of section 14(1) was considered by the Upper Tribunal 24 (“UT”) in *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC) (“*Dransfield*”) and then at Court of Appeal.....

16. *Relevant* sections of the judgement at the Court of Appeal include the following:

68. In my judgment, the UT was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be

winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of it's, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available.

17. The Commissioner, for his part, has issued public guidance on section 14, entitled “*Dealing with vexatious requests*”. Without slavishly following the Commissioner’s guidance, the Tribunal took this into account as being helpful alongside the binding findings of the *Dransfield* decisions. The guidance had been updated with the specific intention of reflecting the *Dransfield* judgment (albeit at Upper Tier level). The guidance sets out a number of “*indicators*” of the “*typical key features of a vexatious request*” (para. 21), while emphasising that this is not a list of “*qualifying criteria*”. These indicators include the burden on the authority, unreasonable persistence, unfounded accusations, intransigence, frequent/overlapping requests, a scattergun approach, disproportionate efforts, and futile requests. The Commissioner’s guidance on section 14 also makes clear that the “*context and history in which a request is made will often be a major factor in determining whether the request is vexatious*” (para. 54). In considering all the circumstances surrounding the request, the public authority will need to take into account the prior dealings between it and the requester. In that regard, “*a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context*”, for

example where “*an individual is placing a significant strain on an authority’s resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden*”. Moreover, the requester’s past pattern of behaviour may be relevant; thus evidence that a requester “*won’t be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied*” can strengthen an argument that responding to the current request will impose a disproportionate burden on the authority.

Section 14(2): repeat requests

18. This provides an equivalent disapplication of the general right of access to information in relation to requests which are “*identical or substantially similar*” to a previous request by the same applicant with which the public authority has already complied, and where a “*reasonable interval*” has yet to elapse between compliance with the previous request and the making of the current request. The words “*identical*” and “*substantially similar*” are not defined in FOIA or elsewhere. It is accepted, however, that the proper approach to section 14(2) is as set out in the Commissioner’s published guidance on this provision. “*Identical*” means that both the wording and the scope of the request “*precisely*” matches a previous request (para. 10); a request will be “*substantially similar*” where (a) the wording is different but the scope of the request (i.e. the “*criteria, limits or parameters*” which define the information being sought) is the same as for a previous request, or (b) where the scope of the request does not “*differ significantly*” from that of a previous request (regardless of how it is phrased).
19. FOIA does not define what is meant by a “*reasonable interval*”; it was submitted by the Commissioner and accepted by the Tribunal (per the Commissioner’s guidance on section 14(2) at [21]) that the key considerations are (a) the likelihood that the information will differ significantly from that provided in response to the previous request and (b) the amount of time that has passed (in a case where it is unlikely that the information will differ in any significant way).

Analysis

20. The Notice of Appeal refers to the fact that the Council has acted “*illegally in many ways* and refers to “*many false allegations said about me and my father*”. Under the heading “*outcome of appeal*”, the Appellant refers to seeking information from the Council “*to help me with my investigation, to present to the police this evidence, and expose*”. As the Appellant will understand, it is no part of the Tribunal’s jurisdiction to consider the Appellant’s wider allegations.
21. The documents the Appellant had handed over at the appeal did not prove that he had been given misinformation. The one document he had received from the Local Government Ombudsman that had not previously been released by the Council, did not prove that more had been withheld. The document in question, which was admitted at the hearing and therefore had not been seen by the Commissioner, was likely withheld by the Council on the grounds that it contained a very large amount of sensitive personal data of third parties and/or would have been part of a investigation. The Tribunal took the view that it was highly likely that this had been properly withheld by the Council.
22. The Tribunal could not understand why the Appellant did not accept that the ‘14 inches’ of documentation held by the Council likely contained duplicate documents and did not accept that this was a reliable indicator that more had been withheld.
23. The Tribunal concluded that the Council had been entitled to rely upon section 14 and the Commission in turn to uphold this reliance, on account of:
 - (1) the prior course of dealings between the Appellant and the Council, and in particular the large number of previous requests (including under the Data Protection Act) which the Appellant had made ;
 - (2) the fact that the Appellant had previously been provided with information in response to his request, but that this did not stop him from making further requests for the same or similar information ;
 - (3) the fact that the extent of the Appellant’s requests had reached the point at which the Council was subject to what the Tribunal accepted was (quotes from the DN) an “*unreasonable distraction and burden*”, affecting its ability to “*carry out its functions efficiently*”; and

(4) the fact that the Appellant had made repeat/overlapping requests within a relatively short period of time, characteristic of vexatious or obsessive behaviour.

24. The Tribunal was of the view that the evidence clearly indicated that the Appellant had previously requested the same, or substantially similar information. In response to those earlier requests, the Tribunal saw no reason not to accept the word of the Council that it had provided all the information relating to the Appellant's complaints concerning his father's care and the Adult Protection investigation that was carried out. Insofar as there had been documents not provided, and on the basis of the documents it had seen, the Tribunal considered it likely that these had been properly withheld. In the Tribunal's view, the requests could equally have been refused on the basis of section 14(2) of FOIA.
25. The Tribunal accepted overall that the Council and the Commissioner in turn had adopted the "*holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility, and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests*" that was described by the UT in *Dransfield* at paragraph 45 of the Upper Tier Tribunal decision.

CONCLUSION

26. Contrary to the Appellant's view, it appeared to the Tribunal that for a considerable period of time, the Council had been trying to be as helpful as possible to the Appellant. He had not substantiated that he had been misled.
27. The Appellant had been entirely polite in his dealings with the Council, but this could not avoid the finding that the unreasonable level of repeat requests amounted to an inappropriate burden on the authority.
28. It appeared to the Tribunal that the Appellant had failed to distinguish between his request for information and his underlying complaint about the Adult Protection investigation concerning the treatment of his late father. Whilst the Tribunal had sympathy for the Appellant's position and could understand that this motivated his pursuit of these matters, his persistence had been unreasonable in seeking to reopen an issue which had in reality been fully addressed and indeed been subject to

independent scrutiny. Whilst his requests for information had originally commanded public interest and a serious purpose, given the Council's responses this had diminished to the point where the requests were indeed vexatious. The Tribunal dismissed the appeal. Its decision was taken on an unanimous basis.