



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

Appeal Reference: EA/2018/0087

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50702366

Dated: 22 March 2018

Date of Hearing: 26 February 2019

**Before
JUDGE ROBERT GOOD**

**TRIBUNAL MEMBER(S)
MRS ANNE CHAFER AND MR PAUL TAYLOR**

**Between
SIMON BRISCOE**

Appellant

**-and-
THE INFORMATION COMMISSIONER**

Respondent

**-and-
HARINGEY COUNCIL**

Second Respondent

Subject Matter:

Freedom of Information Act 2000 (FOIA), Environmental Regulations 2004 (EIR)
Section 14 (Vexatious or repeated requests), Regulation 12(4)(b) (Request for
information is manifestly unreasonable)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

Factual background

1. The appellant, Mr Simon Briscoe has longstanding concerns about the Bank, Channing School and parking and related environmental issues.
2. Mr Briscoe applied to the Haringey Council (The Council), under FOIA, on 18 July 2017, for the following information: (p65)

“Can you please send me copies of all communications between Cllr Morris and Haringey Council relating to the Bank (a road off Highgate Hill), Channing School and road safety and parking in the Highgate area. This should include meeting notes, records of site visits, emails, members’ inquires, phone conversations etc. to cover the period from 2012. I accept that some details will need to be redacted but I still want the full documents, redacted.”

3. The Council replied on 8 August 2017 (p67) that correspondence with Councillors is not covered by the Freedom of Information Act unless they are acting in an executive capacity, which is not the case with Councillor Morris.
4. Mr Briscoe requested a review of this decision. On review, Haringey Council maintained their position, but also stated that if the request came within FOIA it would be refused on the grounds that it was vexatious(p73). The Council

had refused 5 previous requests on 2/12/2016 on the grounds these requests were vexatious (p75).

5. Mr Briscoe complained to the Information Commissioner (ICO) on 25 September 2017(p84). Following advice from the ICO, the Council wrote to Mr Briscoe on 16 February 2018 accepting that his request was covered by both FOIA and EIR and refusing these requests on the grounds that they were vexatious and that the public interest did not support responding to the requests.
6. The ICO investigated the complaint and upheld the Council's decision on 22 March 2018 (p-9). Mr Briscoe appealed to this Tribunal on 19 April 2018 (p10-15).
7. In his grounds of appeal, Mr Briscoe states the road 'The Bank' is on the English Heritage's 'at risk' register, that his requests reflect his work in the Highgate Forum and Haringey's record of previous compliance with his requests is poor. In addition, he states that Haringey have not met the tests for a vexatious request. (p13).
8. Mr Briscoe also makes the point that he feels that the decision will have the effect of 'limiting the scope for individuals to get evidence and challenge a council during the preparation of a plan'. He also expresses the concern that the Council's decision is personal against him.

The Hearing

9. All the parties requested that this appeal be decided by way of a paper determination.

10. The panel decided that it was practical to deliberate on this appeal by way of a telephone conference. This conference took place between 10.30am and 12.35pm on Tuesday 26 February 2019. The appeal papers run to 343 pages and contain a written statement from Sue Dyos, the Feedback Team Leader for Haringey Council, with exhibits (pp196-343).
11. At the outset, the panel considered various issues raised in the appeal papers. These were:
 - a. Whether it was necessary to differentiate the parts of the request covered by FOIA and those parts covered by EIR.
 - b. The relevance of the request for information from Mr Jon Green.
 - c. Whether FOIA or EIR applied to this request.
 - d. Whether it was relevant to consider the exclusion under S.12(cost of compliance).
12. The Tribunal decided that it was not necessary to identify which parts of the request are covered by FOIA and which parts by EIR because the relevant test is, in practice, similar in both S14 FOIA and Regulation 12(4)(b) EIR so that they can be considered together. The significant difference is that the EIR has an additional public interest test. The Tribunal decided that, as no attempt had been made to differentiate the request into FOIA and EIR, it was sensible to consider the public interest test in relation to all the requests.
13. The Council had expressed concerns to the ICO in connection with their belief that Mr Briscoe had submitted a request using a false name ('Mr Jon Green'). Although noting that the Council had justification for this belief, the ICO did not take this further into consideration because of a lack of concrete evidence (p7). The Tribunal agreed and decided that the request by Mr Jon Green was not relevant to the issues to be decided.

14. Although the Council initially stated that information relating to the dealings of a Councillor were not caught by FOIA, it subsequently accepted the advice of the ICO on this point.

Request, decision notice and appeal

15. On 18 July 2017 Mr Briscoe made a request under FOIA as set out in paragraph 2 above. (p65)

16. For the purposes of this hearing, the Council responded stating that it regarded the request as vexatious.

17. In reply to Mr Briscoe's request for an internal review, (p72-73), the Council maintained its stance, stating. "You have made numerous requests about issues relating to The bank, parking/traffic restrictions in Highgate and Channing School both under FOI and through Councillors, and you have been provided with explanations and relevant information."

18. Mr Briscoe complained to the ICO under Section 50 of FOIA. In a decision notice dated 22 March 2018 the ICO held that the Council was entitled to rely on Section 14 FOIA and Regulation 12(4)(b) EIR to refuse to comply with the request.

19. Mr Briscoe appeals to this Tribunal. In his grounds of appeal (p13), he states that the tests of being vexatious have not been set out in a way to justify the decision. He also is concerned that this decision may mean he is denied access to information in the future and that a series of requests may not be vexatious if there are genuine reasons for the requests, such as incomplete earlier disclosures.

20. The Tribunal joined Haringey Council as a second respondent (p63).
21. The Council submitted a witness statement from Sue Dyos, the Council's Feedback Team Leader (p188-195). This statement included an exhibit (196-342). Mr Briscoe made a further submission dealing with this statement and the exhibit (p31-62).

Reasons and Conclusions

22. Mr Briscoe has sought information under FOIA. It is clear from the nature of that request that, at least in respect of parts of the request, the EIR applies. Part of the request involves damage to the road surface and a wall, problems with traffic. The wording of the exemption is different. Under S.14 FOIA the public authority is not obliged to comply with a request for information "if the request is vexatious". Under Regulation 12(4)(b) EIR the public authority may refuse to disclose information if "the request for information is manifestly unreasonable". It is accepted that the test is the same. There is, however, a further public interest test applied to the EIR. For the purposes of the appeal, the Tribunal has considered the public interest test in relation to all the information sought.
23. Mr Briscoe has a longstanding concern about issues relating to The Bank, parking in that area, and Channing School. He has made repeated requests for information and remains dissatisfied with Haringey's response.
24. This request is wide ranging both in terms of the breadth of topics and the period of the request, which is for a period of over five and half years. Mr Briscoe argues that his 15 requests to Haringey since 2011 are not evidence of vexatious behaviour (p46). However, it is not Mr Briscoe's behaviour which is considered but the nature of the request. Mr Briscoe, in other parts of his

submission, is aware of this (p58). Mr Briscoe is persistent in his requests because he is seeking to uncover what he considers to be the 'truth' behind the action of the council.

25. The Council previously refused four earlier requests, made on 2 December 2016, on the grounds these were vexatious. The council has decided not to rely on that past decision to refuse to respond to further requests by applying S17(6) but considered this request on its merits. However, the Council decided that this request was also vexatious. The correspondence from Haringey to Mr Briscoe of 16 February 2018 sets out their approach (p82), which clearly focussed on the request.

26. Some of the context and history of this request can be seen in the 55 pages of emails (pp109-164). There is nothing in these emails which is aggressive or intimidating in content or tone. The language used is appropriate, but it shows a persistence which takes Mr Briscoe's approach beyond a reasonable request for information to a position where he is repeatedly seeking information because he does not agree or accept the information he has been given.

27. The correspondence also shows that Haringey have dealt with Mr Briscoe's requests carefully and in a reasonable manner.

28. The emails also show that Cllr Morris, who was taking the lead in dealing with Mr Briscoe's councillor requests was distressed by the volume of the correspondence. Mr Briscoe states that the reallocation of responsibility for leading on this matter to Cllr Hare was because Cllr Morris had a conflict of interest (p62), namely that Cllr Morris' children attended Channing School.

29. It is not clear why the change happened (p157). It may be that Cllr Morris felt that Mr Briscoe would feel he was being more fairly dealt with by Cllr Hare

rather than by her. Both are councillors for the relevant area. It may have been more to do with sharing the work between Councillors. There is no acceptance by Haringey that Cllr Morris had a conflict of interest or that there was anything inappropriate in her dealings with Mr Briscoe. The evidence in the appeal papers does not support Mr Briscoe's contention of actions affected by a conflict of interests and the Tribunal finds this is the case.

30. Part of Mr Briscoe's motive for his requests for information are the complaints he has about Channing School in terms of the increased volume of traffic caused by the school and the parents of the children at the school (p58).
31. In her witness statement, Ms Dyos, sets out the Council's dealings with Mr Briscoe concerning the Bank, Channing School and parking in the area. In the year before this request, Mr Briscoe made 9 other FOI requests on these subjects as well as other communications (p189-190).
32. Mr Briscoe is the Vice Chairman of the Highgate Forum. He argues that his request is not vexatious because of this role, the importance of the Bank and the importance of understanding the relationship between Channing School and the Council. In our opinion however, the request, seen in the context of his other requests and his other dealings is vexatious because the purpose and value of this request is limited. It appears to be no more than a wide-ranging fishing exercise to attempt to discover evidence of inappropriate or improper actions by Councillor Morris in her dealings with the Council and Channing School, which Mr Briscoe believes is being concealed. The request is not justified and presents an unreasonable burden on the Council as demonstrated by Ms Dyos' statement.
33. This request is wide and covers a long period. The seeking of communications between Councillor Morris and the Council over a five and half year period

has limited value because old communications inevitably become less relevant following subsequent events.

34. Mr Briscoe also argues that his persistence in making requests arises because of the incomplete answers he receives. The Council have responded to his enquiries, and provided information requested. Mr Briscoe regards the responses as inadequate because he is dissatisfied by the information he receives.
35. The Tribunal agrees with the ICO that the nature of this request is vexatious in its scope, taking into account the history of Mr Briscoe's dealings with the Council and would place an unreasonable burden on the Council if they were to respond. The ICO in its response has set out its reasons which the Tribunal agrees with.
36. The Tribunal then considered the public interest test. Although, this does not apply to S14 decisions under FOIA it is sensible to consider this test in relation to the whole request.
37. The argument for disclosure is that transparency of the actions of a public body through disclosure of its policies promotes accountability and trust in that public body. However, the Tribunal is satisfied that the public interest in non-disclosure outweighs any public interest benefit derived from disclosure. There is little public interest in seeing the correspondence from a councillor with the council over a 5-and-a-half-year period. There has already been disclosure of information through requests, publicly available information and public consultations. The area represents a small part of the Council's responsibility. There is little public interest to be derived from disclosure of this information. The argument against disclosure is set out both in the statement of Ms Dyos and in the response of the ICO. The Tribunal accepts

these reasons. Disclosure of this information would place a significant burden on the Council which is not justified.

38. In the circumstance, the Tribunal unanimously upholds the Commissioner's decision and dismisses the appeal.

39. The Council in some of its correspondence has suggested that the cost of complying with this request may be above the appropriate limit. As the Tribunal has dismissed Mr Briscoe's appeal this issue does not arise.

Signed

R Good

Judge of the First-tier Tribunal

Date: 23 April 2019

Promulgated: 24 Apr 2019