IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

Case No. EA/2014/0278

ON APPEAL FROM:

Information Commissioner's
Decision Notice No: FER0530613
Dated: 6 October 2014

Appellant: ANDREW REEVES-HALL

Respondent: THE INFORMATION COMMISSIONER

On the papers

Date of decision:

Before
CHRIS RYAN
(Judge)
and
ANNE CHAFER
JEAN NELSON

Subject matter: Exceptions, Regs 12(4) and (5)
Request manifestly unreasonable 4(b)

Cases: *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC).

IN THE FIRST-TIER TRIBUNAL **Case No. EA/2014/0278**
GENERAL REGULATORY CHAMBER

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

Background to this Appeal

1. On 21 November 2013 the Appellant sent Hampshire County Council ("the Council") a request for information about a 20 mph speed restriction zone in Whitchurch. The request stated that it was made under the Freedom of Information Act 2000 although, as is now conceded on all sides, the subject matter brought it within the parallel freedom of information regime established under the Environmental Information Regulations 2004 ("EIR").

2. The Council relied on EIR regulation 12(4)(b) in refusing the Appellant's information request and, following an investigation instigated by the Appellant's complaint about that refusal, the Information Commissioner issued a Decision Notice on 6 October 2014 in which he concluded that the Council had been entitled to rely on that exception.

3. The Appellant lodged an appeal against the Decision Notice with this Tribunal on 13 October 2014. He indicated that he wished his appeal to be determined on the papers, without a hearing. We agree that it was appropriate to deal with the appeal on that basis. We have therefore reached our decision on the basis of the Appellant's written Grounds of Appeal, the Information Commissioner's written Response and a Reply to the Response filed by the Appellant. We were also provided with a bundle of relevant documentation.

The relevant law

4. EIR regulation 5(1) requires public authorities that hold environmental information to make it available on request. That obligation is expressed to be subject to various exceptions set out in Part 3 of EIR. The exception relied on by the Council (regulation 12(4)(b)) permits a public authority to refuse to disclose information to the extent that the

request for information is *"manifestly unreasonable"*. The exception is itself subject to a proviso, set out in regulation 12(1)(b), to the effect that the exception only prevents disclosure if *"in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information."*

5. The term "*manifestly unreasonable*" is not defined in the EIR. However, it was considered in the Upper Tribunal case of *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC). The decision was based on FOIA section 14, which permits a public authority to refuse a request made under that statute if it is "vexatious". However, Upper Tribunal Judge Wikely stated that in practice there is no material difference between the two tests under section 14(1) and regulation 12(4)(b). Accordingly, we have approached this appeal with the following passage from *Dransfield* firmly in mind:

> *"27. The common theme underpinning section 14(1), at least insofar as it applies on the basis of a past course of dealings between the public authority and a particular requester, has been identified by Judge Jacobs as being a lack of proportionality (in his refusal of permission to appeal in Wise v Information Commissioner GIA/1871/2011; see paragraph 17 above). This issue was also identified by the recent FTT in Lee v Information Commissioner and King's College Cambridge at [73] as a relevant consideration. … I agree with the overall conclusion that the FTT in Lee reached, namely that "vexatious" connotes "manifestly unjustified, inappropriate or improper use of a formal procedure" (at [69])."*

6. Judge Wikely went on to identify four questions which he suggested might help those considering whether or not a request was truly vexatious. They were:
    i. How great a burden did the request impose on the public authority and its staff?
    ii. What was the requester's motive?
    iii. Did the request have value or a serious purpose?
    iv. Was there any evidence of the requester harassing staff members or causing them distress?

   However, he went on to make it clear that those considerations were not intended to be exhaustive and that they should not be treated as a formulaic check-list.

7. Since we met to reach our determination we have become aware that the Court of Appeal has heard an appeal from the Upper Tribunal in *Dransfield*. The Court supported the decision reached by Judge Wikely.

8. Appeals to this Tribunal are governed by FOIA section 58, adapted to apply to cases falling under EIR. Under that section we are required to consider whether a Decision Notice issued by the Information

Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.

The Decision Notice under Appeal

9. The Information Commissioner set out in the Decision Notice the whole of the Appellant's request for information. The length and detail of the request are apparent from paragraph 5 of the Decision Notice, which quotes it in full. He then referred to the four factors from *Dransfield* referred to in paragraph 5 above, but considered the case by addressing the following questions:
    a. was the request likely to cause the Council a disproportionate or unjustified level of disruption, irritation or distress;

    and, to the extent that this might not be clear

    b. was the impact on the Council of complying with the request out of balance with the purpose and value of the request?

    The Information Commissioner also made it clear that he approached these questions having in mind the history of dealings between the Appellant and the Council leading up to the submission of the information request.

10. The Information Commissioner cited 28 information requests, which the Council said that it had received from the Appellant since 2011, and relied, also, on a considerable body of other written comments and requests received in that time from the Appellant, as well as many communications sent by him to the Appellant's County Councillor. By reference to the 20 mph speed limit referred to in the information request, the Information Commissioner referred to two detailed requests submitted by the Appellant to the Council prior to June 2013 and to the Council's decision at that date that it would not consider any further requests on that subject, in reliance on EIR regulation 14(1)(b).

11. The Information Commissioner concluded that the Appellant appeared to wish to have an ongoing dialogue with the Council, with regular feedback on issues that interested him, and that, overall, the resources needed to comply with his communications had impacted on the Council's ability to deal with other business. While it was accepted that the Appellant had a public spirited attitude and there was a degree of public importance to the issues of road safety he raised, the Information Commissioner found that the persistence with which he pursued the issues that concerned him, the level of detail of his questions and the speed of response he expected, compromised the Council's ability to maintain an adequate level of service to other people. The Information Commissioner concluded that if the Council responded to the information request it was likely that the Appellant would make further requests and that it had therefore been appropriate to rely on the exception provided under regulation 12(4)(b).

12. The next stage of the Information Commissioner's decision-making process was to apply the public interest test balance, as required by regulation 12(1)(b). He found that the public interest in openness, transparency and the disclosure of environmental information was outweighed by the public interest in preventing further public resources being diverted to respond to the Appellant's information request.

The Appeal to this Tribunal

13. The Appellant asserted in his grounds of appeal that his information request was justified by the seriousness of the subject matter and the Council's failure to communicate adequately with the residents of Whitchurch during previous stages of the process for testing, implementing and amending a 20 mph restriction. He did not seek the information for his own purpose but to enable him to inform others as part of his role as an editor of the town's news and comment website. The website, he asserted, attracts many readers and generates dialogue on road traffic issues through published letters and public media.

14. The Appellant also made the point that each of the three information requests concerning the 20 mph zone had focused on a separate stage of its roll-out and did not therefore constitute inappropriate duplication. Finally, he challenged the suggestion that some of his other requests, which did not focus on road safety issues, lacked value.

15. In his Response to the Appeal the Information Commissioner drew attention to both the number of requests which the Appellant had submitted, the period of time which they covered (approximately four years) and the length and complexity of some of them. He referred to the Council's estimate that it would have taken 10 hours of staff time to answer the request under consideration (although we were provided with no information about the basis for the estimate) and stressed the burden on Council staff caused by both information requests and other communications emanating from the Appellant. He also argued that the pattern of behaviour in the past justified the Council in concluding that, if it had answered the information request, it would have been faced with further follow-up questions: the burden imposed on the Council would, it was said, be carried over to the future.

16. The Information Commissioner also relied on the level of detail sought in the information request, and in previous requests. This, it was said, was excessive and disproportionate in the circumstances. It went beyond the level of detail at which the Appellant was entitled to engage in the issues that interested him and deprived the information request of much of its value and serious purpose. This was said to be the case notwithstanding that the Appellant had assumed a role as a campaigning journalist at the level of the town's website publication. The Information Commissioner submitted that the information request

formed part of a prolonged endeavour by the Appellant to use freedom of information processes to exert influence over what the Council did and how it did it. It amounted to the sort of irresponsible use of those processes, which the Upper Tribunal had declared unacceptable in *Dransfield.*

17. The conclusion urged on us by the Information Commissioner was that the purpose or value of the information request was limited and was outweighed by the impact on the Council, its staff and resources of having to deal with an average of eight, normally lengthy, requests per year from the Appellant, in addition to other communications from him. The Council had therefore been justified in its reliance on regulation 12(4)(b) and the burden imposed on the Council outweighed the presumption in favour of disclosure, due to the limited value of the request.

18. In his Reply document the Appellant stressed the importance and potential value of the speed restrictions and the tight focus of his information request on that issue.

Our consideration of the issues

19. We do not believe that we have been provided with any information that would enable us to accept either the Council's suggestion that responding to the information request would involve ten hours of staff time, or the Appellant's assertion that the requested information would have been "*easily available*".

20. The materials provided to us included a table of all 33 FOIA requests identified by the Council and relied upon by the Information Commissioner in support of his argument that the information request should be regarded as manifestly unreasonable in the context of the course of dealing between the Appellant and the Council over a four year period. There have been a number of other enquiries and communications which were not formal FOIA requests. Of the FOIA requests fifteen concerned highway matters generally, of which five related to cycling and three to the 20 mph speed limit scheme. Those three contained a total of 20 questions between them.

21. In relation to those three requests, neither the Council nor the Information Commissioner provided a persuasive response to the Appellant's argument that each request touched on a different phase of the roll-out. Nor were we presented with a compelling argument that, viewing the whole history of requests, the Appellant tends to respond to the release of information with a further request seeking, without justification, further information derived from the first response.

22. In the case of one or two of the requests we believe that the Council would have had a stronger case for asserting that they were manifestly unreasonable than in the case of the information request under

consideration in this appeal. We have taken into account the scope and nature of all the requests as part of our evaluation but consider that, more important than the number submitted (and that a few may have been particularly light on serious purpose), is the level of detail that the Appellant frequently sought. For example, he was apparently not content to know, in broad terms, what results were generated by a particular speed survey, but required spreadsheets showing full data on speed, vehicle type, direction and time of the day for every recorded movement at every monitoring site. In other cases he wished to be provided with copies of all correspondence from the public on a particular topic or to have responses from the public broken down between those received by post and those online, accompanied by a copy of every response received.

23. Although the Information Commissioner made a passing reference to the absence of generosity of spirit evident in the Appellant's communications, we do not think that the suggestion that Council staff suffer harassment, irritation or distress as a result of the Appellant's activities carries any significant weight.

24. Nor do we think that the Appellant's role as a self-appointed investigatory on-line journalist places him in a position where the normal tests for assessing a manifestly unreasonable request may be wholly disregarded. An individual in that position may be able to demonstrate that the role he or she has adopted attracts sufficient support and/or interest from the public to demonstrate that each of a larger number of requests than normal, with a wider range of topics, retains sufficient value and serious purpose to justify the burden laid on the public authority to whom the requests are addressed. But the test to be applied remains the same as that to be applied to any requester, including the level of detail of the information sought.

25. Measuring the appropriate level of detail may be affected, in respect of that type of enquirer as much as any other, by the adequacy and accuracy of information previously released by a public authority. A follow up enquiry, even a series of such enquiries, may be justified if a previous request for information, possibly expressed in relatively general terms, has generated an incorrect, evasive or obstructive response. However, that does not mean that members of the public, acting either on their own part or as a representative of others (self-appointed or not), will have unlimited rights to demand an excessive level of detail, in either a first or subsequent request.

26. In our view this is the area in which the Appellant's pattern of requests tips into being manifestly unreal. Those elected to public office have obligations to base policy decisions on an appropriate level of properly investigated evidence. If and to the extent that they are shown to have failed to pursue such sound decision-making process, the public has a right to be informed of what went wrong, possibly through detailed requests for information exploring the body of evidence on which

decisions were based. It does not follow that requests may in all cases seek that detailed level of disclosure without risking a finding that they are manifestly unreasonable.

27. In our view the Appellant went too far, in the information request under review and some of his previous requests, in requiring the Council to unearth and disclose a quantity of information, at a level of detail, which was not justified by the underlying issue of concern. Overall, therefore, the burden placed on the Council, set against the value or serious purpose of the underlying issue, tips the balance in favour of a finding that the exception applies, on the facts of this case. The information request, as formulated and in the context of the history of requests submitted to the Council, should therefore be regarded as having been manifestly unreasonable.

28. On the question of the balance of public interest, we consider that the Information Commissioner was correct in concluding that the public interest in the disclosure of the quantity of information sought was not equal to the public interest in avoiding the Council being burdened in the manner, and to the extent, identified above.

29. We have concluded that the Information Commissioner was right to conclude in his Decision Notice that the Council had responded appropriately to the information request by refusing it in reliance on regulation 12(4)(b). The Appeal should therefore be dismissed.

30. Our decision is unanimous.

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Chris Ryan
Tribunal Judge 1st June 2015