



Appeal number: EA/2019/0299

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

REGINALD ALBERT BELL

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE CLARE GOODMAN
Mr DAVID WILKINSON
Mr ROGER CREEDON**

**Sitting in public at Field House on 22 January 2020
The Appellant appeared in person.
The Respondent did not appear.**

DECISION

1. The appeal is dismissed.

REASONS

5 *Background to Appeal*

2. The Appellant made an information request to Department of Agriculture, Environment and Rural Affairs in Northern Ireland (“DAERA”) on 4 May 2018.
3. DAERA refused the request in reliance on s. 14(1) of the Freedom of Information Act 2000 (“FOIA”).
- 10 4. The Information Commissioner issued Decision Notice FS50773219 on 1 August 2019, upholding DAERA’s decision.
5. The background to the request can be summarised as follows.
6. The Appellant cares deeply about animal welfare and has been involved in campaigns against live animal exports in Kent and Thanet. On 3 April 2017, he made
15 a request to DAERA under FOIA for information about the transport of live sheep and cattle from Northern Ireland to the Republic of Ireland, Great Britain and other EU states from 1 January 2016 to 31 October 2016. The Appellant was investigating compliance with EU Regulation 1/2005 (“the Regulation”) about the welfare of animals during transportation.
- 20 7. The Appellant used the data provided by DAERA to write an “interim review paper” alleging a lack of proper administration and enforcement of Regulation 1/2005. He sent the paper to Government ministers, the media and voluntary organisations including the RSPCA (page 128). The BBC contacted the Appellant in August 2017 and then approached DAERA in September 2017 (page 93).
- 25 8. On 25 September 2017, DAERA informed the Appellant that there had been errors in the data they had provided about the numbers of animals transported. The Appellant was “*truly shocked*” by this, saying it caused him “*much distress*” and potentially “*reputational damage*” (page 122,123).
9. From 3 October 2017 to 4 May 2018, the Appellant made at least seven further
30 requests for information from DAERA about live animal transportation. The full correspondence is contained in the bundle and summarised in the Commissioner’s Decision Notice and Response and in DAERA’s chronology at page 93.
10. DAERA responded to the requests, providing information or explaining when
35 information was not held. The Appellant informed DAERA that he had identified infringements of the Regulation from the data they provided. He accused DAERA of maladministration, demanded explanations and justification and asked DAERA to provide journey logs on a monthly basis going forward so that “*I can verify the*

legitimacy of future long distance journeys commencing in Northern Ireland” (page 169).

11. The Appellant also wrote to the Secretary of State for the Department for Environment, Food and Rural Affairs (DEFRA) about the issues he had identified.
5 This led to correspondence between the Appellant and the DAERA Permanent Secretary, who agreed that one journey log “*should not have been approved*” (page 207). The Permanent Secretary attributed the error to staffing issues.

12. In addition, the Appellant made several complaints about the handling of his FOIA requests. DAERA carried out a formal Level 2 complaint investigation (page
10 202) and informed the Appellant of his right to complain to the Northern Ireland Public Services Ombudsman.

13. The full text of the Appellant’s final request of 4 May 2018 is at page 102. On 6 May 2018, he appeared on a BBC Countryfile item about live animal exports. On 10 May 2018, DAERA informed the Appellant that it would not respond to the 4 May
15 request on the basis that it was vexatious under Section 14(1) of FOIA.

14. The Appellant complained to the Commissioner who exercised her discretion to accept the complaint without internal review. The Commissioner upheld DAERA’s decision, concluding that while the Appellant had a genuine purpose and motivation, his expectations were unreasonable and misconceived and his persistence was
20 manifestly unreasonable and irrational. The Appellant was using FOIA to make allegations of maladministration against DAERA, rather than to obtain recorded information. The requests had placed an unreasonable and oppressive burden on DAERA’s small Animal Welfare Team which consisted of only three staff.

Appeal to the Tribunal

25 15. The Appellant’s Notice of Appeal focussed on his allegations against DAERA. He needed access to regular journey logs in order to monitor their compliance with the Regulation. His aim in making the FOIA requests was to secure “*the proper, efficient and unbiased application of the law governing long distance transportation of animals by DAERA*”. The Appellant had not approached the Ombudsman because he
30 had little faith in receiving a fair hearing, especially when his correspondence had been declared vexatious.

16. The Commissioner’s Response dated 11 October 2019 resisted the appeal and stated in summary at paragraph 41:

35 (1) *the history of the requests and in particular the volume and extent of the Appellant’s correspondence, showed the requests to be vexatious;*

(2) *the requests were disproportionate, and sought to use FOIA as a means to carry on a policy debate with, and criticise, DAERA rather than legitimately to seek information in the public interest;*

40 (3) *the Appellant repeatedly alleged that DEARA, and by implication its staff, were incompetent, untruthful and deliberately acting unlawfully;*

(4) the Appellant's use of the FOIA procedure was in all the circumstances, unjustified and inappropriate.

17. The Commissioner informed the Tribunal that she did not wish to attend or be represented at the hearing of the appeal. The Appellant attended and made oral submissions.

18. The Appellant had indicated in earlier correspondence that he proposed to ask a witness to speak on his behalf, but it was only at the hearing that he made a request to rely on oral evidence from David Bowles, the Assistant Director of Public Affairs at the RSPCA. The Commissioner had not had notice of this witness, nor their evidence, and had not had the opportunity to object or test the evidence. Applying the overriding objective, the Tribunal decided to hear Mr Bowles' evidence, and then consider whether it would be unfair to make a decision without giving the Commissioner the opportunity to test it. Having heard Mr Bowles' evidence, we concluded that it was fair and just to proceed to make our decision.

19. The Tribunal considered an agreed open bundle of evidence comprising 250 pages.

20. In his submissions, the Appellant took the Tribunal to key parts of his correspondence with DAERA. He described his shock at the errors and inadequacies which he felt that he had identified through the FOIA requests and his frustration that DAERA repeatedly refused to provide assurances about future compliance with the Regulation. He feared that DAERA were succumbing to pressure from the "farming lobby" and turning a blind eye to the unlawful mistreatment of animals.

21. In his evidence, Mr Bowles told the Tribunal that the transportation of live animals was a "touchstone public interest issue" and a key RSPCA campaign. It had been highlighted by politicians in the context of the UK's exit from the EU and the 2019 general election. The data provided by the Appellant and others was crucial to the RSPCA's campaign on live animal exports, helping the RSPCA to raise public awareness and engage with politicians and the media. Mr Bowles had met DAERA in Northern Ireland in June 2018 and received assurances from officials about compliance with the Regulation.

22. The Tribunal asked for the Appellant's response to those aspects of his correspondence which the Commissioner had identified as vexatious in her Response (from page 39). When asked if he had abused FOIA to criticise policy and seek explanations, the Appellant said "*I suppose I did!*". The Appellant acknowledged that he was persistent, noting that "*obsessive people get things done*". However, he had been surprised when DAERA said on 10 May 2018 that his requests placed an "*unwarranted burden on staff time and resources*" (page 233). He said that it was the first time this had been mentioned and he would have narrowed his requests if asked.

23. The Appellant strongly disputed the suggestion that his requests were futile or political or that he had accused DAERA of lying. If his appeal was successful, the Appellant said that he would continue to ask for journey logs to verify DAERA's compliance with the Regulation.

The Law

24. The Commissioner noted at paragraph 106 of the Decision Notice that the Appellant's requests for information might be covered by the Environmental Information Regulations 2004 (EIR). This was not raised in the Commissioner's
5 Response and the Tribunal agrees that the information sought is not "environmental information" as defined in the EIR. While it might relate to "*the state of human health and safety, including the contamination of the food chain*", this only falls within EIR "*inasmuch as they are or may be affected by the state of the elements of the environment*" as defined in the EIR. The information requested by the Appellant does
10 not relate to how human health and safety is affected by air, water, soil or other environmental elements. The request falls under FOIA, not EIR.

25. S. 14 FOIA provides as follows:

14. Vexatious or repeated requests

(1) *Section 1 (1) does not oblige a public authority to comply with a request
15 for information if the request is vexatious.*

26. In *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC), the Upper Tribunal interpreted "vexatious requests" as being manifestly unjustified, or involving inappropriate or improper use of a formal procedure. The Upper Tribunal considered four broad criteria for assessing whether a request was
20 vexatious, namely (i) the burden imposed by the request on the public authority and its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the request and (iv) whether there is harassment of or distress to the public authority's staff. The Upper Tribunal stressed the importance of taking a holistic approach. The Upper Tribunal's approach was broadly endorsed by the Court of Appeal in its
25 decision (reported at [2015] EWCA Civ 454), emphasising the need for a decision maker to consider "*all the relevant circumstances*". Arden LJ noted that by using the word "vexatious", "*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*".

30 27. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

"If on an appeal under section 57 the Tribunal considers -

*(a) that the notice against which the appeal is brought is not in
35 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,

40 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.

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

5 28. The burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law, or involved an inappropriate exercise of discretion rests, with the Appellant.

Conclusion

10 29. The Tribunal accepts that there is significant public interest in the issue of live animal exports and that data collected by the Appellant has helped inform the public debate. This is evidenced by the fact that a senior officer of a large national charity attended the hearing to give evidence for the Appellant and by the involvement of the BBC. There is no doubt that the Appellant’s motives are based on a genuine and deeply felt concern about animal welfare.

15 30. However, as the Appellant himself concedes, he has used FOIA not only to obtain information, but also to criticise DAERA and seek explanations for its conduct. Ultimately, his aim - as described in his Notice of Appeal - is to use FOIA to police the actions of the DAERA Animal Welfare team in order to secure compliance with the Regulation. This may be a laudable goal, but it is an inappropriate and improper use of FOIA.

20 31. The Appellant’s persistence and the volume and extent of his requests placed a disproportionate burden on a small team at DAERA. The Appellant admits that he is obsessive about this issue. His requests were extensive and detailed. He analysed information provided by DAERA meticulously and then sought further clarification and detail in new requests, often only days after, or even before, receiving a response.

25 32. The Tribunal does not accept that the Appellant was unaware of the burden his requests created. On 2 November 2017, for example, DAERA extended time to respond to his request of 10 October 2017, identifying that it was complex and voluminous. The Appellant acknowledged this in response, saying, “*there is a lot for me to look at and I am sure that doing so will likely generate further questions*” (page 30 152). It is clear that the Appellant is unlikely to be satisfied with any response from DAERA under FOIA until it evidences, to his satisfaction, compliance with the Regulation.

35 33. The Appellant’s strongly held views and mounting frustration are evident in the tone of his requests and allegations. While public officials can of course be subject to criticism, the Tribunal finds it likely that the requests would have become increasingly distressing to the relatively junior members of staff attempting to deal with them. The Tribunal recognises that the Appellant’s frustration was fuelled by errors made by DAERA in dealing with his first requests for information. We 40 conclude, however, that overall, DAERA attempted to deal with the Appellant’s requests fairly and promptly. DAERA informed the Appellant as soon as they became aware of the error and conducted a thorough investigation. We find

insufficient evidence to support the Appellant's allegation that DAERA only stopped cooperating because of the BBC Countryfile broadcast on 6 May 2018.

34. The Upper Tribunal has identified that a request can be vexatious even where there is a public interest in the information. In *CP v Information Commissioner* [2016] UKUT 0427 (AAC), the Upper Tribunal said that the public interest “cannot act as a trump card so as to tip the balance against a finding of vexatiousness” (paragraph 45). In *Oxford Phoenix v Information Commissioner* [2018] UKUT 192 (AAC) the Upper Tribunal also said that “the fact that there had once been a genuine dispute does not stop a request becoming “vexatious by drift”. The Appellant in *Oxford Phoenix* was “using FOIA as a means of “carrying on the war by other means””.

35. The Tribunal concludes that this is a case where the significant public interest in live animal exports is not a “trump card” and where the Appellant's requests had become “vexatious by drift”, focussing more and more on the detail and less on the wider public interest. The Appellant's final request of 4 May 2018, for example, concerned the specifics of a single journey of 79 calves on a particular day. Weighing the value of the requests against the impact on DAERA and its staff and taking into account the Appellant's aim as described in his Notice of Appeal, the Tribunal is satisfied that the request is an inappropriate use of the FOIA regime which places a disproportionate burden on DAERA and its staff.

36. Applying the guidance from the Upper Tribunal and the Court of Appeal referred to in paragraph 26, the Tribunal therefore concludes that the request is vexatious under Section 14(1) of FOIA.

37. For all these reasons, we now dismiss the appeal and uphold the Decision Notice.

25

(Signed)

30 **C. L. GOODMAN**

DATE: 12 February 2020

DISTRICT TRIBUNAL JUDGE