



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2012/0149

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50428929

Dated: 25 June 2012

Appellant: Jason Henegan

Respondent: Information Commissioner

Additional Party: Northhill Parish Council

Heard at: Field House, London

Date of hearing: 11 March 2014

Date of decision: 17 March 2014

Before

Angus Hamilton

Judge

and

Alison Lowton

and

Narendra Makanji

Subject matter: s 14 Freedom of Information Act 2000 and Regulation 12(4)(b)
EIR

Cases considered: IC v Devon CC and Dransfield ('Dransfield') [2012] UKUT 440 (AAC).

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out in the Tribunal's determination the Tribunal allows the appeal and substitutes the following decision notice in place of the Commissioner's Decision Notice Ref. FS50428929 of 25 June 2012

SUBSTITUTED DECISION NOTICE

Public Authority

Northill Parish Council

Address

55 Fairfield, Gamlingay, Beds SG19 3LG

Complainant

Jason Henegan

Steps Required

Within 28 Days of the date of this substituted Decision Notice Northill Parish Council are required to answer the following enquiries set out at paragraph 11 of the Decision Notice of 25 June 2012:

28 February 2011: I would like to request information relating to the total amount of money that has been spent maintaining the play area since its creation including any expense Council has incurred.

14 June 2011: how did you get on at Central Beds today – did you find the information you were looking for? What is the outcome?

18 July 2011: please can you send me a copy of these documents as soon as possible so that I am fully aware of what they say prior to the meeting.

19 September 2011: I am still awaiting a copy of the council document that David Milton read out at July's council meeting at Ickwell

19 September 2011: spend to date for the Pound Close play area – I'm still awaiting this information – I was told some weeks ago that it has still not been properly collated

New enquiries: please can you tell me how much interest the Pound Close money has accumulated over the 10+ years Council has had it.

28 September 2011: as per our telephone conversation today – you advised me that play equipment had been investigated by mid Beds a few years ago and that they had written to say the site was unsuitable for play equipment. I've asked you for a copy of this document and I'm backing that request up in writing under the Freedom of information Act.

Rights to Appeal

Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure an appeal against

a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to the Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can found on the Tribunal's website at www.justice.gov.uk/tribunals/general-regulatory-chamber

Signed

**Judge Hamilton
17 March 2014**

REASONS FOR DECISION

Introduction

- 1 Section 14 (1) of FOIA provides that:

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

- 2 Regulation 12(4)(b) of the EIR states:

(4) for the purposes of paragraph 1(1) a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable

- 3 In a preliminary consideration of this matter in September 2013 the Upper Tribunal ruled that the expressions ‘vexatious’ and ‘manifestly unreasonable’ were essentially the same and that a Tribunal should have regard to the same types of considerations in determining whether a request was vexatious or manifestly unreasonable. (GIA/3879/2012).

The Disputed Information

- 4 The Tribunal was generally very concerned about the poor standard of preparation on the part of all the parties in relation to this appeal. This considerably hampered the full and proper consideration of the issues in the case. Both the submissions and the evidence were of a poor standard. There were items that the tribunal clearly needed to see (e.g. the complete set of emails submitted by Mr. and Mrs. Henegan during the relevant period; the resignation from the parish council clerk) which were simply not provided. The final set of submissions, which came from the parties after the main bundle had been prepared, was almost impossible

to follow. Representatives of the public authority had purported to insert comments into a document prepared by Mr. and Mrs. Henegan. Those comments were, apparently, colour-coded in blue and red. However the documents submitted to the Tribunal had been copied in black-and-white and it was almost impossible to see where comments were, let alone to understand who was making the comments. This was then compounded by Mr. and Mrs. Henegan commenting in turn upon the indecipherable comments in this document. Whilst the Tribunal can understand a litigant in person possibly struggling with what is required of them the Tribunal was very concerned by the apparent poor preparation on the part of the public authority and the Commissioner.

- 5 The problems this caused were apparent at the very outset when the Tribunal came to consider what information was actually in dispute here (the 'disputed information'). The Tribunal first referred to the Commissioner's Decision Notice which ought, of course, to contain a clear statement of the disputed information. The Commissioner appears to deal with this issue paragraph 11 of the Decision Notice. However it is quite clear on reading through the list of enquiries made by Mr. and Mrs. Henegan, which are set out here, that several of the enquiries are not requests under the Freedom of information Act or the Environmental Information Regulations (e.g. 'please can you advise of the date and location of the next council meeting?'). Some of the enquiries clearly are requests under FOIA/EIR and there is a third class of enquiry where it is quite ambiguous as to whether it is a FOIA/EIR enquiry or not (e.g. 'I am still awaiting a copy of the council document that David Milton read out at July's council meeting'). The Commissioner acknowledges this ambiguity (para 12 DN) but does not then go on to analyse and categorise the various requests.
- 6 The Tribunal also noted that there was also little agreement between the parties as to the extent of the enquiries covered by this appeal. As mentioned above the Commissioner described a set of enquiries running between 28 February 2011 and September 2011. However in an email

dated 18 October 2011, which appears at p128 of the bundle, Mr. and Mrs. Henegan refer to a more extensive list of unanswered enquiries - even though the period in question is the same as that considered by the Commissioner. Furthermore in a letter dated 21 October 2011 (p 132 bundle) sent by the public authority to Mr. and Mrs. Henegan the public authority refer to an even more extensive list of enquiries which appear to stem from the same period.

- 7 The Tribunal felt quite strongly that these issues should have been clarified before the hearing. The Tribunal noted that there had been attempts instigated by the Tribunal in 2012 to clarify these issues but no definitive response appears to have been received from the parties. Ultimately the Tribunal decided that they were confined to considering the information described in the original Decision Notice, as this is the decision that Mr. and Mrs. Henegan were appealing. The Tribunal also set aside requests which were clearly not FOIA/EIR requests but where the situation was unclear the Tribunal erred in favour of the Appellant and treated the request as a FOIA/EIR request.

The Questions for the Tribunal

- 8 The Tribunal judged that the sole question for them was to consider whether the Appellant had proved on the balance of probabilities that his requests for information were not 'vexatious' within the meaning of s14(1) FOIA. Bearing in the mind the ruling of the Upper Tribunal in September 2013 in this case the Tribunal did not think it was also necessary to consider whether the enquiries were 'manifestly unreasonable' in accordance with the EIR.

Evidence & Submissions

- 9 Subject to the comments already made The Tribunal considered all the evidence and submissions from the parties.

- 10 On the issue of 'vexatious' the Tribunal considered the guidance in the binding case of *IC v Devon CC and Dransfield* ('Dransfield') [2012] UKUT 440 (AAC). This invites a Tribunal to consider four broad (and overlapping) issues :

The burden placed on the public authority and its staff

The motive (of the requester)

The value or serious purpose (of the request)

Any harassment or distress (of and to staff)

- 11 In relation to the issue of the burden placed on the public authority the Tribunal were again rather hampered by the poor quality of the evidence submitted to the Tribunal. There was an often-repeated assertion in the papers that during a 3-week period in July 2011 Mr. and Mrs. Henegan had submitted 45 out of the total of 75 emails received by the public authority. The Tribunal accepted that, if correct, this had the potential to create a significant burden but the Tribunal was unable to conclude that it did so because no party had thought to provide copies of the emails. This omission was significant in the context of the appellant's assertion that the public authority repeatedly failed to respond to enquiries and had to be chased and chased and also in the context of the appellant's claim that they had been advised by the clerk to the public authority to use pester power – the implication being that unless they pressed for a response they wouldn't receive any. Without the actual emails the Tribunal was unable to determine whether the '45 email' assertion was indeed correct and, if so, whether this was a reasonable tactic employed by the appellant or an unjustifiable burden placed on the public authority. The Tribunal noted that the public authority had prepared a schedule of emails sent by Mr. and Mrs. Henegan (p177 bundle) which totaled 78 in all but the dates of these were unclear as the schedule had been badly prepared and the dates were not complete. Again no copies of the emails were provided so an objective assessment of the 'burden' was not possible.

- 12 Because of all the uncertainty on this issue the Tribunal focused on the requests for information that were actually the subject of the Decision

Notice. The Tribunal concluded that on balance these were clearly not burdensome. The Tribunal noted that the Commissioner came to the same conclusion (para 39 Decision Notice).

- 13 The Tribunal felt that the motive of the requester and the serious purpose of the request were too closely linked in this particular case to be considered separately.
- 14 The Tribunal felt on balance that Mr. and Mrs. Henegan did have a serious purpose or motive in submitting enquiries to the public authority. This was two-fold and the purposes were sometimes overlapping. First, their motive was to persuade the council that it was in the council's interests to sell the land in question to them so that the council was relieved of the burden of maintaining it. Secondly, in light of the council's refusal to sell, the motive was to point out that the land was poorly maintained and to insist that the land was looked after properly. This may have been a purpose that principally benefitted the Henegans, rather than the broader community, but the Tribunal felt that this point did not render the purposes lacking in seriousness or mean that Mr. and Mrs. Henegan's motives were questionable or malign.
- 15 In relation to the harassment and distress caused to the public authority's staff by Mr. and Mrs. Henegan's requests – the Tribunal felt that no clear evidence had been produced to support this claim. The Tribunal noted that there were assertions that the public authority's clerk had resigned as a result of the Mr. and Mrs. Henegan's correspondence but these assertions were not supported by clear evidence (e.g. a statement from the clerk or the letter of resignation – the Tribunal noted the Commissioner's reasons for excluding the letter of resignation but felt that this could have been handled in a better way than simply excluding the letter – for example by redaction). The Tribunal also noted that the clerk in question had been convicted of fraud with the public authority as the victim. This factor alone must have placed a significant question mark over the clerk's given reasons for leaving.

- 16 On balance the Tribunal did not consider that the public authority's staff had been caused harassment or distress by Mr. and Mrs. Henegan's enquiries. The Tribunal noted the Henegan's generally friendly tone and their offers to help the clerk with certain tasks. The Tribunal also noted Mr. and Mrs. Henegan's assertion that they had been encouraged by the clerk to use 'pester power'. The Tribunal also noted that a number of the emails were clearly follow-up emails relating to unanswered enquiries.

Conclusion

- 17 Having considered the Dransfield criteria the Tribunal was satisfied that on balance Mr. Henegan had established that he and his wife were not vexatious in their enquiries and that, consequently, the exception in s.14 FOIA was not available to the public authority. Bearing in the mind the ruling of the Upper Tribunal in September 2013 in this case the Tribunal did not find it necessary to go on and consider additionally whether the enquiries were 'manifestly unreasonable' in accordance with the EIR.
- 18 Our decision to allow this appeal is unanimous.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 17 March 2014