



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0279

**Heard at West Hampshire Magistrates Court, Southampton
On 22 March 2018**

**Before
KAREN BOOTH
JUDGE**

**MR MIKE JONES AND MR JOHN RANDALL
TRIBUNAL MEMBERS**

Between

MR DARRELL STURMEY

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

DECISION OF THE FIRST-TIER TRIBUNAL

1. For the reasons given below, we decided that the decision notice issued by the Respondent on 1/11/2017 is in accordance with the law and we therefore dismiss the appeal.

REASONS

Background to the appeal

2. The Appellant started working at the Bournemouth Aviary as a volunteer in 2015. At that time, responsibility for the Aviary had reverted to Bournemouth Borough Council ("the Council"). His volunteering agreement was terminated on 29/3/2016 by the Parks Development Manager of the Council for reasons relating to his conduct.
3. During the period of his volunteering (and following the termination of his volunteering agreement) the Appellant wrote to various people in the Council raising complaints about a number of issues (primarily health and safety issues) relating to the Aviary. He requested a formal investigation in relation to those complaints and the termination of his volunteering agreement. Those complaints were formally investigated by the Council under its three stage complaints process. The final stage of that process was completed on 22/6/2016. None of the Appellant's complaints were upheld. The investigators concluded that the reasons for the termination of the volunteering agreement were clear and legitimate and that the complaints and allegations were unfounded.
4. The Appellant then referred the matter to the Local Government Ombudsman. The LGO investigated his complaint about health and safety concerns relating to the aviary (but not his complaints about his treatment as a volunteer, as such matters are outside the LGO's remit). The LGO (in a decision dated 15/11/2016) found no fault by the Council and did not uphold the complaint.

The 10 requests for information

5. On 27/11/2016, the Appellant submitted his first Freedom of Information Act ("FOIA") request for information to the Council (headed "Volunteers exposed to Health & Safety Risks by [the Council]"). On 6/12/2016 the Council informed the Appellant that they could not comply with his request as it exceeded the relevant cost limit (although they did provide him with a copy of their Volunteering Policy document). They offered to consider a modified request in order to enable it to be dealt with within the cost limit and explained how the Appellant might so modify his request. On 29/12/2016 the Appellant dismissed that offer and insisted that his request be dealt with in its original form.

In the meantime, he submitted two further FOIA requests to the Council; on 3/12/16 (Council Employee Numbers 2006-16) and on 10/12/16 (Avian Influenza (Bird Flu) ...).

6. On 29/12/2016 the Council informed the Appellant that, in view of his refusal to modify his first request, it was being treated as a vexatious request under section 14(1) of FOIA and they drew his attention to section 17(6) of FOIA.
7. The Appellant made seven further requests to the Council for information on the following dates:
 - 17/1/17 (Law Makers, Law Enforcers and Law Breakers);
 - 16/2/17 (Council employee numbers 2006-2016);
 - 25/6/17 (Fire Extinguisher Testing Statistics);
 - 12/7/17 (Scrutiny of Council Financial Accounts); and
 - 14/7/17 – 3 separate requests - (street lighting colour coding strategy), (council owned buildings that could be potentially used for tenancy) and (Council employee profiles).
8. At the Appellant's request, the Council conducted an internal review in relation to the first request. In a letter dated 13/3/2017, the Council informed the Appellant that they had upheld their original decision to refuse the request on the basis that it was vexatious and provided detailed reasons for that decision.

The complaints to the Respondent

9. On 29/3/17 the Appellant made a complaint to the Information Commissioner regarding the Council's handling of his fourth request for information. On 17/7/17 he submitted a further complaint with regard to the last six requests.
10. The Respondent's decision notice was issued on 1/11/17. The Respondent decided that the Council's decision to apply section 14(1) to those requests was correct and that the Council was not obliged to issue refusal notices for those requests in accordance with section 17(6). The Council was not required to take any steps.

The appeal

11. The Appellant exercised his right under section 57 of FOIA to appeal to this Tribunal against the Commissioner's decision notice. He attended a hearing and gave oral evidence. The Respondent opted not to attend the hearing.
12. The evidence before us consisted of: the paper evidence in the hearing bundle; the additional evidence referred to in the Case Management Directions dated 8/2/18; and the Appellant's oral evidence. The Appellant brought some further evidence to the appeal relating to parking and bus lane appeals, which we disregarded as it had no relevance to the issues we had to decide.
13. In considering an appeal, our task is to decide whether the Respondent's decision notice is in accordance with the law (section 58). If it is not, we must allow the appeal or substitute such other notice as could have been served by the Respondent. In any other case we are required to dismiss the appeal.
14. The Appellants grounds of appeal can be summarised as follows:

- The Council were classifying all of his FOI requests as vexatious, when they were made in the best interests of the public, Council employees and volunteers and after consulting others.
- Their refusals of his requests relating to employee/workforce profiles compromised his position as “stakeholder” in connection with Taylor Review on modern day employment practices.
- His dealings with the Council, the LGO and the Respondent have exposed serious shortcomings with regards to the impartiality and independence of “the system”.

The remainder of the appeal form sets out the background to his complaints and their effect on him.

15. The Respondent submitted a detailed response to the appeal, which includes a helpful summary of the leading case law relating to section 14.

The law

16. Section 14(1) of the Freedom of Information Act 2000 (“FOIA”) provides that section 1(1) (general right of access to information held by public authorities) does not oblige a public authority to comply with a request for information if the request is vexatious.

Section 17(5) and (6) of FOIA provide as follows:

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

17. At pages 31 to 34 of the bundle, the Respondent correctly summarised the leading case of Dransfield on section 14 and the guidance given by the Upper Tribunal and the Court of Appeal in that case in relation to what might constitute a vexatious request. This guidance has been reflected by the Respondent in their guidance entitled “Dealing with vexatious requests”, which can be accessed via the ICO website.

The issue

18. The issue we had to decide was whether the Respondent's decision notice was in accordance with the law; that is, whether the Council was correct in treating the requests referred to in the complaints to the Respondent as vexatious and whether section 17(6) applied in relation to those requests.

Our decision and the reasons for it

19. After considering all of the evidence before us and applying it to the guidance provided in the Dransfield case, we concluded that all ten of the Appellant's requests for information were vexatious requests.
20. The Council's initial response to the Appellant's first request made on 27/11/2016 (Volunteers exposed to health and safety risks by [the Council]) was to refuse it under section 12 of FOIA (exemption where cost of compliance exceeds appropriate limit, which is currently £450). They did, however, offer to consider a modification of the request, with a view to it being dealt with in accordance with the cost limit. They suggested possible ways of modifying the request (see page 49 of the bundle). The Appellant did not, however, accept or even address that offer. In his response at page 60 of the bundle he concluded by saying: "Hence I must now insist that my FOI request is met and NOT dismissed/diverted given that it is in the best interests of the Public and Volunteers."

On receipt of that response the Council advised the Appellant that they were treating his request as a vexatious request under section 14 and, for that reason, they would not be complying with it.

21. We were satisfied that the Council was correct in deciding that the first request was vexatious. That was not their first response. They had initially relied on section 12 and offered help to reduce the scope and, therefore, the cost of complying with the request. The Appellant did not take up that offer. His request was clearly linked to his voluminous correspondence with the Council whilst he was volunteering (and to the Council and others after his volunteering agreement was terminated) and to his subsequent complaints to the Council and to the LGO, neither of which was upheld. His first FOI request was submitted just 12 days after the LGO's final decision was made (on 15/11/2016). He told us at the hearing that he had not previously made an FOIA request. It was a clear attempt, in our judgement, to open up those issues again.
22. We were satisfied that the Council was correct in deciding that the third request (10/12/16), the fourth request (17/1/17), the sixth request (25/6/17) and the seventh request (12/7/17) were all vexatious requests as they were clearly and directly related to his previous complaints relating to the Aviary.
23. The second request (3/12/16 - Council employee numbers) was not so obviously connected, although it did include a reference to volunteer numbers.

The fifth request (16/2/17) and the ninth request (14/7/17 – employee profiles) were couched in very similar terms.

In relation to those three requests, the Appellant had maintained that his interest was as a stakeholder for the Taylor Review on Modern Working Practices, whose Report was published in July 2017. We noted that, in his appeal form, the Appellant had suggested that he had some formal connection with the Review. When we raised this with the Appellant at the hearing, it transpired that he had in fact no such connection or special status with regard to the Taylor Review, but was simply free to offer his views/information to the Commission in the same way as any other member of the public. In view of this and the history referred to above, we did not accept that his primary motive in requesting this information was connected with the Taylor Review (or, realistically, could have added value to it).

We were satisfied that the Appellant's primary motive for making these requests was to reopen his previous grievances relating to the Aviary and that the Council was correct in deciding that all three requests were vexatious.

24. Taken in isolation, the eighth request (14/7/2017 - Street Lighting Colour Coding Strategy) and the tenth request (14/7/2017 - Council owned buildings), were unconnected with the Appellants previous complaints and, on the face of it, may have had some value and serious purpose. However, given the history referred to above, the earlier requests and the fact that the Appellant had submitted three separate requests for information on 14/7/2017, we were satisfied that the Appellant's true motive was to further harass and annoy the Council and that the Council was correct in treating them as vexatious requests.
25. We asked the Appellant at the hearing why he had not taken up the Council's suggestion of modifying the first request to attempt to bring it within the cost limit. We reminded him that the Council had quite helpfully made two suggestions about how he might modify the request. He firstly told us that he *had* tried to modify it (which was clearly not the case) and, on further questioning, he said that if the Council had given him just *some* information he would have been content, but they had given him nothing. We pointed out that it was not open to the Council to modify the request themselves. He then said that he did not wish to give the Council "a hook" on which to base their answer, as this could compromise the integrity of the response. We were not persuaded by any of those answers.
26. The Appellant provided a detailed account of his background and his involvement with the aviary. He described his love of birds and righteous approach to health and safety issues. He stressed that his motive in pursuing his requests for information was all about the furtherance of public safety and the wider interest of the local economy and the public, "and not about me". He told us that the key requests were those that related to health and safety (of volunteers in particular) and employment profiles (given his alleged involvement with the Taylor Review) and that, had the Respondent required the Council to answer the requests relating to those issues, he would have

“lain dormant” with regard to the others “and said “that’s life – I can’t win all the fights. He refuted the suggestions that the tone and manner of his correspondence with the Council staff was unreasonable and oppressive and asserted that it was “one hundred per cent not intended to be vexatious” and that nothing negative was intended.

27. We accepted that all of the Appellant’s requests had a *potentially* serious purpose and value. However, taking into account the background referred to above and all of the relevant circumstances, we concluded that they were all vexatious in that they amounted to a disproportionate, manifestly unjustified, inappropriate and improper use of FOIA.
28. The timing of the Appellant’s first request, and his dismissal of the suggestion that he modify it to bring it within the cost limit, were, in our judgement, clear indicators that it lacked any value or serious purpose and that it was in reality an attempt to reopen issues that had been formally investigated and rejected by the Council and the LGO. Given his previous persistence with regard to the issues referred to above, we considered that the potential future burden on the Council was huge and that the Council was correct in classing the first and subsequent requests as vexatious, thereby protecting the Council’s resources from being squandered on disproportionate use of FOIA.
29. All but two of the requests had some connection to his previous complaints. Three of his requests were for substantially the same information. Three of the requests were submitted on one day, within the space of 24 minutes. The tone and language of the requests was largely inappropriate and facetious. The Appellant did not, as he had frequently asserted, have any special stakeholder connection with the Taylor Review. And, from what he told us at the hearing, he does not (contrary to his claims on page 135 of the bundle) have any professional connections with the BBC or the major newspapers.
30. We agreed with the Council’s description (on page 151 of the bundle) of the Appellant’s FOI requests and previous correspondence as “an oppressive pursuit of grievance”.
31. The above reasoning covers the Appellant’s first two grounds of appeal. The third ground was outside our remit, but we did not accept that his dealings with the Council, the LGO or the Respondent exposed any such shortcomings.

Our decision

32. For the above reasons, we decided that the Respondent’s decision notice was in accordance with the law. The requests that were the subject of his complaints were properly treated as vexatious requests, as were the first three requests. The Council had issued refusal notices in respect of the first three requests within the statutory deadline. We agreed that the Council was not obliged to issue refusal notices in relation to the subsequent requests (in reliance on section 17(6)), although we noted that the Council had in fact sent a written response to all of the requests.

Karen Booth

Judge of the First-tier Tribunal
Date: 18 April 2018