



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

Appeal No: EA/2014/0254

BETWEEN

GIOVANI LOSITO

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

Tribunal

**Brian Kennedy QC
Jean Nelson
Nigel Watson**

Hearing: 9 March 2015.

Location: Chesterfield Justice Centre, Tapton Lane, Chesterfield, Derbyshire.

Decision: Appeal Refused.

Subject Matter: The Freedom of Information Act 2000 (“FOIA”) and reliance by the Herefordshire Council (“the Public Authority”) on Section 14 (1) to refuse the request.

Introduction:

1. This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“the DN”) dated 2 October 2014 (reference FS50537156) which is a matter of public record.
2. A hearing on the papers took place on 9 March 2015 I

Background:

3. The Appellant wrote to the Public Authority on 24 January 2014. The request, was made in the following terms: *“ I own part of the land at [name redacted]. I am now aware of a complaint which was made regarding [name redacted] on part of the land. I therefore request under FOI a copy of that complaint. I [sic] appreciate I [sic] am unable to see the names but the names can be blocked out.”*
4. On 21 February 2014 the Public Authority refused to provide the information, relying on section 14 of the FOIA, vexatious and/or repeated request.
5. The public authority responded to a request dated 5 February 2014, for an internal review, on 27 March 2014 maintaining its original decision.
6. Following an internal review the public authority wrote to the Appellant on 17 April 2014. It clarified and distinguished the position in relation to her exchanges with the Records Retrieval team and upheld the original decision in relation to the exemption at section 44 (2) FOIA. The Commissioner has at all material times distinguished the request of 26 September 2013 from the request under FOIA of 27 November 2013.

Scope of the Case:

7. The issue for the Commissioner was to determine whether the Public Authority was correct to rely on section 14(1) of the FOIA to refuse to provide the requested information.
8. Under section 14(1) of the FOIA, a public authority is not obliged to comply with a request for information if the request is vexatious. Although “Vexatious” is not defined in the FOIA, it is generally accepted that the purpose of section 14 is to protect the resources (in the broadest sense of the word) of the public authority from being squandered on disproportionate or improper use of the FOIA (See IC V Devon County Council and Alan Dransfield decided in the Upper Tribunal). Each case must be decided on its merits and a holistic approach has been adopted by the Tribunals when considering these cases.
9. In this case having considered the arguments provided by the Appellant and having received representations from the Public Authority, the Commissioner set out his findings in his DN, concluding that the Public Authority was entitled to conclude that the request, when viewed in context, was vexatious and was entitled to refuse to comply with it under section 14 FOIA.
10. The Appellant states in support of his appeal that: a) he has never made a request for the requested information before and he has only made it having taken some advice; and b) he has no contact with the person who has previously requested similar information - the only connection the Appellant has with that person is that their daughter works part-time for them both.
11. The Public Authority and the Commissioner do not suggest that the Appellant has made a previous request for the same information. The issue is the connec-

tion to another person making a similar request. The Public Authority has specifically advised the Commissioner that it refused the request as it appears that the Appellant is acting in concert with another party and this acting in concert is what makes the instant request vexatious.

REASONS

- 12.** This Tribunal have considered the evidence in the Open Bundle (“OB”) before us and looked carefully at the reasons given by the Commissioner in the DN from paragraphs 10 to 37 and agrees with and adopts the interpretation of the evidence pertaining to the issues herein and the conclusions reached at paragraphs 38 and 39 of the DN.
- 13.** Similarly this Tribunal accepts and adopts the reasoning of the Commissioner in paragraphs 22 to 28 of his Response (dated 11 November 2014) to the Grounds of Appeal at pages 14 - 20 of the OB. Other evidence in the OB before us, in our assessment of the evidence, supports this view.
- 14.** We find that the argument about the use of the same e-mail address was not proven because there was no evidence about the actual addresses given but just their descriptive names. While the Appellant did provide evidence as to why the same address might have been used and assurance that there was no sharing of e-mails, we find that nonetheless they were linked from the history, specifically that the appeal from the other person, his business associate, was turned down on 24 January 2014 and his information request was submitted on the same day with the comment about redacting personal details. We find that the fact that the redacted version would still be disallowed was covered by the Commissioners argument on the original case repeated at paragraph 25 in the DN (page 5 OB). Hence we are of the view that the request even with the redaction allowed would still be vexatious.
- 15.** The appellant was joint owner of the Losito Stud Farm with his business associate, with whom the Public Authority suspect he is acting in concert. Matters concerning the progress of planning applications on their jointly owned property/business would almost certainly, in our view, have resulted in communication between the pair at some level no matter what the domestic arrangements. The reporting of ragwort on their land and the discovery that a Public Authority employee had taken photographs of it without their permission appears to have been taken very badly by the Appellants business associate and resulted in persistent communication with the Public Authority as to who did what, when and with what authority. This occurred after a period of dispute with the Public Authority as to the planning status of the land. We find it improbable that the Appellant did not, at a very minimum, know that his business associate felt strongly about both issues and was in constant communication with the Public Authority. The Appellants business associate believed that the actions of some Council officials were improper due to a relationship between the two officers that she believed was leading to decisions that were against the interest of the Losito Stud farm. It seems the Appellants business associate had tried to use FOIA to reveal this fact and we find it improbable that the Appellant was unaware of this. The record in the “log of contact” on 7 December 2012 shows that the Appellant at

least knew at this early date some of the issues that his business associate was pursuing and that she felt she was being stone walled.

- 16.** As we have induced above, on 24 January 2014, the Tribunal in an earlier appeal confirmed that the decisions not to reveal the information requested were upheld and on the same day the Appellant herein, using the same e-mail address as his business associate, repeated the request for the same information. We find it highly probable that the request for information on 24 January 2014 was deliberately restating the request made by the Appellants business associate.
- 17.** Accordingly we find the Public Authority's submission as stated at page 4 OB in paragraph 17 of the DN is probably correct and that the Appellant and his business Associate were acting in concert and what they will continue to follow this same pattern in exhausting the request process.
- 18.** Similarly, and for the same reasons we also accept and endorse the Commissioners conclusions at paragraph 35 of his DN.
- 19.** In light of this finding at 17 above we support and endorse the Commissioners comment at paragraph 23 of the DN giving weight to the detrimental impact on the Public Authority by the actions of the Appellant acting in concert with his business associate, as we find he was doing, and resulting conclusion that the instant request was itself vexatious in all the circumstances.
- 20.** For the above reasons we refuse the appeal herein.

Brian Kennedy QC

8th April 2015.