



Appeal number: EA/2016/0109

5

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

10

DAVID WILLIAMS

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

15

**TRIBUNAL: JUDGE ALISON MCKENNA
Dr HENRY FITZHUGH
Mr NIGEL WATSON**

20

25 **Determined on the papers, the Tribunal sitting in Chambers on 4 October 2016
Date of Promulgation 25th October 2016**

30

DECISION

- 5 1. The appeal is dismissed.

REASONS

Background to Appeal

2. The Appellant engaged, over several months, in correspondence with Great Bedwyn Parish Council about its maintenance of a memorial marker stone in the parish. The Parish Council, having responded substantively to his enquiries, advised him that it would no longer respond to his correspondence on that matter. On 25 June 2015, the Appellant requested under the Freedom of Information Act 2000 (“FOIA”):

“...copies of all written legislation you hold in respect to the following items.

1. *Closure of correspondence.*
2. *The Minutes to the above item.*
3. *Ownership of the site.*
4. *To change the site.*
5. *Withholding the site from its rightful owners.*
6. *Authority of Threat.*
7. *Vexatious complaints policy.*
8. *Spending public money when you were prohibited from doing so.*
9. *Copy of the Minutes 10/3/1993 which states that you were prohibited from spending money on this site”.*

3. The Parish Council refused the information request in reliance upon s. 14 (1) and (2) of FOIA, which provide that:

(1) Section 1 (1) does not oblige a public authority to comply with a request for information if the request is vexatious.

- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a*

reasonable interval has elapsed between compliance with the previous request and the making of the current request.

4. The Respondent issued Decision Notice FS50591196 on 30 March 2016, upholding the Parish Council's decision in respect of s. 14 (1) of FOIA. The Respondent did not consider the application of s. 14 (2) as the Parish Council no longer relied upon it. The Decision Notice sets out the background to the request, which is that during 2014 the Parish Council had replaced fencing around the stone, as it had fallen into disrepair. The Appellant did not agree that the Parish Council had the power or authority to take that action. The Parish Council wrote to the Appellant in December 2014 with a full explanation of its position and explained the basis on which it had acted. It subsequently held a meeting with the Appellant. The Parish Council made clear that it wished to draw a line under the correspondence and in May 2015 told the Appellant it would no longer respond to his communications.

5. However, the Appellant's correspondence continued with the request which is the subject of this appeal. Paragraph 27 of the Respondent's Decision Notice records that the Appellant told the Respondent's officer that he does not believe that the Parish Council will be able to provide the requested information because he does not believe it had the legal authority to carry out the maintenance work. The Respondent's Decision Notice records his findings that (i) the information request was made for the purpose of putting pressure on the Council, rather than that of pursuing the disclosure of information; and (ii) the Parish Council has limited resources which would be diverted from its core functions if it were obliged to reply to the Appellant's request. In all the circumstances, the Respondent agreed with the Parish Council that the request was vexatious.

25 Appeal to the Tribunal

6. The Appellant's Notice of Appeal dated 15 April 2016 contained the Appellant's own report about the history of the dispute and attached some supporting documents. He did not specify the nature of his challenge to the Respondent's Decision Notice, but it was clear he disagreed with it.

7. The Respondent's Response dated 18 May 2016 maintained his analysis as set out in the Decision Notice.

8. The Appellant's Reply dated 24 May 2016 emphasised that the Appellant is the representative of a group of families and was not acting as an individual. He submitted that the information request had been genuine and that he had offered to make a financial contribution toward the costs of compliance. We note that this submission is at odds with what the Appellant is recorded as having said to the Respondent's officer at paragraph 27 of the Decision Notice.

9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising some 270 pages,

including submissions made by both parties, for which we were grateful. Neither party filed witness evidence.

5 *The Law*

10. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

10 *“If on an appeal under section 57 the Tribunal considers -*

15 *(a) that the notice against which the appeal is brought is not in accordance with the law, or*

15 *(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

15 *the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

20 *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

11. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant. We further note that the question for the Parish Council, the Information Commissioner and the Tribunal is whether the request itself (not the requester) was vexatious.

12. The Court of Appeal recently considered the question of identifying vexatious requests in *Dransfield v Information Commissioner* [2015] EWCA Civ 454, in which case Arden LJ observed at [68] that *“vexatiousness primarily involves making a request which has no reasonable foundation, that is no reasonable foundation for thinking that the information sought would be of value to the requester, to the public, or to any section of the public”*. We note that the Court of Appeal’s approach was to regard the hurdle set by s. 14 (1) FOIA as a high one. The task for the public authority is to consider whether the request would be likely to cause disruption, irritation or distress to the public authority and, if so, to balance that disruption, irritation or distress against the purpose and public value of the request.

Conclusion

13. We found the terms of the request in this case somewhat curious for the following reasons. Firstly, the request was for *“all written legislation”* related to a number of different topics. Nevertheless, some of the topics listed clearly do not

derive from a legislative basis, for example, Minutes of Parish Council meetings. It is therefore difficult to see how the Parish Council could have complied with that aspect of the request for copies of legislation. Secondly, the purpose of the request, taken in the context of the overall correspondence, appears to have been designed to illustrate that there was no such legislation. Taking into account the Appellant's statement to the Respondent (recorded at paragraph 27 of the Decision Notice), it seems to us that the Appellant's own starting point in the context of FOIA was that the Parish Council would be unable to comply with his request. We struggle to see how the information sought could be said to be of value to the requester in those circumstances. Finally, if the Appellant (as he submitted in his Reply) was making a genuine request for copies of legislation, then we note that, as all legislation is available for free at www.legislation.gov.uk then such a request would appear to fall within the exemption at s. 21 FOIA for information available by other means.

14. This is not a case in respect of which a large volume of correspondence between the Appellant and the public authority is at issue. Although there was a fairly sustained correspondence, we consider that the question of vexatiousness in this request lies in the terms in which it was made. Looking at the history of the correspondence, we find that the request was made in terms designed to illustrate a point in the course of the Appellant's argument to the effect that the Parish Council had acted without statutory authority, and so might best be described as rhetorical. The Appellant accepted as much in his discussions with the Respondent's officer, and despite his later statement to the Tribunal, we are not satisfied that he was making a genuine request for copies of legislation held by the Parish Council. We note that the Parish Council had already given the Appellant a full explanation of its position some months before the request, explaining the authority under which it had acted, and that it had also held a meeting with the Appellant in an attempt to draw a line under the dispute. We find that the request was made as an attempt to prolong that dispute and that it placed an administrative burden on the Parish Council.

15. In this context, we conclude that the Appellant's request falls into the Court of Appeal's category of *one which lacked a reasonable foundation*. Being designed to prove an absence of information we find that, viewed as an information request, it had no value either to the requester or to the general public. The burden on the public authority in dealing with it was therefore disproportionate. In these circumstances, we conclude that the request was vexatious and fell within the scope of s. 14 (1) FOIA. In reaching this conclusion, the Tribunal discerns no error of law or inappropriate exercise of discretion by the Respondent in his Decision Notice. For the above reasons, the appeal is dismissed.

(Signed on the original)

ALISON MCKENNA
PRINCIPAL JUDGE

24 October 2016

45

