



Neutral Citation Number:

IN THE FIRST-TIER TRIBUNAL Appeal No: EA/2014/0154
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50528879
Dated: 21 May 2014

Appellant: Ron Heath

Respondent: The Information Commissioner

Heard on the papers: Fox Court, Gray's Inn Road, London

Date of Hearing: 14 October 2014

Before
Chris Hughes

Judge

and

Jacqueline Blake and Alison Lowton

Tribunal Members

Date of Decision: 11 November 2014

REASONS FOR DECISION

Introduction

1. Mr Heath was a councillor on St Mabyn Parish Council in Cornwall. Disciplinary proceedings were brought against him alleging that he was in breach of the Code of Conduct of the Parish Council at two meetings of the Council held on 6 July 2010 and 3 August 2010. A detailed investigation by a Principal Legal Officer (Mr Mansell) of Cornwall County Council was carried out. The report dated 22 December 2010 was sent to Mr Heath in two versions. The Standards Committee of Cornwall County Council suspended him from the Parish Council for three months in May 2011. A subsequent hearing of the First-tier Tribunal of the GRC (Local Government Standards in England) held in March 2012 considering a further detailed report dated 20 October 2011 found that Mr Heath had failed to treat others with respect, bullied them and brought the Council into disrepute, contrary to the Code of St Mabyn Council. The Tribunal disqualified him from serving on the Council for two years. He subsequently lodged an appeal against this decision with the Upper Tribunal, but did not pursue that appeal.

2. Mr Heath unsuccessfully complained against the Principal Legal Officer through each stage of Cornwall CC's complaints procedure. He attempted to complain against one of his former St Mabyn Parish Council colleagues alleging that he had given false evidence to the Investigating Officer. On 1 June 2012 Mr M Stokes a manager within Cornwall Legal Services wrote to him explaining why he had received two reports dated 22 December 2010 and dealing with his complaint against Mr Mansell:-

“Complaint against Mr SJ R Mansell and Corporate Governance

Thank you to your letter of 25 May with further enclosures.

Please note the following:-

1. I have not asked you to provide photocopies of the two reports to which you have made reference. I asked you to produce the originals to me and if required I would take them myself.

2. I have been able to clarify why you ended up with two different reports dated 22 December 2010. At 10.35 on 22 December 2010 Mr Mansell sent me a version of the final report for me to consider given that I am his Line Manager. At 11.42 on 22 December 2010 I returned the report with some amendments attached to an e-mail. The latter version is what was presented to the Hearing Panel and which was the actual final version. The former was merely a document under preparation as the Final Report. You seem to have incorrectly been sent the former document as well. It is not accepted that any of the changes that were made change the context or message of the Investigating Officer's report. The changes were appropriate and legitimate and not as you suggest "altering, changing, omitting and alleged tampering and disposing of evidence". I have gone through this with Councillor Rowe [Mr Heath's County Councillor] and he accepted the simple explanation I have given him makes sense and indicates appropriate treatment of the reports."

I have already told you on more than one occasion that we have looked at your complaint against Mr Mansell which was not upheld at all three stages of our complaints process. Mr Mansell is writing to you separately in relation to your complaint against [name redacted].

I have told you before you have been provided with such information as the Council has as is relevant requests for information that you have submitted. There is nothing further to provide you with.

Having to deal with your ongoing correspondence is diverting public resources from delivering services to others and is not achieving anything for anyone. You are mistaken in your assertions and you are not correct in your various assertions. Neither I nor any of my team will respond to any further correspondence from you, save in relation to any new and unrelated matters or in relation to any formal complaint that you submit in response to Mr Mansell's letter which will be with you shortly.

I will be forwarding a copy of this letter to Cllr Rowe for information.

Yours sincerely"

3. Mr Heath has unsuccessfully complained to the Local Government Ombudsman. He has lodged complaints against at least one lawyer employed by Cornwall County Council with the relevant professional body.

4. On 17 February 2013 Mr Heath wrote to Mr Stokes alleging misconduct on his behalf and:-

“I am now making a formal and official request for you to provide me with the information and documents, a copy of the "report" and findings, as to how you are/have "dealt with the official complaint" against Mr Williams, Mr Mansell, and yourself, within 20 working days...

I am making a formal official complaint to Mr Lavery as to your serious conflict of interests and lack of impartiality and biased and prejudicial opinions...

5. In the letter sent to Mr Lavery (Chief Executive of Cornwall County Council) Mr Heath alleged *unethical and morally incorrect practice* and repeated his allegations against Mr Stokes.
6. The Council replied on 5 March 2013 (bundle pages 32-34) and rejected the FOIA request relying on section 14 of FOIA. In so doing it relied on both s14(1) – that the request was vexatious and s14(2) that it was a repeat of previous requests. In relying on s14 (2) it commented *“ to the extent that it was appropriate to provide you with documentation within the scope of your request in response to your previous correspondence, that has already been done and there is no obligation on the Council to provide photocopies of anything that it has previously provided.”*
7. With respect to the reliance on section 14(1) the letter considered the request against five criteria. The request could fairly be seen as obsessive since the Council had already repeatedly confirmed to him that none of the matters raised required further consideration. The making of unfounded allegations demonstrated an unreasonable fixation on various staff members and could reasonably be construed as harassing the Council. The author concluded that dealing with the request would impose a significant burden *“Your correspondence to date spans many months and is repetitive. This is notwithstanding the findings of an independent tribunal against you, the Local Government Ombudsman not entertaining a complaint from you, your formal complaint against Simon Mansell having been dismissed at all stages of the Council's complaints procedure and you being repeatedly told that your issues will not be pursued further. I have no doubt that, irrespective of the response you can request, you will not be dissuaded from corresponding further. However you have already been told that your correspondence will not receive a reply unless it raises*

new issues.” The author of the letter declined to express a view as to whether the request was designed to cause disruption or annoyance but concluded that the request, viewed objectively, lacked any serious purpose. In its review letter of 15 April 2013 the Council maintained its position.

8. Mr Heath complained to the Respondent in these proceedings the Information Commissioner ("ICO"). In considering the case the ICO (DN paragraph 10) noted the definition of vexatious considered in *Information Commissioner v Devon County Council & Dransfield* that a request was "*manifestly unjustified, inappropriate or improper use of a formal procedure*" and noting that the concepts of proportionality and justification were relevant to the consideration of whether a request was vexatious. He noted the long history of the issue and the hundreds of pieces of correspondence that the Council held. He considered the history of contact between Mr Heath and the Council. He noted that the Local Government Ombudsman had declined to take up the issues raised by Mr Heath (DN paragraphs 24-29) and that the Council was spending a disproportionate amount of time dealing with Mr Heath's dissatisfaction with the outcome of tribunal proceedings; which Mr Heath could have challenged by appeal but had chosen not to do so. The ICO noted the findings of the tribunal hearing in March 2012 with respect to Mr Heath's conduct in making unsubstantiated allegations against others. The ICO in his consideration of the issues adopted the approach set out by the Council in its letter of 5 March 2013 and concluded that the request was vexatious. In the light of this decision he did not go on to consider whether it was repetitious.
9. In his appeal Mr Heath gave an extensive account alleging misconduct against a number of Cornwall County Council staff arising from the misconduct proceedings and his claim that there was unlawful tampering with the report. He focussed on the handling of the two versions of the report. He accused a number of individuals of serious professional misconduct as lawyers. Among other enclosures he sent a copy of a letter he had written to Mr Mansell's professional body and repeated his allegations about misconduct in the context of the hearings conducted by Cornwall County Council concerning Mr Heath's misconduct.
10. In his response to the appeal the ICO relied on the contents of the decision notice commenting (bundle page 29e) "*It is submitted that the findings and conclusions reached by the Commissioner are overwhelmingly supported by the evidence*

contained in the enclosed bundle. Furthermore there is nothing in the Appellant's grounds of appeal that goes any way to undermining the Commissioner's decision. Rather, it is submitted that this case concerns precisely the sort of request that Judge Wikely referred to in Dransfield as "a disproportionate, manifestly unjustified, inappropriate or improper use of FOI."

11. The issue before the Tribunal is a simple one, whether the request for information is vexatious within s14(1) FOIA, in the light of the guidance provided by the Upper Tribunal in the case of Dransfield.
12. Given the weight of evidence in this case there is only one possible answer. Mr Heath is dissatisfied with the outcome of proceedings under the Code of Conduct for Councillors which, having considered his misconduct imposed sanctions upon him. Instead of pursuing an appeal against the findings; at a late stage he abandoned the appeal. He has since then sought to attack those findings through indirect routes – a complaint to the Local Government Ombudsman, complaints against individuals to their employers and professional bodies, relentless correspondence and this FOIA request. He received a full, clear and convincing explanation of a minor procedural slip in the letter from Mr Stokes of 1 June 2012 (shortly after he had received the decision of the First-Tier Tribunal). He has failed to consider that explanation and has continued to pursue his irrational campaign against officers of Cornwall County Council. That campaign has been grossly wasteful of Council resources, been conducted in part by making wholly unfounded allegations against its officers, is entirely without merit and an abuse of the various routes he has pursued to conduct it. It is vexatious within s14(1) FOIA. It may be noted that the conduct leading to this hearing is a continuation of his previous conduct which led to sanctions being imposed for breaches of the Code of Conduct for St Mabyn Parish Council.
13. The Tribunal concludes that the reasoning of the ICO is correct in law and the appeal entirely without merit. This appeal is dismissed.

14. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 11 November 2014