



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

Appeal Reference: EA/2019/0178

Decided without a hearing on 23 October 2019

Before

**JUDGE ANTHONY SNELSON
MS ROSALIND TATAM
MRS ANNE CHAFER**

Between

MR GERRY WOODHOUSE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION

The unanimous decision of the Tribunal is that:

- (1) The requests for information to which the appeal relates were vexatious and, by virtue of the Freedom of Information Act 2000 ('FOIA'), section 14(1), Potto Parish Council was not obliged to comply with them.
- (2) Accordingly, the appeal is dismissed.

REASONS

Introduction

1. The Appellant, Mr Gerry Woodhouse, is a resident of Potto, a village in North Yorkshire. He is also a former member of the Potto Parish Council ('the

Council'). That body has five members, who are assisted by a clerk. Council members are volunteers. The clerk is paid a modest stipend (the latest figure we have is £1,200 p.a). About 350 people live within the parish boundary.

2. In these proceedings Mr Woodhouse challenges the decision of the Respondent ('the Commissioner') dated 3 May 2019 that his four requests to the Council under FOIA made between 4 August and 3 October 2018 were vexatious and that the Council was not obliged to comply with them. The Commissioner stands by her decision and resists the appeal.

The procedural history

3. In August, September and October 2018, Mr Woodhouse addressed several requests for information to the Council. For convenience the parties have treated them as numbering four, although one, the first, was made in two parts.
4. The first request in time, part one, was made on 4 August 2018. Referring to a previous resolution of the Council, Mr Woodhouse requested:

Please provide me with copies of this 'legal advice'.

The second part, which followed 12 days later, requested:

- (1) Details describing each of the third parties contacted to date
- (2) Copies of the legal advice sought
- (3) Copies of the legal advice received

5. The second request in time, made on 7 September 2018, was in these terms:

Please provide me with recorded information describing:

- (1) Where the details of the Council's internal reviews about the individual weaknesses/actions listed in the two Action Plans are recorded.
- (2) Which of the Council's 'Policies and Procedures' have been revised to address the output of those internal reviews.
- (3) Where the records of all this Council business have been published.

6. The third request in time, made on 20 September 2018, referring to the Village Hall Management Committee agendas and minutes, was framed as follows:

Please provide me with a copy, by email, of these documents for each of the Committee's meetings held to date during 2018.

7. The fourth request in time, presented on 3 October 2018, sought information of the following description:

- (1) Which agendas record the topic of possible amendments to the council's policies or procedure for publishing draft minutes
- (2) Which meeting minutes record the discussion and the decision/resolution to amend the council's policy or procedure for publishing Draft minutes

(3) If it is the case that there are no data to record these amendments, please provide information to explain the discrepancy between your claim that “the council does not publish draft minutes” and the fact that draft minutes only (i.e. no final/approved minutes) have been published in the six month period from May 2018 to early October 2018.

8. The Council initially provided partial responses to the requests.
9. Mr Woodhouse was dissatisfied and applied for reviews. The results did not resolve his dissatisfaction.
10. In September and November 2018 Mr Woodhouse directed three complaints to the Commissioner about the way in which the Council had dealt with his requests. An investigation followed, at an early stage of which the Council adopted the new stance that the requests were all vexatious and it was not required to answer any of them. That defence, as we have noted, was accepted by the Commissioner in her Decision Notice.
11. By his notice of appeal dated 24 May 2019 accompanied by 19 appendices and sundry other documents covering a total of some 114 pages, mostly closely typed in small font, Mr Woodhouse challenged the Commissioner’s decision on a number of grounds.
12. By her response dated 26 June 2019 the Commissioner resisted the appeal, essentially relying on the grounds contained in the Decision Notice.
13. The appeal came before us on 23 October this year for consideration on paper, the parties having consented to it being determined without a hearing.

The applicable law

14. FOIA, s1(1) enacts a general right of access to information held by public authorities.
15. Under the Act, ‘information’ means information recorded in any form (s84).
16. By the Act, s14(1), a public authority is excused from complying with a request for information if the request is ‘vexatious’. Our focus is on the request, not the requester. In *Dransfield v Information Commissioner and Devon County Council* [2012] UKUT 440 (AAC), the Upper Tribunal (‘UT’) (Judge Nicholas Wikeley), at para 27, expressed agreement with an earlier first-instance decision that –

“... vexatious”, connotes “manifestly unjustified, inappropriate or improper use of a formal procedure.”

The judge continued (para 28):

Such misuse of the FOIA procedure may be evidenced in a number of different ways. It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes - (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff). However, these four considerations ... are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list.

17. *Dransfield* and a conjoined case were further appealed to the Court of Appeal. Giving the only substantial judgment (reported at [2015] 1 WLR 5316), Arden LJ noted (para 60) that the UT's guidance just cited was not directly in issue on the appeal, but added these remarks (para 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 this is consistent with the constitutional nature of the right.¹ The decision-maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.

18. In *Dransfield* the UT also passed certain comments on the Commissioner's Guidance relating to vexatious requests which, we understand, led to parts of it being modified. On appeal, Arden LJ commented (para 32):

The IC has a statutory obligation ... to issue guidance ... The guidance covers such matters as dealing with vexatious requests. Various government departments have also issued guidance ... As this guidance does not have special status in matters of interpretation, it is not necessary for me to cite it in my conclusions. For my own part, while I welcome the issue of such advice, I do not find it provided assistance in resolving the issues on these appeals.

We likewise note the Guidance but our interpretation of the law is founded on the statutory language and relevant decisions of the higher courts.

19. The appeal is brought pursuant to FOIA, s57. The Tribunal's powers in determining the appeal are delineated in s58 as follows:

- (1) If on an appeal under section 57 the Tribunal considers -
 - (a) that the notice against which the appeal is brought is not in accordance with the law; or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

¹ This echoes remarks in paras 2 and 3 about the importance and constitutional significance of the right to freedom of information.

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

The background facts

20. Some matters of fact are in dispute. Since we have not heard evidence from witnesses or seen many of the relevant documents, we are not in a position to resolve many of the differences between the parties. The account which follows is based on matters which we understand to be uncontroversial.
21. Mr Woodhouse was a member of the Council but was removed in 2014, partly at least on the ground that his attendance at meetings had fallen below the level required. After his removal he took to sending frequent correspondence to the Council, raising numerous criticisms and concerns.
22. Those criticisms and concerns have ranged across a wide spectrum of the Council's activities and responsibilities, including those relating to the publication of agendas for, and minutes of, meetings, numerous aspects of parish finances and many other matters. Some have related to perceived governance deficiencies, but many have been directed to minor, technical breaches of regulatory obligations, such as delays in responding to correspondence or poorly-worded responses.
23. Although some of the statistical information supplied by the Council is in dispute, it is common ground that Mr Woodhouse has sent a large number of emails to the Council over the past five years. The Commissioner in her investigation found that the number exceeded 690 between January 2014 and August 2018 and we do not understand that figure to be challenged.
24. Many exchanges between Mr Woodhouse and the Council have followed a similar pattern. They begin with a polite request for information. Next comes a chasing message, around a fortnight later (despite the FOIA standard of 20 working days). When the response is received, it is challenged and an internal review requested. And when the Council replies to the review request, a complaint is then directed to the Commissioner.
25. It is evident that a significant number of Mr Woodhouse's communications have been enormously lengthy. On the Council's case, some exceeded 200 pages. He seems to take issue with this, but only on the somewhat technical basis that these (or some of them) were broken up into several separate email messages. So, for example, he agrees that his annual challenges to the Council's accounts included appendices or attachments which in total exceeded 100 pages. Nor does he challenge the detail of the Commissioner's

response, para 44, in which reference is made to four particular emails ranging in size from 549KB to 2MB.

26. Numerous emails sent by Mr Woodhouse to the Council contained requests for information. He acknowledges that he made fresh requests for information "every few weeks" (the Council puts the number much higher, at more than 500 over four years).
27. It is also agreed that many of the requests have been framed as FOIA requests and Mr Woodhouse seems to accept the Commissioner's statement in her Decision Notice (para 42) that in the preceding 18 months she had dealt with 23 complaints by him against the Council.
28. As early as 2014 the unusual level of interchange between Mr Woodhouse and the Council resulted in proceedings before the Tribunal². In a decision sent out on 11 December that year the Tribunal, by a majority, dismissed the Council's appeal against the Commissioner's decision in Mr Woodhouse's favour, but it is noteworthy that the reasons recorded that he had written 81 emails to the Council in the three months prior to the first of the FOIA requests with which the case was concerned. That amounted to a rate of close to one email a day.
29. The Commissioner has drawn attention to the tone of Mr Woodhouse's communications. He has on numerous occasions resorted to language which can only be described as abusive. He has accused the Chair of the Council of perjury. He has described the clerk as "hapless", "inept", "wholly incompetent", "not-fit-for-purpose" and "corrupt". None of this language is in dispute.
30. Despite being requested to direct correspondence to the Council's officers, Mr Woodhouse has persisted in writing to the clerk personally and (again, despite requests not to) addressing her by her first name.
31. It is not in question that Mr Woodhouse's correspondence has taken up a substantial proportion of the Council's energy and resources. The Council has estimated that as much as 80% of its time is devoted to responding to it. Mr Woodhouse does not accept that figure but is not in a position to suggest another one. It would not be appropriate for us, on the material available and without hearing evidence, to alight on a particular percentage. We do, however, find that Mr Woodhouse's activities since 2014 have accounted for a very substantial proportion of the Council's time, and massively more than one would reasonably expect to be devoted to dealing with a single individual.
32. It is the Council's case that Mr Woodhouse's behaviour has had the further consequence of causing distress to one individual (identified in our papers) to the extent of being driven to seeking medical help. As a result, the Council has

² EA/2014/0177

reported that it has forbidden the clerk from dealing personally with his communications. This evidence is plausible and Mr Woodhouse is in no position to contradict it. We accept it as true.

33. It is right to place on record that Mr Woodhouse has on occasions succeeded in drawing attention to shortcomings in the Council's performance of its duties, for example in relation to the timing of the publication of agendas.

Mr Woodhouse's case

34. Mr Woodhouse submitted that, so far from his actions being vexatious, it was the Council that was acting vexatiously by failing to respond to his requests. Most were simple and straightforward and could be answered in seconds. He made no apology for pressing the Council over a sustained period to abide by its obligations as a public body – something which, on his case, it had signally failed to do for many years. His correspondence was cogent, reasonable and proper. He acknowledged that he had on occasions expressed himself in "blunt" language, but again made no apology for doing so, contending that it was justified in the circumstances.

The Commissioner's case

35. The Commissioner submitted that this was a very clear case. The "threshold of vexatiousness" was breached in respect of the requests under consideration and "had in fact been exceeded much earlier" (Decision Notice, para 41). Mr Woodhouse's correspondence and the activity generated by it (within the Council and the Commissioner's office) were out of all proportion given the size of the Council and the scope of its responsibilities. The burden involved could not but impair the Council's ability to discharge its other functions. Moreover, the *manner* in which he pursues his points is vexatious. The pattern of presenting a request, chasing a response, challenging the response by seeking an internal review and then (very often) taking the matter to the Commissioner is indicative of a vexatious approach. So also is the habitually hostile and abusive tone and the insistence on personalising the requests by directing them to the clerk and using her first name despite requests not to. Any value that Mr Woodhouse's requests may have had in the past have long been outweighed by their negative effects of causing immense and unreasonable disruption to the Council.

Conclusions

36. In our view, Mr Woodhouse's case is almost a paradigm illustration of the abuse of the important constitutional right to freedom of information which s14 is designed to counter. The duration over which the requests have been made and their regularity, the pattern of behaviour adopted in their pursuit, the colossal volumes of material sent, the triviality (at times) of the subject-

matter (although we appreciate the he sees none of it as trivial) and the abusive language employed are all characteristics which point firmly to an obsessive and vexatious mindset on Mr Woodhouse's part. And the effects of his behaviour in causing not only huge and wildly disproportionate disruption but also personal distress are precisely the kinds of consequences which the section seeks to guard against. We entirely agree with the Commissioner that the requests to which the appeal relates were vexatious and the Council was right to invoke s14. We also agree with her that Mr Woodhouse crossed the s14 line no little time ago.

Outcome and postscript

37. The appeal is dismissed.
38. We note with surprise Mr Woodhouse's comments at the end of his document in answer to the Commissioner's response. His gist is to cry foul on being met with her finding of vexatiousness, on the ground that he should have received some prior warning. This betrays a fundamental misunderstanding. It is not the Commissioner's function to supervise citizens in the exercise of their rights. Her role is to determine complaints presented to her. It is the citizen's duty to exercise his constitutional rights properly and responsibly. If he fails to honour that duty he has only himself to blame.
39. We hope that Mr Woodhouse will think very carefully before submitting FOIA requests again. He would do well to bear in mind that there are other means of holding public authorities to account.

(Signed) Anthony Snelson
Judge of the First-tier Tribunal

Dated: 27 November 2019
Promulgation date: 28 November 2019