



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

Appeal Reference: EA/2021/0059P

Before
Judge Stephen Cragg Q.C.

Tribunal Members

John Randall CBE
David Cook

**Determined, by consent, on written evidence and submissions
Considered on the papers on 1 September 2021.**

Between

Roy Pike

Appellant

-and-

The Information Commissioner

Respondent

DECISION AND REASONS

DECISION

1. The appeal is allowed.

MODE OF HEARING

2. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.
3. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 130.

BACKGROUND

4. In the course of ongoing correspondence, on 7 October 2019, the Appellant wrote to the Swards End Parish Council (the Council) and requested information about reseeded the goalmouths in the following terms:-

With reference to your email of 1.10.19.... I would like answers to the following questions.

Are you pursuing any redress from the supplier?

I understand that you have accepted that the dry weather was the reason for failure ... If this was the case and it still failed have you sought other reasons like poor soil preparation and/or low-quality seed. Have you addressed either of these potential reasons with the supplier?

Whose idea was it to protect the area with the high cage structures?...

What do you intend to do next? (and perhaps the third time you might get it right).

5. In his correspondence the Appellant also requested information relating to the annual audit reports: -

So, the variance document for 2018/19 is incorrect so you need to decide which method you are going to use and reset the variance/accounts documents accordingly.

The recommended method for small councils is the one of receipts and payments.

I would like to be informed of what method you are to use and to receive a copy of the adjusted accounts.

The chairman also acknowledged that he had signed off the accounts yet when he wrote to me ... he said the annual accounts were not available. So, can he explain this apparent contradiction.

6. The Appellant was dissatisfied with the response he received, and wrote to the Council on 16 December 2019, requesting further information:

Reseeding the goalmouths.

You state that this was discussed at the meeting. As it was an agenda item why wasn't it recorded in the minutes? ...

[name redacted]'s contradiction on availability of annual accounts. ...

I find your response lamentable. Can you please explain the process relative to your suggested External Auditor review in September? ...

Finally, you have not responded to:

VAT receipts when are you making this claim?

Timing differences is my suggestion a solution?

Clerks payments and EALC grant how was your salary of [redacted] arrived at and where was the grant shown on the variance report?"

7. With respect to the Annual Variance Report, the Appellant also made observations about the validity of the figures provided and referred to there being errors on the Variance and Accounting Statements.
8. The Council responded on 23 January 2020 in relation to both sets of requests for information. It denied holding further information relating to reseeded the goalmouths, clerks' payments and EALC grants. It confirmed that the misunderstanding about the accounts had been explained and told the Appellant he had been given the opportunity to inspect the accounts. The Council told the Appellant it considered that all matters had been adequately dealt with and that it would not enter into further discussion about matters relating to the goalmouths, statement of variance for accounts, the availability of the annual accounts 2019/20 or the clerk's receipt of the EALC Transparency grant. The Council also cited section 14(1) (vexatious request) FOIA. Following an internal review the Parish Council wrote to the Appellant on 20 February 2020 confirming its view that section 14 FOIA applied.

THE LAW

9. Section 8(1)(c) FOIA provides that a request can only be valid if it ‘describes the information requested’.
10. The Commissioner’s guidance states that ‘...we are of the view that there has to be a low test for a description to meet the requirements of Section 8(1)(c)’.¹ In relation to ‘requests framed as questions’ (which appears to us to be relevant in this case) the Commissioner’s guidance states that:-

A request in the form of a question will be valid under Section 8(1)(c) FOIA, provided it still describes distinguishing characteristics of the information, as in the examples below where the information is differentiated by its subject matter. (sickness absence policy, overseas aid spending, and measures to tackle vandalism respectively);

‘Why has the Council changed its policy on sickness absence?’

‘How much money did the department spend on overseas aid last year?’

‘What is being done to tackle vandalism in the local park?’

11. Section 14(1) FOIA states that “(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”. Vexatiousness is not defined in section 14 FOIA, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.
12. Amongst other things, the Commissioner’s guidance on section 14 FOIA states that it is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. The Guidance also states that: -

The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

13. The approach to vexatiousness is based mainly around the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC). The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in *Dransfield* when it defined the purpose of section 14 as follows:

'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...' (paragraph10).

14. Also, in *Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question as to whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. As the Upper Tribunal observed:

'There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA'.

15. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed at paragraph 68 that: -

'...the emphasis should be on an objective standard and that the starting point is 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 or to the public or any section of the public... The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.'

16. The recent Upper Tribunal case of *Cabinet Office v Information Commissioner v Ashton* [2018] UKUT 208 (AAC) made clear that s14(1) FOIA can apply purely on the basis

of the burden placed on the public authority, even where there was a public interest in the request being addressed and where there was a ‘reasonable foundation’ for the request.

17. The case also confirmed the approach in *Dransfield* to the effect that the Tribunal should take a holistic approach, taking into account all the relevant factors, in order to reach a balanced conclusion as whether a particular request is vexatious: see especially paragraph 27 of the UT judgment in *Ashton*.
18. Further, the Commissioner has identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include: -
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance

THE DECISION NOTICE

19. Following earlier correspondence, on 12 August 2020 the Appellant provided the Commissioner with the necessary documentation to support his complaint about the way his request for information had been handled, and the Commissioner produced a decision noted dated 10 February 2021.
20. The Appellant disputed the Council’s application of section 14(1) FOIA to the four topics covered by his requests (reseeding of two goalmouths on the Village Green;

Chairman's contradictory responses to availability of annual accounts; errors on Annual Variance Report; and omission of grant on Variance Report re EALC Transparency grant). The Commissioner recorded the level of activity in relation to each of these issues as follows: -

40. Summarising the level of interaction with the complainant in this case, the Parish Council told the Commissioner that the complainant had sent "about 10 emails/letters" on the subject of reseeding the goalmouths. Similarly, with respect to the availability of the annual accounts, it told the Commissioner:

"The PC has received about 15 emails about the accounts and [the complainant] chases every email after one day of sending them".

41. The Parish Council also confirmed receiving "about 10 emails" from the complainant about the Annual Variance report and, with respect to the Variance Report, again about eight emails.

42. The Parish Council also told the Commissioner:

"The PC receives at least one email from [the complainant] a month and as soon as it is answered another email is received re-asking for the information or disagreeing with the information sent".

43. In its submission, the Parish Council referred to the complainant's 'constant correspondence'. It explained:

"When I [the Clerk] send information asked for to [the complainant] he complains that it is not the correct information or not on time or asks more of the same questionsAs soon as I/or the PC send a response I have another email asking the same questions or complaining about the information sent".

44. With respect to the burden on the authority, the Parish Council explained that the Parish Clerk is employed for seven hours per week. It considered that the amount of the time she spends researching and drafting responses to the complainant's emails and enquiries is disproportionate.

21. In her conclusions the Commissioner recorded as follows: -

55. The Commissioner recognises that the Parish Council is a small organisation and that the Clerk works limited part-time hours. The Commissioner accepts that the Parish Council told her that it receives at least one email a month from the complainant and that its responses lead to follow-up requests or complaints. On the basis that most, if not all, is handled by the Clerk during her seven working hours per week, the Commissioner

considers that it would create a significant burden on the Parish Council to deal with this level of correspondence from one particular individual.

56. The Commissioner has considered whether there is any value or serious purpose which would be served by the disclosure of the requested information and, if the requests were complied with, whether they would satisfy this purpose.

57. Neither party put forward any evidence of the wider value or likely public interest in the four topics. Nevertheless, the Commissioner accepts that there will likely be some local interest in the Parish Council's accounts and other financial matters. However, she considers that the public interest would appear to be satisfied to a considerable extent by the publication of financial and audit information on the Parish Council's website.

58. With regard to the reseeding of the goalmouth, in the absence of evidence that the information requested will be of wider benefit to the public, the Commissioner is not satisfied that the purpose and value of that request are enough to justify the impact on the Parish Council.

59. The purpose of section 14 of the FOIA is to protect public authorities and their employees from unreasonable demands in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can overburden a public authority and disrupt its ability to perform its core functions.

60. In the circumstances of this case, the Commissioner considers that responding to the requests would only be likely to result in further requests and complaints and runs the risk of preventing the Parish Council from dealing with other important matters in the parish.

61. Furthermore, she considers that the purpose and motive behind the requests carry insufficient weight to be capable of justifying this impact.

62. Taking all the above into account, the Commissioner is satisfied that the Parish Council has demonstrated to her that the requests in this case are part of a wider pattern of requests, complaints and challenges made by the complainant, and that, when viewed in that context, they go beyond what it would be reasonable to expect a small parish council, with limited resources and a member of staff who works seven hours a week, to absorb in the name of transparency and accountability. She considers that the Parish Council has shown that it is having to spend disproportionate amounts of time and resources on dealing with the complainant's approaches to it and that this risk undermining its ability to carry out its core functions.

22. The Commissioner found that the Council was entitled to apply s14(1) FOIA.

23. The Appellant filed an appeal dated 25 February 2021 which argued that his request was not vexatious and had a serious purpose. His main purpose appears to be holding the Council to account in relation to financial matters and he argues that the reason for the volume of emails and/or requests to the Council is because the Council does not respond to his requests or provides answers which do not deal with the requests.
24. In her response to the appeal, the Commissioner supports the conclusions in the decision notice.

DISCUSSION

25. We have considered the original request for information in this case. With one exception it seems to us to comprise of requests for explanation and reasons for actions taken or not taken by the Council. There is therefore a question as to whether the majority of the request is a FOIA request at all. Applying the Commissioner's guidance (as set out above), it appears that it is possible that the request 'still describes distinguishing characteristics of the information, as ...the information is differentiated by its subject matter', but the Council does not seem to have formed a view on this, given its reliance on s14 FOIA. The Council has also told the Appellant that it does not hold further information relating to the goalmouths, statement of variance for accounts, the availability of annual accounts 2019/20 or the clerk's receipt of the EALC Transparency grant. In relation to the one direct request for information where the Appellant asks for a 'copy of the adjusted accounts' there is an email from the Council dated 2 December 2019 in which the Appellant was told that the Council 'does not propose to restate the accounts', which suggests that this information is also not held.
26. Therefore, we are considering the application of s14 FOIA in circumstances where it is unclear how much of the request is covered by FOIA and where the Council appears to have told the Appellant that it does not hold the information sought.

27. In relation to s14 FOIA we should start by saying that this was quite a finely balanced case. We take on board all that the Council has said about the burden that the Appellant's frequent engagement with it over a significant period has placed upon the very limited resources that the Council has, and remind ourselves that the Council clerk is limited to seven hours work a week.
28. However, in our view there was a reasonable foundation to the making of the requests for information. It seems clear to us that the Appellant is concerned about the expenditure and budgeting of the Council in several areas, has been determined to find out the relevant information in each area, and this has led to a number of follow up requests for reasons and explanations when he has not received what he considers to be a full answer at the first attempt. As described by the Commissioner, the Council 'receives at least one email a month from the complainant and that its responses lead to follow-up requests or complaints'. Although this is clearly a significant level of correspondence, it seems to us difficult to conclude on that basis that the current request can be described as 'vexatious' solely on the basis of the burden placed on the Council.
29. Behind the requests we recognise a degree of persistence from the Appellant about his areas of concern. But although the examples of the correspondence we have seen could be described as sometimes forthright, they are not based on unfounded allegations, do not use abusive or aggressive language, and are not intended to cause annoyance.
30. We also accept that the Appellant has a genuine desire to hold the Council to account in relation to its finances and the current request is directed at that issue, and has felt frustrated that the Council, in his view, has not always fully responded.
31. In all those circumstances, taking a holistic approach, considering the contents of the request considered by the Commissioner, the history of contact between the Appellant and the Council, we have decided, narrowly, that we do not find that the request was vexatious.

32. However, we reach that conclusion with some hesitation, and it certainly does not mean that requests from the Appellant in the future might not be found to be vexatious, if the surrounding circumstances at the time merited that conclusion.
33. As a result of our conclusion, the Council will need to consider the Appellant's request and decide whether all or some of it comes within FOIA at all. Following that decision, it can be seen from what the Council has already said to the Appellant that, in relation to any aspects of the request which are covered by FOIA, the response may well be that the Council does not hold any further information to disclose to the Appellant. That is a matter for the Council to consider when it evaluates the request without the assistance of s14 FOIA.

CONCLUSION

34. On that basis, we would allow this appeal.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 22 September 2021.