



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0249

**Heard at Fleet Bank House, London
On 22 January 2018**

**Before
CHRIS RYAN
JUDGE
ANNE CHAFER
MICHAEL HAKE
TRIBUNAL MEMBERS**

Between

SERGE YAKOVLEV

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

DECISION AND REASONS

Attendances:

The Appellant represented himself
The Information Commissioner did not attend and was not represented.

Subject matter: FOIA - Vexatious or repeated requests s.14

GENERAL REGULATORY CHAMBER

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

Introduction

1. We have decided that the Information Commissioner was correct to conclude, in her Decision Notice FS50679869 dated 12 October 2017, that the London Fire Brigade (“LFB”) had been entitled to refuse an information request submitted by the Appellant on 25 April 2017 (“the Request”). The basis for the refusal was that the obligation to disclose information under Section 1 of the Freedom of Information Act 2000 (“FOIA”) did not apply because the Request fell within the scope of FOIA section 14(1).
2. FOIA section 14 reads:

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

The Appellant’s request for information and LFB’s response

3. This Appeal arises from the same events that were recorded in paragraphs 1 – 3 of an earlier decision of this Tribunal (EA/2016/0122) on 4 October 2016. In that case the Tribunal accepted that the LFB did not hold information to identify three members of its staff who were said to have visited the Appellant’s flat on 9 June 2015 in response to an emergency call reporting that his home was affected by a strong chemical smell.
4. The earlier decision was the subject of various appeal procedures, all of which failed.
5. In April 2017, the Appellant was in correspondence with the LFB regarding his continuing concern that harmful gases were entering his premises. On 24 April 2017, he received an email from the LFB rejecting his complaint that an ingress of gas was continuing and that the LFB and others were involved in a criminal operation against him. In response he submitted the Request, which was in these terms:

"Thanks for your email, which I found absolutely unacceptable, as I have requested investigation and inspections of new facts of toxic gases ingress in our house, which appeared after the hearing as a clear vendetta for my rightful complaints, as well as tribunal wrong decision, which is now under review of the Adm. Court.

I also request that all further calls will be attended by the FB teams fully equipped with gas detectors and analyzers, which is a must by LFB regulations. Your email did not address any of my requests and therefore must be appealed and corrected by your superiors.

I therefore will appreciate if you provide me with the following information under FOIA 2000:

- 1. Full name, position and direct email address of your superior.*
- 2. Full name, position and direct email address of FOI officer.*
- 3. Full name and position of the CEO of LFB.*
- 4. Full names and positions of 3 FB officers, who visited my floor on the day of reported incident, which have been deliberately concealed during the hearing in breach of FOIA 2000.*

I look forward to your urgent reply by return email"

6. Part 4 of the Request clearly repeats the information request that gave rise to the earlier Tribunal decision.
7. The Request was rejected by the LFB and the Appellant immediately asked the Information Commissioner to investigate the refusal.

The Information Commissioner's investigation and Decision Notice

8. In response to a request from the Information Commissioner for his arguments suggesting that the LFB had not handled the Request properly, the Appellant replied (in an email dated 21 August 2017):

"Although the breach of FOIA 2000 is under consideration by the Court of Appeals, I will appreciate with your following information under FOIA 2000:

- 1. What are full names and positions of 3 commanding officers in charge of the incident, who had visited my house and refused to investigate incident in extremely aggressive and impolite manner?*
- 2. What FB station they belong to?*
- 3. Full name and position of their superior, as well as CEO of LFB?*
- 4. Why my repeated complaints and FOI requests after the incident have been not acknowledged and replied as it must be by LFB regulations?*
- 5. Why despite 44 pages of recorded information on the incident, the Tribunal was provided with misleading reply by LFB and its solicitor?*
- 6. I reserve the right for further information under FOI during the coming hearing."*

9. The Information Commissioner pursued her investigation with the LFB. It justified its decision to refuse the Request in the following terms

"We consider Mr Yakovlev's request to be vexatious on the grounds that it:

- Demonstrates **unreasonable persistence** by the requester. The requester is attempting to reopen an issue which has already been comprehensively*

addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

- *Makes **unfounded accusations.** The request makes completely unsubstantiated accusations against the public authority or specific employees.*
- *Shows **intransigence.** The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.*
- ***Frequent or overlapping requests:** The requester submits frequent correspondence about the same issue.*
- *The request is **futile:** The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation."*

10. The Information Commissioner reviewed each of those arguments against the background of well-established case law on FOIA section 14 emanating from the Upper Tribunal and the Court of Appeal. The case law was summarised in paragraphs 15-19 of the Decision Notice, by reference to the Information Commissioner Guidelines in which its principles have been encapsulated. We do not repeat it here because the principles themselves were not in dispute.
11. The Information Commissioner applied those legal principles to each of the arguments presented by the LFB. She accepted each of them and concluded that the Request had been vexatious and that the LFB had been entitled to reject it on that basis.

The Appeal to this Tribunal

12. The Appellant lodged an appeal against the Decision Notice on 19 October 2017.
13. Appeals to this Tribunal are governed by FOIA section 58. 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.
14. The scope of our jurisdiction is therefore strictly limited to the terms of the Decision Notice under appeal. We have no power to either re-investigate any previous decision or to consider any other aspect of the Appellant's relationship with the LFB or other institutions. There are other procedures available to handle such matters.
15. The Appellant asked for his appeal to be determined at a hearing, rather than on the papers. He was entitled to that option. However, the Information Commissioner informed the Tribunal that she did not intend to attend and would rely on the written Response she filed.
16. Shortly before the scheduled date for the hearing the Appellant asked the Tribunal to order the LFB and the Information Commissioner to attend and to submit certain individuals for cross examination. None of those individuals had previously submitted witness statements. The application included a request that the three LFB employees who had attended the Appellant's flat should attend to give evidence.

17. The Principal Judge directed that the application be considered at the hearing and we accordingly invited the Appellant to address us on it first. It was then agreed that we would proceed with the substantive appeal, but on the basis that if, on further reflection, we considered that we should make the procedural directions requested we would adjourn the hearing and not decide the appeal until those directions had been made and complied with.
18. Having now considered the application for directions we have decided that it should be refused. There is no basis for requiring individuals to attend who have not proffered evidence in witness statement form and the earlier tribunal decision determined that the three individuals who are said to have attended the Appellant's flat could not, in any event, be identified. We therefore proceed to determine the substantive issues on the Appeal.
19. The Appellant's Grounds of Appeal raised a number of points on those wider issues, including other litigation, complaints and information requests. It included an invitation that we address not only this case but other cases which the Appellant believed involved various breaches of the FOIA and that we reprimand the Information Commissioner and her staff for their involvement in such breaches and declare that the Information Commissioner's office "*is not fit for purpose and must be seriously reformed with acknowledgment of its serious misconducts*".
20. We were unable to discern any point within the Grounds of Appeal that addressed the approach which the Information Commissioner had adopted, (as recorded in the Decision Notice), or the conclusion she had reached. There has been no criticism by the Appellant of the legal basis on which the Information Commissioner proceeded and the Grounds of Appeal did not identify any error, which we have been unable to discern, in the application of the law to the facts of the case.
21. It was clear to us, from listening to the Appellant at the hearing, that he has a number of sincerely felt concerns about the circumstances in which he lives and the way in which he has been treated by various authorities, including the LFB. However, on the narrow issue of whether the LFB had been right to treat the Request as falling within the section 14 exemption, the only argument that he presented to supplement his Grounds of Appeal was the suggestion that it was the Information Commissioner herself who had encouraged him to submit a second request for information on the basis, he reported, that she felt that his case justified further consideration. The Appellant was not able to provide detail to support his argument during the hearing but, at our suggestion, he agreed to search out the relevant information after the hearing and to provide it to us.
22. Very shortly after the hearing the Appellant sent an email to the Tribunal that identified the document on which he relied as a letter from the Information Commissioner's office dated 15 August 2017. This acknowledged safe receipt of the Appellant's complaint about the LFB's refusal of the Request and explained the process that the Information Commissioner would follow in carrying out her investigation. It is evident, therefore, that, far from being a communication that could be said to have invited the Appellant to submit an information request that overlapped with a previously rejected one, it came into existence some time after the Request had been submitted. It is therefore incapable of justifying the Request in the way the Appellant claims.

23. The additional argument presented at the hearing did not therefore introduce any new sustainable argument to supplement the Grounds of Appeal. As we have stated, those Grounds did not themselves set out any basis for saying that the Decision Notice was wrong in any respect. It seems to us that the correct principles were considered and the evidence assessed against each of them with adequate care. There is therefore no basis for the Appellant's appeal and it must be dismissed.

24. Our decision is unanimous.

Signed:

Chris Ryan
Judge of the First-tier Tribunal

Date: 2nd February 2018