



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

**Appeal No: EA/2016/0068**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50593881**  
**Dated: 16 February 2016**

**Appellant: Gary Willetts**

**Respondent: The Information Commissioner**

**2nd Respondent: Conwy County Borough Council**

**Heard on the papers: St Katherine House Northampton**

**Date of Hearing: 8 August 2016**

**Before**

**Chris Hughes**

**Judge**

**and**

**Anne Chafer and John Randall**

**Tribunal Members**

**Date of Decision: 29 August 2016**

**Subject matter:**

Freedom of Information Act 2000

**Cases:**

Information Commissioner v Devon County Council and Dransfield GIA/3037/2011

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 16 February 2016 and dismisses the appeal.

## **REASONS FOR DECISION**

### Introduction

1. Mr Hunt bought the Victoria Pier at Colwyn Bay in 2003. He was unable to make a commercial success of the pier and fell behind in paying business rates on the pier to Conwy County Borough Council, (the Second Respondent in these proceedings, the “Council”) which brought proceedings to enforce payment and obtained a bankruptcy order against Mr Hunt. Mr Hunt’s trustee in bankruptcy disclaimed the pier, which reverted to the Crown and in turn the pier was transferred to the Council by a deed of 27 March 2012. Because of Mr Hunt’s objection to the Land Registry the registration of the Council’s title to the pier has not been finalised. Mr Hunt is challenging aspects of the management of his bankruptcy and seeking to establish that he still owns the pier. The Appellant in this appeal against a decision of the First Respondent (the “ICO”) finding that his information request was vexatious, Mr Willetts, is acting as a McKenzie friend for Mr Hunt in High Court proceedings.
2. Over the years Mr Willetts has made a number of detailed requests for information from the Council, many of them relating in some way to the pier. In reply to an earlier request the Council wrote to Mr Willetts on 21 January 2014:-

*“The submission of FOIA requests on the subject of Victoria Pier or related subjects such as the Council’s involvement with CADW, HLF or communications with legal Counsel will only serve to detract from the necessary work that must be done. It is with this in mind that I would ask for your co-operation in refraining from making enquiries on this subject or any other related and/or unrelated subject so as to not to cause any disproportionate or unjustified level of disruption. The Council, with its limited resources, will need to carefully assess the purpose and value of such future FOIA request/s with a view to considering whether or not S14 of the FOIA is engaged. I hope that this does not prove to be necessary and that you will support the Council, its members and officers to facilitate the democratically taken decision to explore further the possibility of de-listing and demolishing the Victoria Pier”.*
3. In January 2015 Mr Willetts wrote to the Council asking for:-

*“(a) A copy of the land certificate from the Land Registry confirming that the owner of Colwyn Bay Pier is Conwy CBC.*

*(b) A copy of the entry of the register from the Land Registry confirming that this sets out clearly that the owner of Colwyn Bay Pier as Conwy CBC.*

*(c) Confirmation that if the answer to questions (a) and (b) that no such documents exist, that the Council does not and cannot demonstrate ownership of Colwyn Bay Pier”*

4. The Council wrote explaining the position and subsequently confirmed on 18 June 2015 that it did not hold the requested data (ICO’s decision notice FS50576092).
5. On 19 June 2015 Mr Willetts wrote a detailed request for information to the Council:-  
*“You are required to confirm or deny if the Authority is in possession of the following documentation. If so a copy of such documentation is required. If however you confirm that you are in possession of the documentation, but will not release such information, then the reasons for not doing so are required. All as set out in section 1(1) of the Freedom of Information Act 2000.*

*In your communication of 17 June 2015 you set out in clear and precise terms that the Authority does not possess a certificate from the Land Registry confirming that they own Colwyn Bay Pier nor does have a copy of the register confirming that Conwy CBC owns Colwyn Bay pier.*

*The Courts have decided in the case of Barclays Bank v Guy CA 9 April 2008, that:  
By virtue of section 58 of the 2002 Act (Land Registration Act) and the other provisions of that Act the register is conclusive, subject to only to its rectification pursuant to the provisions of the Act itself.*

*I would therefore formally request that you confirm or deny that the Authority is in possession of the following documentation, and if it has to supply a copy to me.*

*1 As the answer to item (c) of my request of 30 January 2015 is that the Authority believed that it is the legal and beneficial owner of Colwyn Bay Pier, can all documents which support such an assumption in possession of the Authority be provided, together with any external legal opinion which confirms that Conwy CBC own the legal and beneficial interest in Colwyn Bay Pier.*

*2 In addition the provision of any other documents which may have led Conwy CBC to believe that they own Colwyn Bay Pier, This includes case references which support the assumption or any text book evidence.*

*3 In view of the fact that less and until the Courts have determined the application under section 320 of the insolvency Act 1986, that no escheat of Colwyn Bay Pier can take place to the Crown Estates The provision of all documents, including facsimiles, electronic communications and hand written documents, between the Crown Estates and Conwy CBC, in the period from 18 August 2011, to the 18 August 2014.*

*4 All documents in the possession of Conwy CBC, which confirm that it is possible under the Crown Estates Act 1961, to convey a property not in the ownership of the Crown Estates as at 27 March 2012, as the due process under the statute was not complete as that time nor is complete as at 19 June 2015”.*

6. The Council responded indicating that it considered the request vexatious and repetitious and, relying on FOIA s14(1) and (2) would not be acceding to the request. It maintained this position on review and Mr Willetts complained to the ICO.
7. After investigation the ICO published the decision notice which is the subject of this appeal. In his decision he reviewed the evidence provided by the Council concerning the high level of correspondence (often to multiple recipients) from Mr Willetts, including 53 FOIA requests in 5 years, 815 emails from him in that period and 998 emails to him. The Council noted that the information was already known to Mr Willetts in his role as McKenzie friend, that no serious purpose or wider public interest was served by the request. The ICO accepted that the Council had devoted considerable resources to responding to Mr Willetts, that the request related to the ongoing litigation, was of limited public value and that it was reasonable to consider that Mr Willetts would continue to make requests and continue in correspondence regardless of any response he received to the request. Dealing with the request would be a disproportionate burden on the Council’s resources. The ICO therefore considered the request vexatious.
8. In his appeal and supporting documents Mr Willetts made extensive criticisms of the Council, he claimed that the calculation of the number of communications to and from him was “rather fanciful and without foundation.” He advanced general arguments as to the importance of FOIA, and addressed the issue of the ownership of the pier and stated:- (bundle pages 36) “In simple terms the issue between the parties which goes to the heart of the matter, is does the Public Body have in its possession the required evidential documentation which will prove its claim of legal ownership. The

requester says simply it does not have a land registration certificate, nor does it possess a copy of the entry in the land registry.” In his rejoinder to the ICO’s case he repeated this and set out arguments as to land law and registration of title. He made criticisms of the Council and disputed the ICO’s conclusions as to the burden of his requests and stated he had not made further requests for information.

9. The ICO, in responding to the appeal, maintained the position set out in the decision notice. The burden was considerable (reply paragraphs 35 -40), the issue of ownership of the pier would be settled by the High Court and he quoted the decision of Mr Justice Morgan explaining why Mr Hunt’s case failed, the request had very limited serious purpose (paragraphs 41-52). He relied on the case of *Dransfield* in finding that it was appropriate to rely on s14(1) to:- “*protect the resources (in the broadest sense of the word) of the public authority from being squandered on disproportionate use of FOIA*”.

#### Consideration

10. In considering this appeal the tribunal shared the ICO’s difficulty in discerning any sustainable argument by Mr Willetts that the ICO had erred in law in coming to his decision. The request of 19 June is in essence pursuing an argument with the Council as to the ownership of the pier which at that stage had been extensively litigated and was further litigated in a 3 day hearing in the Chancery Division during the course of the ICO’s investigation. As the ICO correctly indicated, the issue would be resolved in the court. Mr Willetts in the course of this appeal has repeatedly stated that the core issue is ownership of the pier. In this request he has been pursuing that argument through an inappropriate route. There is no serious purpose to this request and the burden of responding to it is substantial. The decision of the ICO is correct in law and this appeal is dismissed.

11. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 29 August 2016