



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2014/0075

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50509308
Dated: 5 March 2014

Appellant: JANET GIGGINS

Respondent: INFORMATION COMMISSIONER

Heard at: READING MAGISTRATES' COURT

Date of hearing: 9 JULY 2014

Date of decision: 12 AUGUST 2014

Before

ROBIN CALLENDER SMITH
Judge

and

ANNE CHAFER and JOHN RANDALL
Tribunal Members

Attendances:

For the Appellant: Ms Janet Giggins.

For the Respondent: Written representations from Mr Richard Bailey, Solicitor for the Information Commissioner.

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Case No. EA/2014/0075

Subject matter: FOIA

Vexatious or repeated requests s.14.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 5 March 2014 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mrs Janet Giggins (the Appellant) wanted West Berkshire Council (the Council) to provide her with information that related to an extract of the Council's Overview and Scrutiny Committee meeting held on 18 September 2012.
2. On 26 October 2012 she asked for links, documents, the audit report if complete, briefing notes and documents with regards to the complaints procedure. The Council provided her with that information.
3. Then, on 29 January 2013, she requested a copy of the Council's audit report on its complaints process with the version control/review history. The Council told her that the report was in draft form and was being withheld under section 36 (2) (c) of FOIA. She was told that the Council would publish the report when it was finalised. That occurred on 23 May 2013.

4. The Appellant stated that she had not received the dates of the version reports. They were subsequently provided to her.
5. 8 June 2013 she wrote to the Council and requested information in the following terms:

Should you feel that this information does not fall within the scope of my original request (and the one preceding it) then please can you also action a new request for versions 1 and 2 of the audit report, together with associated distribution correspondence and responses and/or meeting minutes, and any correspondence relating to this request and its precedent relating to the complaints process.

6. The Council responded on 28 June 2013 and refused to provide the requested information relying on section 14 FOIA on the basis that the Appellant's request was vexatious. The Council's position was maintained following an internal review on 29 July 2013.
7. The Appellant complained to the Commissioner that she was not satisfied that her information request had been properly refused.
8. The Commissioner considered the complaint in the light of the Upper Tribunal case of *Information Commissioner v Devon County Council and Dransfield* [2012] UTUT 440 (AAC) (Dransfield).
9. In that appeal case the Upper Tribunal concluded that "vexatious" meant more than simply irritating, annoying or disappointing. It could be applied to "a manifestly unjustified, inappropriate or improper use of FOIA".
10. In *Dransfield*, the Upper Tribunal had identified four core issues to be considered in terms of vexatious: firstly, the burden on the public authority; secondly, the motive of the request; thirdly, the value or serious purpose of the request and finally, any harassment of, or distress caused to, the public authorities' staff. The Upper Tribunal emphasised those four core

issues were not meant to be exhaustive and underlined the “importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not”.

11. The Council told the Commissioner – during his investigation into the Appellant’s complaint – that in order to understand its reasons for applying section 14 (1) FOIA to this information request it was necessary to consider the history of the matter.

Historical Background Considered

12. In 2008 the Appellant had made a complaint about the handling of neighbour’s planning application. The Appellant took the complaint to the Local Government Ombudsman (LGO) and was awarded £500 compensation against the Council.

13. The Appellant objected to the LGO’s findings and had requested a review by a senior LGO officer. That review found a higher level of fault in respect of the Council but the same compensation was awarded. The Appellant remained dissatisfied and had indicated in an email of 3 August 2010: “We are still disputing the Assistant Ombudsman’s decision”.

14. In 2010 a development was being planned to replace to social housing properties with a care facility for elderly residents. The development was sited behind the Appellant’s property. The Appellant had complained about the process that was being used and made information requests linked to a training session which took place just before a meeting about the development that was attended by the Council’s Western Area Planning Committee members.

15. The Council stated that the Appellant maintained that the training session had been a secret meeting to pre-determine the application of the development.

16. The amount of information provided for that request was challenged by the Appellant who, after the Commissioner's investigation, took the matter on appeal to the Information Tribunal. The Information Tribunal considered the Commissioner's investigation and the Council's explanation about the information had provided. The Information Tribunal determined that no further information was held and the Appellant's appeal was struck out in March 2012.

17. When the application for the development was approved on 17 November 2010 the Appellant complained to the Chief Monitoring Officer, seeking a review of the decision. The Council provided the Commissioner with a copy of the first email, sent 21 November 2010, when the Appellant made it clear that she was aware that, if a Judicial Review was to be undertaken, that had to be started within three months of that decision. The Appellant still questioned the decision and had not taken any steps to challenge it by way of Judicial Review.

18. The Appellant then turned her attention to the use of commuted s.106 funds in respect of the financing of the development. She questioned the legality of this both with the Council and the Council's auditors. The Chief Monitoring Officer contacted the Appellant on 25 March 2011 stating:

.... I am satisfied that it is lawful for the Council to make a contribution towards the provision of affordable housing in one part of the District, from s.106 contributions paid in respect of other developments in other parts of the District.

19. The Appellant was advised that, from the beginning of 2011 to May 2011, the Monitoring Officer was on leave and that in his absence two officers were deputised to act in his stead. The Appellant questioned the Council's authority to permit this. Then, having received a response from one of the deputised officers, the Appellant accused the Council of intercepting her correspondence.

20. Because of the level of correspondence received from the Appellant at that point in 2011 the Council appointed a single point of contact for the Appellant. The Council had used the Local Government Ombudsman's template for Persistent and Prolific Complaints. That had become the focus of the matter which resulted in another complaint to the LGO.
21. To support this complaint to the LGO – and in the light of a Subject Access Request made by the Appellant on 25 September 2012 for information she believed might show the Council blacklisted her correspondence – the Council had to review over 3000 emails dating back to October 2010.
22. On 18 December 2012 the LGA determined that the Council had not acted with fault and closed the complaint. Its report stated that it had seen no evidence of the Appellant being blacklisted by the Council.
23. The Council's position presented to the Commissioner was that the Appellant was dissatisfied about the way it had handled her complaints with regards to the planning processes of 2008 and 2010 together with her belief that she had been blacklisted. That dissatisfaction had crossed over to a fixation with the Council's complaints process.
24. On 26 October 2012 the Appellant requested information from the Council's Overview and Scrutiny Committee meeting of 18 September 2012 in respect of the Council's complaints procedure. The information requested was the links, documents, minutes and notes on the subject.
25. It provided the information and the Appellant, on being told that there were no minutes, requested a review on the basis that the meeting had been to discuss her and her complaints, implying that was the reason why there were no formal minutes taken by the Council.
26. Specifically that she had stated:

.... you would have had the opportunity to inform Councillors that I had been classified as a “persistent and prolific” complainant by raising matters of concern....

27. The Council told the Commissioner that the Appellants correspondence had not been discussed as it was a general meeting that looked at process and training issues.

The Commissioner’s Conclusions

28. The Commissioner believed that the Appellant’s main concern throughout this appeared to be that there were no minutes produced and that this was a time that the council could have discussed her. That supported the Council’s opinion that the Appellant was now more concerned about herself being discussed rather than the complaints procedure itself.

29. The Commissioner discerned a pattern of the Appellant’s requests shifting because of the dissatisfaction with the Council’s handling of her correspondence and the planning application process to requests being made about the complaints procedures.

30. At issue was whether, when she had been provided with the eventual complaints procedure audit report, her request to be provided with all the versions of the draft report leading up to the final report was vexatious.

31. The Appellant had told the Commissioner that the purpose of the request was to seek reassurance that the report had not changed as a result of her interest. She stated that it was natural for her to wonder if there had been something in the draft reports or associated correspondence that the Council did not want her or the public to see. Transparency, accountability, probity and access to information/justice were the inherent values and purposes of the request. Publication of the draft report would be relatively simple and could lay to rest, rather than fuel, any concerns about the complaints process now operating.

32. The Appellant had also pointed out to the Commissioner that he had found against the Council previously when it applied section 14 to one of her earlier requests.
33. The Commissioner concluded that the Council had gone some way to demonstrate transparency by providing its final audit report on the complaints process. Providing all the background correspondence to satisfy the Appellant that the report had not changed because of her interest was not, in his view, in the public interest in terms of the Council's use of its resources to provide that information.
34. The public interest had been served by the Council providing the finalised complaint audit report from the previous request. Audit reports did undergo changes and alterations before the final version was agreed upon but it was the final audit that carried the weight in the complaints process.
35. The Commissioner also considered that, because the LGO in 2012 had not found any fault in the way the Council had handled the Appellant's correspondence that showed that the Appellant was not satisfied with the finding of an independent body and was pursuing a line of enquiry which appears to have no end. That had an unjustified and disproportionate impact on the authority both in terms of its time and resources if it had to respond to the request.
36. Given that the Council had supplied the finalised audit for its complaints process and had also provided information about the complaints procedure from the October 2012 request the Commissioner did not consider it was justified to require the Council now to provide this further requested information. Also a draft audit report had significantly less public interest in a situation where the Council had provided the final report.
37. The Commissioner concluded that even if the information had been provided that was not going to resolve any personal dissatisfaction the

Appellant might have with the Council's handling of her complaints. It would lead to further requests of a similar nature impacting further on the Council's resources for responding.

38. On that basis the Commissioner concluded that the Council had correctly relied on section 14 (1) FOIA not to provide the requested information case.

The appeal to the Tribunal

39. In her Grounds of Appeal and at the oral hearing of the appeal the Appellant made the following points which have been summarised.

- (1) She had requested an oral hearing because there were too many "facts" within the decision notice under appeal which she disputed.
- (2) She had not been given the opportunity by the Commissioner's case officer to comment on or correct the highly biased, selective and misleading "context and history" of the request and previous requests put forward by the Council.
- (3) The Commissioner's decision included many paragraphs commencing "The Council said..." without verifying the facts either independently – much of the information was available online – or with herself.
- (4) It ignored corrections she had supplied regarding the LGO investigation. She had to obtain that information by a Subject Access Request when it became clear to her that the decision was going to be made without her being able to put forward her side of the case.
- (5) She believed the Commissioner's reasoning was unclear. It was based on disputed facts.

- (6) The Commissioner had relied on a single paragraph in *Dransfield* out of context and had not taken into account other FOIA decisions which emphasised the need to agree the facts in the background.
- (7) She believed the purpose and value of the request had been understated. The public interest was not satisfied simply by the publication of the final report and that was not the information she had requested. Public authorities should not be able to pick and choose which part of a request were of value. She did not recall being specifically asked for the purpose or motive behind the request.
- (8) She did recall being asked to give reasons why it was not vexatious but that was without having sight of the arguments that the Council had put forward to say that it was vexatious.
- (9) She had first asked for the audit report in October 2012. That request was refused because the audit had been delayed and she was invited to re-request the report in the New Year which she did on 29 January 2013. The re-request was a two part request and the second part of that was for the version control/change history if not included in the report. She had eventually been provided with a link to the report on 23 May 2013: that was “version 3” and there was no change history/version control. It was that background that had led to her “rather exasperated” final request.
- (10) There was no burden in the Council complying with the first part of the request and providing previous versions of the report. If there had been a time/cost implication regarding the supply surrounding documentation it could have been refused under section 12. The Commissioner did not appear to have asked for any time/cost estimates and the Council had supplied none.

- (11) If there was a genuine or supportable argument for the Appellant's requests having crossed the "tipping point" based on a history of the Council's own creation then why was it reached before the provision of versions 1 and 2 of the audit reports given that the request for the version control/history had been made five months before?
- (12) There was no supportable argument for a "tipping point" or for "spread" or "drift" because the Council had in fact created the problem itself by such things as mishandling a complaint in which maladministration was proved and misleading the Commissioner.
- (13) She had done nothing more than to exercise her democratic rights.

Conclusion and remedy

40. The Tribunal, having had the opportunity to hear from the Appellant and to read in detail all the information provided by her and the Council, observes that it is clear that she has lost trust and confidence in the Council's responses to her various requests.
41. The context and history in which the request was made is a major consideration because in the end it highlights issues of proportionality which lie at the heart of section 14 (1) vexatiousness.
42. She wants to see the history of an audit report through its various versions when the audit report itself has been published and made publicly available.
43. It is hard to see the value or public interest in requiring the Council to devote any resources to this.

44. The purpose of the request is purely personal and does not reflect matters of wider public interest. Public interest in the complaints procedure has been served by the Council providing the finalised audit report from the previous request.
45. Having considered all the papers in this matter, together with the Appellant's fears that there has been some kind of concealment by the Council because of her previous dealings with it, there is no evidence of any wrongdoing in respect of this particular issue on behalf of the Council.
46. That has to be weighed into the balance of the purpose and value of the information request when that, in turn, is weighed in the context of the impact on the public authority and the distress, disruption or irritation that would be incurred by complying with the request.
47. From the decision notice it is clear that the Commissioner formed the view that the Appellant's contacts, correspondence, complaints and requests had already taken up a disproportionate amount of time in relation to the Council, diverting resources that would have been available to it to deal with other matters.
48. The Tribunal has arrived at the same conclusion. Simply because the Appellant no longer trusts what the Council says or does cannot give her a licence to make repeated information requests that, in themselves, lead to further requests.
49. This information request was correctly characterised as vexatious both by the Council and by the Commissioner. For all the reasons outlined above the Appellant's appeal fails.
50. Our decision is unanimous.

51. There is no order as to costs.

Robin Callender Smith

Judge

12 August 2014