



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference: EA/2013/0202
Appellant: Robert Arthur Pickthall
Respondent: The Information Commissioner
Judge: NJ Warren
Member: S Cosgrave
Member: Dr M Clarke
Hearing Date: 11 February 2014
Decision Date: 7 March 2014

DECISION NOTICE

1. Mr Pickthall has appealed to the Tribunal against a decision notice issued by the Information Commissioner (ICO) to the effect that a request he made on 16 January 2013 under the Freedom of Information Act (FOIA) to Weaverham Parish Council (Weaverham) was vexatious. We heard the appeal on 11 February at Chester. The ICO did not trouble to attend.
2. Mr Pickthall told us that he was particularly interested in how Weaverham purchased two playing fields, one known as Lakehouse and the other as Russet Road. He wanted to know in particular about covenants, title deeds and loans in connection with the playing fields.
3. Mr Pickthall explained that he knew that, unlike most local parish councils, Weaverham had not responded to a general request to send their records to the Cheshire Record Office. He believed that this was because the Weaverham records had been stolen.

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4. He had been able to obtain some information relating to Lakehouse from Cheshire West Council. These included a survey report, maps, and information about boundary fences but not the title deeds.
5. When he first approached Weaverham for parish records he was given two volumes of minutes and was told that these went back to the 1930s. He believes that these are not the correct documents. He alleged that Weaverham were being deceitful and they had material which they had not shown him.
6. Mr Pickthall explained that when he complained to the ICO he really wanted the ICO to investigate only two points. These were:-
 - (a) he wanted to see the title deed packet;
 - (b) he claimed that Weaverham possessed other archives which they had not shown to him.
7. At the end of the hearing it seemed to us that we had to approach our deliberations in two parts. First, was the ICO correct in his decision on the request dated 16 January 2013? Second, was the ICO correct in not addressing the two issues which, according to Mr Pickthall, were the ones he was concerned about?
8. We can deal with the first issue comparatively briefly. The request which Mr Pickthall made on 16 January 2013 was the tenth request he had made to Weaverham in the space of two months. It referred to six properties owned by the parish council, including fields, allotments and a car park. In respect of them Mr Pickthall asked for “copies of all documentation” relating to their purchase and upkeep.
9. Pausing there, it will be seen that the request wrongly treated FOIA as a statute concerning discovery of documents. It is doubtful whether the request fulfilled the requirement in Section 8 FOIA to describe the requested information. Weaverham rejected the request as vexatious under FOIA. In his decision notice, the ICO suggests that part of the information requested was environmental and therefore fell to be dealt with under the Environmental Information Regulations (EIR). We do

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not consider that this question need detain us. It now seems to be accepted that the question whether a request is vexatious under FOIA or “manifestly unreasonable” under EIR are really equivalent. For the sake of completeness we should add that, in our judgment, the public interest in maintaining this exception in this case outweighs what little public interest we can discern in disclosure of environmental information in accordance with the request

10. Weaverham is a parish council and its resources are small. We are satisfied that the breadth of the request; its apparent absence of value; and the history of previous requests laid such a disproportionate burden upon Weaverham that they were entitled to invoke the protection which Section 14 FOIA gives them. In our judgment the ICO decision notice is correct on this point.
11. What then of Mr Pickthall’s other concerns?
12. It is relevant to consider the start of Mr Pickthall’s dealings with Weaverham. On 13 November 2012 he wrote to Mrs Jones the parish clerk asking for the price that Weaverham had paid to Northwich RDC for lands purchased between 1946 and 1956. He stated that he was not submitting the request “by way of FOI” but would do so if required. Mrs Jones replied straightaway saying that there was no need to worry about a formal FOI request but she would have to do a bit of investigating. Then comes an important request dated 16 November 2012 (“the title deeds request”). It reads as follows:-

“Further to my earlier request for information would you kindly provide me copy of the Northwich RDC deed of conveyance and attached plan and pertinent to Lakehouse Playing Field.”

In reply Mrs Jones explained that she was waiting for the council’s solicitors to release some documents. Weaverham had no suitable storage of their own for deeds. She added that what she did have “to hand” were the minutes from the council’s meetings and Mr Pickthall could call and read them during office hours. In answer to a further inquiry she mentioned that there was a photocopier available for his use.

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13. Mr Pickthall then put in another rather wide ranging request concerning deeds. Again this produced a prompt reply from Mrs Jones to the effect that Mr Pickthall could continue to peruse the minutes for as long as he wished. She regretted that some more information concerning other village committees was not held by Weaverham. Copies of deeds would be made available for him to view when they became available. She mentioned that so far as any request for correspondence was concerned she would have to check it first under the Data Protection Act (DPA).
14. On 13 December 2012 Mrs Jones wrote to say that she had been in touch with the solicitors. She said it was common practice for solicitors to retain deeds and their associated documents for safekeeping. The solicitors were trying to locate any Weaverham files held. Once this information was received she would tell Mr Pickthall; but she would then have to go through the files in order to adhere to the DPA. She confirmed that FOIA entitled Mr Pickthall to view the records which Weaverham held and added that the council intended to cooperate fully with his requirements. An indication of her helpfulness is that, on the same day, she e-mailed Mr Pickthall about other minutes he was requesting, explaining that she did not have them because the meeting was that of another local authority. She had done a quick search on that authority's website without success but was sending him a copy of a press release and of questions raised by a Weaverham parish councillor at that meeting. Just before Christmas, Mrs Jones confirmed that she had still not heard back from the solicitors.
15. By mid-January Mr Pickthall was concerned about the delay in dealing with the title deeds request so he asked the ICO for advice. They suggested to him that he put in a complaint. So it was that on 16 January 2013 Mr Pickthall sent an e-mail. The first part of the e-mail complained about the delay in obtaining "the deeds of conveyance pertaining to Lakehouse Field". The second part of the e-mail comprised the wide ranging request which we and the ICO have found to be vexatious.
16. On 23 January 2013 Weaverham's chairman wrote a letter to Mr Pickthall headed "refusal notice". The letter enclosed copies of some documents that Mr Pickthall

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had requested. It went on to say that his complaint had been rejected. Information had been made available where possible and “for the instances where documents have not been to hand you have been advised that this is the case.”

17. The letter added that Weaverham now considered his repeated request to be obsessive and vexatious under Section 14 FOIA and considered that the matter of supplying information regarding land owned by the council was closed. Mr Pickthall was told about Weaverham’s complaints procedure and given the address of the ICO.
18. Mr Pickthall then filled in the ICO complaint form. He identified the request for information about which he was complaining as having been made on 16 November 2012 – it was the title deeds request. He identified his complaint as being that Weaverham had taken too long to send the information.
19. The ICO wrote to Mr Pickthall. He took the view that the letter dated 23 January was the first refusal of the title deeds request. He advised Mr Pickthall to ask for a review. In a letter to Weaverham, the ICO confirmed that the complaint related to the title deeds request. Mr Pickthall unsuccessfully requested Weaverham for a review on all his FOI requests and then wrote to the ICO asking him to “press this matter on my behalf”.
20. The ICO then wrote to Mr Pickthall reciting half a dozen or so of his requests (including the title deeds request) and indicating that his investigation would consider whether Weaverham had correctly refused “some of your requests” under Section 14 FOIA. A similar letter was sent to Weaverham.
21. We pause to observe that it is by no means clear to us that Weaverham had rejected the title deeds request on the ground that it was vexatious; it is very difficult to see how that description could fairly apply to it. Rather, Weaverham seem to have been relying on the fact that the documents were not “to hand”, raising the question of whether or not Weaverham held the information.

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22. Weaverham responded to the ICO's letter on 18 June 2013. On 5 August the ICO telephoned Weaverham who confirmed that they did not consider the title deeds request to be vexatious. The ICO's decision notice was issued on 10 September 2013. Unaccountably, it deals only with the question of whether the request dated 16 January 2013 was vexatious or manifestly unreasonable. It makes no assessment of the other requests earlier said to be within the scope of the investigation; nor does it address the title deeds request which was the subject of Mr Pickthall's original complaint.
23. In our judgment, the failure to deal with the title deeds request means that the decision notice against which this appeal is brought is not in accordance with the law.
24. We considered whether to set aside the decision notice so that the ICO could consider the title deeds request; an alternative would be to adjourn the case to receive a submission from the ICO on this issue; it would also be open to us to add Weaverham as a party to the case or to request further information from them about the title deeds. Having regard to Rule 2 GRC Procedural Rules, we consider that all these would be disproportionate and we have sufficient material now on which to decide the case.
25. We have concluded that Weaverham did not hold the information which was the subject of the title deeds request for the following reasons.
26. We reject Mr Pickthall's assertion that Weaverham actually holds documents which they are deliberately hiding from him. It is quite obvious from the cheerful, careful and courteous way in which Mrs Jones treated his requests that she was dealing with him openly and honestly.
27. The question which rightly concerned Mrs Jones was whether a firm of solicitors might hold the title deeds on Weaverham's behalf. We conclude on the balance of probabilities that this is not the case.

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28. It might seem at first sight surprising to imagine that a public authority should not possess the title deeds to land in its ownership. We know, however, from a letter from Weaverham's solicitors dated 8 April 2008 (page 103) that at some time before June 2006 title to the land at Lakehouse Field was registered. When that happens, it is the entry in the Land Registry which is proof of title; the "title deeds" no longer serve that purpose. There may be rare cases where solicitors find it prudent to retain the title deeds but otherwise practice varies as to what happens to them. They simply do not have their former importance.
29. Another letter written by the solicitors on 14 June 2006 (page 104) records that Weaverham were still trying to "ascertain the whereabouts of the original title documents" to Lakehouse Field. This is powerful evidence that in 2006 the documents were already lost.
30. Finally, we know that Mrs Jones has made recent inquiries with solicitors acting for Weaverham without success. On the basis of this information we conclude on the balance of probabilities that Weaverham no longer holds these documents and nor does anyone hold them on their behalf.
31. Our decision therefore is to substitute a different decision notice for that issued by the commissioner:-
- (1) We confirm Weaverham's decision that the request dated 16 January 2013 was vexatious;
 - (2) In respect of the request for Lakehouse title deeds, we decide that the request must be refused because Weaverham does not hold the documents.
32. We take no action in respect of the other requests. We are inclined to think that they were not part of Mr Pickthall's original complaint. To the extent that they should now be so considered, our findings of fact in respect of Lakehouse Field indicate that Weaverham have complied with the requests and any shortfall is because the information is not held. We accept Mrs Jones's evidence in this connection.

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NJ Warren

Chamber President

Dated 7 March 2014

Promulgation Date 10 March 2014