



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

**Appeal No: EA/2015/0071**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50557800  
Dated: 19 January 2015**

**Appellant: Simon M Thomas**

**Respondent: The Information Commissioner**

**Heard at: Cardiff Civil and Family Justice Centre**

**Date of Hearing: 30 June 2015**

**Before**

**Chris Hughes**

**Judge**

**and**

**Dave Sivers and Narendra Makenji**

**Tribunal Members**

**Date of Decision: 21 July 2015**

**Date of Promulgation: 22 July 2015**

**Attendances:**

For the Appellant: in person

For the Respondent: did not appear

**Subject matter:**

Freedom of Information Act 2000

**Cases:**

Information Commissioner v Devon CC and Dransfield 2012 UKUT 440 AAC

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 19 January 2015 and dismisses the appeal.

## **REASONS FOR DECISION**

### **Introduction**

1. Mr Thomas feels deeply aggrieved with Bridgend County Borough Council (“the Council”). In 2005 he entered into a lease for retail premises owned by the Council. He is a builder, he instructed solicitors to act for him in the transaction, but did not engage a surveyor, relying on his own expertise in the building trade. He inspected the premises before entering into the lease and identified matters with respect to the premises needing attention. He negotiated a six-month rent free period, a six month period to carry out certain repairs and a further 18 months to address other matters.
2. On entering into possession in July 2005 he formed the view that the state of disrepair was more extensive than he had anticipated; he considered it unsafe. He told the Tribunal that he estimated that it would cost £12,000 to rectify and he was reluctant to spend that since there was a break clause in the lease. He claimed that the Council were unhelpful and refused to engage with him
3. He did not carry out the works or pay rent and in 2007 (after hearings at which Mr Thomas was present and stated that he had sought legal advice) an order for possession was granted together with damages of £13023.62. Mr Thomas never handed in the keys and the Council needed a court order to secure physical possession of the property. To secure payment of the debt the Council secured a charging order against his home. An application for an order for sale was made on 11 July 2008 which was adjourned on Mr Thomas’ offer to pay £50 per month, one payment was made. A later arrangement reduced the payment rate to £20 per month, no payments were made. On 23 December 2010 the Council notified Mr Thomas that it would seek an order for sale. An order for possession was made on 26 August 2011. On 5 March 2012 the Court set a date for possession of 26 March 2012. Mr Thomas again applied to suspend the warrant on 21 March. The Court refused to suspend and directed that unless the amount was paid in full

by 26 March 2012 the warrant would go ahead. Mr Thomas paid the sums due in full within the time allowed.

4. Mr Thomas made his first FOIA request on 16 January 2012. Over subsequent years he made a large number of requests. Much information was supplied, although some was refused in the basis of the time it would take to compile the information. There were six FOIA requests that month and a further 4 later that year including requests for details of individual officers' job titles and qualifications which were refused as vexatious or as being personal data (bundle pages 163-4). In 2013 he made 14 further requests. At 11.50pm on 9 September 2013 he made an unclear request for policies which concluded:-

*"... You have all my details, you know who I am. Your IT department will oblige, say 30 mins work?"*

*Or, we can have [name redacted - at the hearing Mr Thomas stated that he had invented this female name] bent over the photocopier for three hours a day, which appears to be Mr [name of Council officer redacted]'s favourite position?*

*Thank you in anticlimactic [sic] anticipation"*

5. On 12 September 2013 the Council wrote to him discussing some of his numerous recent requests and correspondence (bundle pages 95/6). It raised the question of the burden on the authority, his use of multiple recipients and asked him to use a single point of contact for all future requests. It went on to state:-

*"I must raise with you my further concern in relation to the lack of temperance demonstrated within some of your communications. In accordance with the Authority's Complaints Policy, I would remind you that we believe that whilst all complainants have a right to be heard, understood and respected, we also consider that our members of staff have the same rights. We therefore expect you to be polite and courteous in your dealings with us. We will not tolerate aggressive or abusive behaviour, unreasonable demands or unreasonable persistence..."*

*I am aware that the Authority has previously considered you as vexatious in terms of previous requests for information. That connected with the likelihood of your requests causing distress and being designed to cause disruption and annoyance. I would not wish to return to a vexatious position but must warn you that without a change to the nature of your correspondence in making unsubstantiated allegations against staff or simply being rude I will consider that action seriously.”*

6. On 22 January 2014 he sent a document to various persons and individuals including the ICO and the Council alleging perjury and conspiracy to pervert the course of justice detailing issues in his dispute with the Council concerning the property and the possession proceedings and stating that a named Council lawyer made a statement to the court knowing it to be untrue.
7. This document was the culmination of a series of communications to the lawyer querying steps taken by that individual in the proceedings before the court, querying qualifications; *“I ask this question in preparation for my complaint to the Legal Ombudsman...(19.8.13)... you have no need to remind me of the orders of the Court. The sum significant enough to purchase a house in say,[name redacted of the place where the lawyer lived] for example, is at the forefront of my mind”*
8. He subsequently reported the lawyer and another Council officer to the CID who inspected Council files. He did not engage with the police to provide any evidence and the police did not continue the investigation (page 92).

#### The request for information

9. On 5 September 2014 Mr Thomas wrote a detailed letter of complaint to the Leader of the Council.
10. On 24 September 2014 Mr Thomas wrote to the Council concerning the shop premises asking for a copy of the terms of the lease of the previous occupier of the retail premises.
11. The Monitoring Officer of the Council replied to the complaint on 25 September:-

*“The Leader has asked me to respond to your email. As you are aware this is a matter that has been rehearsed repeatedly by you over a period of 7 years. I have stated my view clearly, that the matter was litigated and is concluded. You have sought to continue the process via local representatives, the police and the Information Commissioner.*

*There is nothing more that the Authority can say on the matter and I consider your seeking again to re-open this matter as vexatious. The Authority will not therefore meet or correspond with you further on this matter.”*

12. On 29 September 2014 the Council refused to deal with the request on the grounds that it was vexatious, carried out an internal review uphold the decision. Mr Thomas complained to the Respondent in these proceedings (“the Commissioner”) who investigated and in his decision notice upheld the Council’s position.
13. He considered the history of relations between Mr Thomas and the Council, noting the extent of the requests and Mr Thomas refusal to accept the work generated (DN paragraphs 18-21), the abusive, aggressive and inappropriate content of the communications (DN paragraphs 22,23), the personal grudges pursued and demonstrated by the correspondence (DN paragraphs 24—27), the unreasonable persistence in pursuing issues arising out of the possession proceedings for the shop for seven years (DN paragraph 28), unfounded accusations against the Council and its officers (DN paragraph 29), the making of frequent and overlapping requests (DN paragraph 30), a deliberate intention to cause annoyance (DN paragraph 31).
14. He found that Mr Thomas would continue with his requests regardless of response (DN paragraph 38) and concluded (DN paragraph 40):

*“It was not the intention of the legislation that individuals should be allowed to pursue personal grievances to an unreasonable extent through the use of FOIA. Limited public resources should not be spent on continuous unproductive exchanges. The FOIA gives significant rights to individuals and it is important that those rights are exercised in a reasonable way. There comes a point when the action being taken and the associated burden being imposed on the authority is disproportionate to the objective that the*

*complainant is attempting to achieve. That point has been reached in this case. There is nothing to suggest that there is any serious purpose or value behind the request which is sufficient to warrant the Commissioner overturning the Council's decision to rely on section 14(1).*

15. In his appeal against this finding Mr Thomas argued that there were two public interest questions:-
  - Whether it was appropriate for the Council to enter into leases applying *caveat emptor* - the principle that the purchaser bears responsibility for what he purchases
  - Whether the Council's property management was sound
16. He stated that he was preparing a complaint to the Public Service Ombudsman for Wales and the Legal Services Ombudsman. The litigation was "fatally infected by the bad acts of the Council". He set out the physical condition of the shop.
17. In his grounds of appeal he acknowledged that his language was blunt but claimed that it was justified, his queries concerning staff qualifications were critical to good governance, the Council had failed to engage with him. There was a substantial value and public interest— enabling him to hold the Council to account for violations of his rights as a citizen by referring the matter to an Ombudsman for investigation. There was a plausible basis for suspicion of wrong-doing which could be established by an Ombudsman.
18. The Commissioner's response to the appeal was succinct. He argued that the request was attempting to re-open litigation which was the domain of the Court and (in the event that a decision of the Court was flawed) the Court's appeal processes. It was not the role of the Commissioner or (as the Commissioner understood the position) the Local Government Ombudsman to re-open litigation. Despite Mr Thomas's contention that the Council had not engaged with him, there was substantial evidence of Council engagement. There was no evidence of a FOIA offence. The conclusion of the DN was correct and Mr Thomas had not set out any grounds to show that the DN was not in accordance with the law.

19. In his appeal Mr Thomas focussed on the dispute concerning the building and why he felt he needed to see the previous lease. He was aggrieved that his attempts to engage with the First Minister had been frustrated, he considered that the Council Leader had not acted as he should.
20. He admitted that he had been abusive and robust in his language. He claimed that his 11.50pm email had not contained any defamatory sexual innuendo. His stance was that his language and conduct were justified by the distress he felt at the prospect of the forced sale of his house. He expressed outrage at the low value which had been placed on his house in the documents relating to the Court ordered sale, at the use of Bailiffs to attempt to recover the debt, that the police had called at his house in 2010 at the behest of the Council. He was convinced that he would establish that council officers had committed perjury. In the hearing he stated with respect to one allegation against a Council lawyer:-

*I apologise unreservedly*

21. He did not see anything threatening in the mention of where an individual lived in the context of a dispute he was conducting in intemperate language. In his concluding statement to the Tribunal Mr Thomas stated that all he wished for was to give the Council a list of the documents that he required so he could understand the matter in his own mind and put the matter to bed.

### Consideration

22. Although Mr Thomas attempted to argue a public interest in the application of *caveat emptor* to Council leases, this was a transparent focussing on an analysis of his very personal concerns. Similarly his claim that disclosure would shed light on the quality of property management is specious – the complexity of handling a diverse property portfolio with limited resources in an uncertain property market would not be in any real way illuminated by this request.
23. The reality of the position is that he had the confidence and (he thought) the skill and knowledge to strike a good bargain with the Council over the lease of a shop and the cost of repairs needed. His confidence was misplaced and he



found that, within his analysis, he could not make the return he wanted so he abandoned the transaction. However in doing so he did not function effectively, failed to deal with the litigation and surrender of the premises sensibly, and strenuously avoided payment of the debt for as long as possible. When the Council started debt enforcement proceedings against him he continued to avoid his responsibility and started to treat each step taken as a personal affront. He delayed payment of any sums due under his lease from the start of 2006 until 2012, when he was able to pay in full all sums due at short notice.

24. Since then he has pursued a highly personalised campaign against a number of Council officers making abusive, insulting and derogatory statements about them and making wholly unjustified complaints to the police. He has been unable to accept that he made any error and has sought to demonstrate serious misconduct by the Council and its officers over a number of years. The burden on the Council and its staff has been considerable.
25. From the history before the Tribunal it is clear that the Council has devoted considerable time to answering Mr Thomas's questions and helping him resolve any relevant issues he has raised. However it is also clear that Mr Thomas has approached council staff with a profound lack of respect. His own sense of entitlement and feeling of being wronged seem, in his mind, to justify a range of conduct and language which show a great lack of concern for the rights of others or an understanding of how relations are conducted in society.
26. There is no public interest in this and other requests. Mr Thomas has continued to dwell on his resentment for too long. His request is an abuse of a statutory right. The Commissioner's analysis is clearly entirely correct, he has properly identified key aspects of the history which point very clearly to an inappropriate use of a statutory right where the functioning of a public body is significantly prejudiced by an objectively worthless request. The analysis in *Dransfield* fully applies to this case. The Council have over the years been very tolerant of Mr Thomas requests and behaviours. He signally failed to accept the very measured advice of the Council's letter of 25 September

2013. The Tribunal is satisfied that the Council's conduct in dealing with his requests has been entirely proper. This appeal is dismissed.

27. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 21 July 2015