



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

**Appeal Reference: EA/2018/0028**

**Decided without a hearing  
On 10 July 2018**

**Before**

**JUDGE HAZEL OLIVER  
MRS SUZANNE COSGRAVE  
MS ALISON LOWTON**

**Between**

**MR ROD COOKE**

Appellant

**and**

**INFORMATION COMMISSIONER**

Respondent

## **DECISION**

The appeal is dismissed.

## **REASONS**

### **Background to Appeal**

1. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 8 February 2018. It concerns information sought in relation to meeting minutes of Kirby Cane & Ellingham Parish Council (the “Council”).
2. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. The appellant has an ongoing dispute with the Council about the ownership of certain land which was given to the community prior to 1894 for the relief of the poor. This land is managed by groups of volunteer resident trustees and is vested in the Charity Commission. The appellant contends that the land is actually owned by the Council, and that land is being held and managed improperly.

4. On 9 February 2017 the appellant made two separate requests for information from the Council, in relation to item 18 of the minutes of its meeting on 15 November 2016. Item 18 was about consideration of correspondence relating to local charities, and set out a summary of advice received from a solicitor about ownership of the land and the handling of further correspondence on the matter.

a. "I am now asking via the Freedom of Information Act 2000 for copies of the correspondence, email or otherwise, between the Clerk, Chair and other councillors concerning Item 18 from below the minutes of the November 15<sup>th</sup> 2016 meeting. I am also asking for full details of councillors present for Item 18, those who took part in discussions, what dispensations were asked for and given and what interests were declared".

b. "Owing to the absurdity of the above statements, I am now asking via the Freedom of Information Act 2000 for copies of the correspondence, email or otherwise, between the Clerk, Chair and the NP Law solicitor; or, copies of minutes taken, or notes made, during face to face meetings, or telephone conversations with the NP Law solicitor. Also copies of any memos, emails, or other communications between the Clerk and the Chair, other councillors. I also wish to have the reference from NP Law so that I, or my legal representative, can contact them".

5. The Council responded to these requests on 8 March 2017. They refused to provide the information in reliance on section 14 of FOIA, on the grounds that "these items are vexatious and are substantially repeat requests as they relate to issues which have frequently been dealt with by [the Council] in the past".

6. The appellant requested an independent internal review of this decision on 20 March 2017. The Council provided its review decision on 19 April 2017, and upheld the original decision to withhold the information. The appellant made a complaint to the Commissioner on 24 April 2017.

7. The Commissioner issued her Decision Notice on 8 February 2018. The Commissioner decided that section 14(1) (vexatious requests) was engaged in relation to both of the requests. The Council would be placed under an unjustified and disproportionate burden if it had to respond to the requests.

### **The Appeal**

8. The appellant appealed against the Commissioner's decision on 16 February 2018. The appeal is put on the basis that the requests cannot be regarded as "vexatious" as they were only made after the November 2016 meeting, and councillors could be seen as trying to mislead the public and protect themselves from being reported by withholding the information. In relation to the first request, the appellant says it is illegal for councillors not to declare an interest. In relation to the second request, the appellant says he has provided conclusive evidence that the

Council did own the relevant land and has asked for the legal advice to be made public. He alleges that the Council should not be allowed to continue what looks like an attempt to cover up wrongdoings. He also takes issue with the accuracy of much of the information provided by the Council to the Commissioner.

9. The Commissioner's response maintains that the requests are vexatious, adopting a holistic approach and considering the motive, value, burden and previous course of dealings between the appellant and the Council. The appellant has provided a response to this document which explains his disagreement with the points relied on by the Commissioner, and a final submission relating to caselaw on ownership of land.

### **Applicable law**

10. The relevant provisions of FOIA are as follows.

- 1     **General right of access to information held by public authorities.**  
(1)    Any person making a request for information to a public authority is entitled—  
    (a)    to be informed in writing by the public authority whether it holds information of the description specified in the request, and  
    (b)    if that is the case, to have that information communicated to him.

.....

- 14     **Vexatious or repeated requests.**  
(1)    Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

11. There is no further guidance on the meaning of "vexatious" in the legislation. The leading guidance is contained in the Upper Tribunal ("UT") decision in **Information Commissioner v Dransfield** [2012] UKUT 440 (AAC), as upheld and clarified in the Court of Appeal ("CA") in **Dransfield v Information Commissioner and another & Craven v Information Commissioner and another** [2015] EWCA Civ 454 (CA).

12. As noted by Arden LJ in her judgment in the CA in **Dransfield**, the hurdle of showing a request is vexatious is a high one: "...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." (para 68).

13. Judge Wikeley's decision in the UT **Dransfield** sets out more detailed guidance that was not challenged in the CA. The ultimate question is, "*is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?*" (para 43). It is important to adopt a "*holistic and broad*" approach, emphasising "*manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*" (para 45). Arden LJ in the CA also emphasised that a "*rounded approach*" is required (para 69), and all evidence which may shed light on whether a request is vexatious should be considered.

14. The UT set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious:

- a. **The burden imposed on the public authority by the request.** This may be inextricably linked with the previous course of dealings between the parties. “...*the context and history of the previous request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor.*” (para 29).
- b. **The motive of the requester.** Although FOIA is motive-blind, “*what may seem like 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.*” (para 34).
- c. **The value or serious purpose.** Lack of objective value cannot provide a basis for refusal on its own, but is part of the balancing exercise – “*does the request have a value or serious purpose in terms of the objective public interest in the information sought?*” (para 38).
- d. **Any harassment of, or distress caused to, the public authority’s staff.** This is not necessary in order for a request to be vexatious, but “*vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes side-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive.*” (para 39).

15. Overall, the purpose of section 14 is to “*protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA.*” (UT para 10), subject always to the high standard of vexatiousness being met.

### **Evidence and submissions**

16. We had an agreed bundle of open documents, including the final response and submissions from the appellant, which we read. We have taken all of this material into account in making our decision.

### **Discussion and Conclusions**

17. We have considered whether these requests were vexatious in accordance with the broad headings set out by the UT in ***Dransfield***.

18. **The burden imposed on the public authority by the request.** The appellant makes the point that the burden of his request is minimal, as all the information is easily at hand for the clerk. However, this must be considered in the context of the previous course of dealings between the parties. A simple request may nevertheless be vexatious when considered in the round.

19. The appellant's requests are clearly very closely connected with a long-running dispute between him and the Council about ownership of certain land, going back over six years. This has generated considerable correspondence, to be dealt with by a single part-time clerk and eight volunteer parish councillors. The Council has said to the Commissioner that the appellant sent 215 emails to the present clerk between 2014 and October 2017, and it can take up to five hours a month to deal with the correspondence. The appellant says there is "no evidence" for the number of emails, but does not deny that this has been a long-running matter. This has included a standards and conduct investigation in 2013 in relation to complaints about the appellant's conduct, and an investigation by the auditors Mazars LLP in December 2014 following the appellant's objection to the Council's accounts. The ongoing dispute and volume of correspondence also indicates that a response to the current requests is very likely to generate further correspondence.

20. Taking into account the history of this matter, including the small size of the Council which is run by part-time volunteers, we find that a significant burden would be imposed on the public authority by the requests.

21. **The motive of the requester.** The appellant says that his motives are to ensure that the Council complies with the law in relation to provision of information in the public domain and the Nolan Principles. He says that the Council should not be allowed to continue with what looks like an attempt to cover up wrong-doings. In relation to his request about the legal advice, he says that he has provided conclusive evidence that the Council does own the lands in question.

22. Again, this must be looked at in the wider context of the course of dealings between the parties. It is clear that both of the requests are very closely connected with the dispute about ownership of land. The request about legal advice is self-evidently about this issue. The request about item 18 in the minutes is put by the appellant as a concern about wrongdoing, but again this directly concerns a discussion item about the land ownership. In context, we find that the motive of the appellant in making these requests was primarily connected with this ongoing dispute rather than for any wider purpose in the public interest.

23. **The value or serious purpose of the requests.** As already noted above, the appellant says these relate to very serious concerns that the council has not complied with the law. The legal advice in question relates to land and assets approaching one million pounds, so the public are entitled to see exactly what the solicitor did or did not say. The appellant also disputes a number of the matters relied on by the Commissioner, including that the Charity Commission will not correspond with him and that he made a complaint to the police.

24. We do accept that transparency in the operation of parish councils is an important principle in the public interest, as is ensuring that such councils operate within the law. We are also not in a position to make a finding on the factual points disputed by the appellant, and it is not our role to make a finding on whether the legal advice received by the Council was correct. However, as noted above, this is a long-running matter which has already been considered in detail between the parties over a number of years.

25. We agree with the Commissioner that the minutes already set out a summary of the Council's position regarding the legal advice on land ownership, which provides the public with some information and reduces the value in disclosure of the information requested. In addition, in December 2014 there was a letter to the appellant from the auditors Mazars LLP which had

already considered the appellant's complaints about the Council's approach to the relevant charities, and found no failure of governance or other concerns that would justify issuing a report in the public interest – including a finding that it was not unreasonable for the Council to make no further enquiries to assert title to assets. We also note that the appellant has not provided any evidence to support his allegations of wrongdoing. His assertions that the Council's position on the land ownership is incorrect does not indicate wrongdoing – this is a disagreement between the parties. These factors limit the value and serious purpose of the request.

**26. Any harassment of, or distress caused to, the public authority's staff.** We do not find that the appellant has deliberately harassed or caused distress to the Council members or clerk. Nonetheless, we note that there has been a considerable volume of correspondence over a number of years directed at a single issue. In the context of a small council run by volunteers and a part time clerk, we find that the burden of dealing with this matter would potentially cause a feeling of harassment and distress to the individuals involved.

27. Considering all of the above matters, we find that these requests do reach the high standard of vexatiousness. We have considered the purpose of section 14 as being to protect the resources of the public authority from being squandered on disproportionate use of FOIA. These requests were directly connected with a long-running dispute between the appellant and the Council, which the Council had already spent very considerable time and resources on dealing with. There is no reason to think that a response to these requests would have been the end of the matter, and in fact were likely to generate further correspondence or requests. Looked at in the round, it would be disproportionate to require the Council to respond to these requests and we find that they are vexatious.

28. We uphold the decision of the Information Commissioner and dismiss the appeal.

Signed: Hazel Oliver  
Judge of the First-tier Tribunal

Date: 20 July 2018  
Promulgation date: 23 July 2018