



Neutral Citation Number:

IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2014/0211

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FER0516009
Dated: 22 July 2014

Appellant: Paul Gadd

Respondent: The Information Commissioner

Heard at: Cambridge

Date of Hearing: 29 October 2014

Before

Chris Hughes

Judge

and

Henry Fitzhugh and Jean Nelson

Tribunal Members

Date of Decision: 19 January 2015

Attendances:

For the Appellant: in person

For the Respondent: did not appear

Subject matter:

Environmental Information Regulations 2004

Cases:

Information Commissioner v Devon CC and Dransfield 2012 UKUT 440 AAC

REASONS FOR DECISION

1. The Appellant in these proceedings (“Mr Gadd”) is an active campaigner against certain actions of Uttlesford District Council (“the Council”). He has raised numerous concerns about the production of the Local Plan for the area. On 2 August 2013 he made a request of the Council for information about the production of the Local Plan. That request, the Council’s response and the decision notice of the Respondent in these proceedings (“the ICO”) were considered by this Tribunal in a linked hearing in which it was found that all the information held had been provided and Mr. Gadd’s appeal against the ICO’s decision notice failed (EA/2014/0171).
2. On 2 September 2013 Mr Gadd made a further request for information extending over five pages (ICO’s decision notice – bundle pages 9-14), comprising 22 numbered paragraphs and within them 33 sub-paragraphs. Four of the requests were contained in the 2 August request (which had been substantively answered on 16 August) and the rest of which explored in great detail aspects of the decision-making around the production of the Local Plan.
3. The Chief Executive of the Council replied very promptly on 5 September pointing out that the Council had responded to the previous request, and that the requests were either repeat requests or asked for expressions of opinion not information. The Council refused to deal with the request on the basis that the requests were manifestly unreasonable with regulation 12(4)(b) of the Environmental Information Regulations. Mr Gadd responded by claiming that *“the information requested is discrete, targeted and should not be even slightly difficult or onerous for UDC to provide.”* On review the Council enumerated step by step how the requests were repetitious, redundant or seeking the expression of opinion. The letter continued (page 289): *“You have made numerous requests to the council for information which have been properly responded to. Your most recent request raised nothing which you had not raised in previous correspondence which has been dealt with. I am therefore satisfied that the request dated 2 September was manifestly unreasonable.”*
4. Mr Gadd complained to the ICO. The ICO indicated to the Council that he was unlikely to accept that its position on requests seeking explanations or expressions of

opinions was sustainable. The ICO concluded that these were valid requests and then considered all 22 requests in the round in the light of the decision in *Dransfield*.

5. The ICO noted the Council's arguments that the Council had provided the majority of the information or indicated that it was not held already. The Council provided an 11 page document analysing the request and its relation to information already provided, a list of 65 items of correspondence between Mr Gadd and the Council and a list of previous requests for information and complaints to and about the Council, Councillors and planning including to the Local Government Ombudsman and the Council's auditors.
6. The ICO considered Mr Gadd's arguments that the Council had avoided answering questions "*..or if it has been asked before UDC have refused to answer it properly or have provided an answer which appears to be untrue*" and further considered his detailed arguments with respect to each of the 22 requests (bundle pages 346-357) and that the requests were not manifestly unreasonable.
7. The Commissioner concluded that there was a legitimate interest in the information sought; however he was pursuing similar information and "*it appears he is failing to take into account the previous responses provided by the Council and the information he already has available to him. The Commissioner would also agree with the Council I that it appears the complainant is rewording his requests to seek the same or similar information*" (decision notice paragraph 38-42); he considered that Mr Gadd would not be satisfied by any response, that any response would automatically lead to follow up requests, the burden on the Council was disproportionate and divert the Council away from its duties.
8. In considering the public interest the ICO noted the considerable amount of information on the Local Plan on the Council website which provide the necessary transparency and accountability to the public and concluded that the balance of public interest lay in preventing further diversion of resources to dealing with Mr Gadd's request.
9. Mr Gadd lodged a statement of appeal extending to 18 pages. He indicated that he had considerable legal experience as a former partner of a major firm of solicitors. He repeated his argument that the information request was limited, that he considered the responses that he had received were untrue, that the Council had behaved unlawfully

with respect to the Local Plan. He set out at length what he considered to be inconsistent statements from the Council with respect to the Local Plan. He stated that there was no relevance of his previous reference of the Council to the Local Government Ombudsman. He argued that the request was not manifestly unreasonable, because (inter alia) the costs of providing responses would be small – he contrasted this with the £413,000 expenditure on the planning department which he argued was largely unlawful expenditure, there was little or no overlap with previous requests, he asserted that both the Chief Executive and Council’s Monitoring Officer “apparently lied”. He maintained this position at the hearing.

10. The ICO resisted the appeal and reaffirmed the stance he had taken in his decision notice. He relied on the Upper Tribunal decision in *Dransfield* to maintain that the context of the request was relevant including the complaint to the auditor, to the Local Government Ombudsman, about councillors to the monitoring officer in factoring in the motive and conduct of the requestor in determining whether the request was reasonable. He reaffirmed his view that repetitive nature of the request was a key indicator. He noted that the Council was not obliged to provide answers to specific questions, but to supply information if it was held – EIR was not a right to interrogate. The question of the alleged illegality of the Council was not a matter for the Tribunal.
11. It is appropriate to examine some of the key factual assertions made by Mr Gadd.
12. He has claimed that there was little or no overlap with previous requests. An examination of the 22 requests against the previous four shows that the wording of part 1 of both is very similar, as is the wording of parts 4 and 22, parts 2 and 17. Part 3 (August request) is very similar to part 2 (September request). The Tribunal therefore concurs with the view expressed by the ICO in his response (bundle page 251) that the substantive issue about information was raised in the previous request and Mr Gadd’s complaint not upheld. It was further considered by the Tribunal in rejecting Mr Gadd’s appeal (EA/2014/0172) in the linked hearing to this case. Mr Gadd in his submissions had a poor grasp of the factual matrix with which he was dealing.
13. He asserted that he had Counsel’s advice that the Council had acted unlawfully. A consideration of that advice (bundle pages 232-234) does not disclose any such advice – the Counsel he instructed noted the allegation Mr Gadd had made and stated “*If an*

authority acts therefore to change the plan period to avoid the proper planning of an area this will be unlawful". This is fundamentally distinct from Counsel's advice that the Council has acted unlawfully. It is unfortunate that a senior solicitor such as Mr Gadd could have made this error.

14. He asserted that there was massive unlawful expenditure in connection with the preparation of the Local Plan and he complained to the Council's auditor under section 16 of the Audit Commission Act 1998. The auditor (who had seen Mr Gadd's legal advice) found no misconduct or improper purpose (Decision Letter at bundle pages 228-231). In the hearing Mr Gadd affirmed that, in his view, the auditor was wrong.
15. In considering whether a request for information is manifestly unreasonable it is necessary to look at the request in the round and in its context. The function of the EIR is to enable citizens to be informed so that, if they wish, they can participate in decisions concerning the environment. It does so by providing a right to information held by public bodies. However the information should be held in written or other permanent form, it does not have to be produced from the memories of staff, or generated by the public body. As the ICO correctly noted, it is not a right to interrogate. The objection raised by the Council to many of the parts of the request as being requesting an opinion or reasons rather than of recorded information was a proper indication that EIR was being misused and the position the ICO adopted on this point during his investigation was, in the Tribunal's view, problematic.
16. The constellation of relevant issues discussed in Dransfield are prominent in this case: burden, motive, value, harassment of staff, however the core question is the overall proportionality of the request to the benefit which may flow from it. In this case there is substantial evidence of the burden of this request from Mr Gadd on the Council's planning function, in the context of his repeated criticisms of the Council in this regard. The length and complexity of the requests would impose a significant further burden on one of the smallest district councils in England. The motive and purpose of the requests are also suspect. Mr Gadd is pursuing a campaign in which his key concern appears to be to expose wrongdoing by the Council; however repeated recourse to external authorities (and also to independent functions within the Council) have not revealed any wrongdoing or misconduct. Mr Gadd has an ill-founded and strongly held belief in the misconduct of the Council, its members and

staff for which he does not have a rational basis. Although it is not specifically raised by the Council or the ICO, the Tribunal is satisfied that the repeated unfounded assaults on the integrity of members of the staff must cause some distress, is not something that any public servant should be subject to and is strongly indicative of a pattern of behaviour which has little to do with a desire to have environmental information more readily available. The ICO found that any response would only give rise to further questions and the Tribunal is satisfied that this was a correct conclusion. A reply would elicit further requests imposing a further burden on the Council and its staff to no public benefit.

17. The ICO correctly identified that the Council has provided substantial amounts of information on its website which provides the transparency and accountability which is the purpose of the EIR. The Tribunal is satisfied that the addition of the further information requested (insofar as it exists) would not be of assistance to public understanding or participation.
18. The Tribunal is satisfied that the Council and the ICO were correct in identifying this request as manifestly unreasonable. It was disproportionate and an abuse of the rights conferred by EIR. The appeal is wholly lacking in merit and is dismissed.
19. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 19 January 2014