



NCN: [2023] UKFTT 00477 (GRC)

Case Reference: EA/2022/0266

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

Decided on the papers on 24 May 2023

Decision given on: 07 June 2023

Before

**TRIBUNAL JUDGE CL GOODMAN
TRIBUNAL MEMBER M SAUNDERS
TRIBUNAL MEMBER D PALMER-DUNK**

Between

GERRY WOODHOUSE

and

(1) THE INFORMATION COMMISSIONER

Appellant

Respondent

Decision:

1. The appeal is allowed.
2. Decision Notice IC-119123-M4P7 is not in accordance with the law.

Substitute Decision Notice

Potto Parish Council was not entitled to refuse Mr Woodhouse's request for information dated 3 May 2021 on the grounds that it was vexatious under section 14(1) of the Freedom of Information Act 2000 ("FOIA").

To ensure compliance with FOIA, Potto Parish Council must issue a fresh response to the Request which does not rely on section 14(1) FOIA within 35 days of the date of this Decision Notice.

REASONS

Background and Request

3. Potto Parish Council ("the Parish Council") is a small parish council in North Yorkshire. In 2019, a Tribunal concluded that 350 people lived in the parish and that the Parish Council had five volunteer members and one part time employee, the clerk, who was paid £1,200 a year.
4. The Appellant was a former member of the Parish Council. On 3 May 2021, he made the following request for information to the Parish Council under FOIA:

"Information request re missing data - various topics.

I wish to request some information with regard to the following numbered elements:-

1. I refer to a detailed objection letter, submitted to Potto council on 1st September 2020, about your 2019-20 accounts. Please advise if the council has (as per previous years) sent a response to the External Audit team about this matter and, if so, I wish to request a full copy of the council's response.
2. Regular reviews are required to monitor the effectiveness of arrangements to protect public money, but I cannot find this information published on your website. I wish to request the page number of the meeting minutes (if there is one), and the minuted item reference number on this page, that specifically records of the council's two most recent acts of monitoring and also records the results of this monitoring.
3. I refer to the two Audit remedial Action Plans that were deleted from the council's website around June 2019, apparently in contravention of the council's Retention of Documents Policy, which states "indefinite" for all Audit records (I note that all the other Audit data remains published on your website). What information do you have to explain or substantiate why these Action Plans are no longer published (noting also that all the Audit Actions in these Plans still remain outstanding)?
4. I am advised that your External Auditor provides Potto council with financial updates from time to time, regarding the additional Audit fees now being incurred for additional Audit work. Please provide the date and the financial fee, as per the most recent update.
5. I note that there is an undesignated date written at the top of recent agendas. What information does this date signify (eg, date compiled or date published, etc)?
6. Thank you for sending me a copy of the council's 2019-20 asset register on 12 May 2020. However, as the asset registers are still not published on the council's website, I wish to request a copy of the 2020-21 asset register. I also request a copy of any supporting ledgers, etc, stating the financial details for each of these assets, both for 2019-20 and 2020-21.

7. In your email dated 26 November 2020 you reiterate allegations and threats of harassment under the Prevention of Harassment Act 1997. What advice, information or evidence has Potto council received from third parties (eg, YLCA), to support these persistent threats?

I look forward to receiving a helpful and clear email response to each element, so as to conclude this request professionally and in a timely manner. Thank you”

(referred to in this Decision as “the Request”)

5. The Parish Council initially provided some information in response. On internal review, the Parish Council then refused on 29 July 2021 to respond to the Request on the basis that it was vexatious by virtue of section 14(1) FOIA. (The Parish Council initially also relied on section 14(2) FOIA, but subsequently withdrew this.)

The Decision Notice

6. The Appellant complained to the Commissioner.
7. On 29 July 2022, the Commissioner issued Decision Notice IC-119123-M4P7, finding that the Request was vexatious and that the Parish Council was entitled to rely on section 14(1) FOIA to refuse to provide the requested information. The Commissioner found that:
 - a. the value of the Request was “reduced” because the Parish Council’s annual audits since 2016/17 were being independently scrutinised by an external auditor who was about to publish a public interest report and by the Standards Board;
 - b. the Appellant’s concerns had become personal. The Parish Council alleged that he had an ongoing campaign of harassment against their clerk which had caused serious distress, and he had begun to harass its internal auditor;
 - c. if information was provided, the Appellant would demand further explanations and raise further questions which added to the burden on the Parish Council; and
 - d. the Parish Council was a small organisation with very limited resources - over 80% of its time was spent dealing with correspondence from the Appellant.

The Appeal

8. The Appellant appealed to the Tribunal. His grounds of appeal, which were set out over 16 pages and eight appendices, and were further expanded on in response to the Commissioner’s subsequent application for strike out, are summarised below:
 - a. the Decision Notice was based on his pattern of behaviour up to 2019 which had changed fundamentally after April 2019;
 - b. the Parish Council was accusing the Appellant, rather than the Request, of being vexatious;

- c. there were factual inaccuracies in the Parish Council’s submissions to the Commissioner (for example, the Standards Board had been abolished);
 - d. the Appellant disputed the Parish Council’s allegations of harassment against the clerk and internal auditor;
 - e. the external auditor had not found the Appellant to be vexatious, as it had the power to do;
 - f. past requests for information were justified because of maladministration at the Parish Council. The Appellant relied in particular on the external auditors’ Public Interest Report (“PIR”) issued on 21 July 2022 which identified weaknesses in governance and accountability at the Parish Council on multiple heads. The Appellant submitted that it was highly unusual for a PIR to be issued in relation to a parish council;
 - g. there was no burden on the Council in publishing the requested information because it had a duty to make that information available;
 - h. the Parish Council had issued “corrupted and libellous publicity” about him, resulting in national media stories about him.
9. The Commissioner set out its response to the appeal in an Application for Strike Out dated 25 October 2022. The Commissioner maintained its position as set out in the Decision Notice, and relied heavily on the decision of a First-tier Tribunal in *EA/2019/0178* dated 28 November 2019 that earlier requests for information from the Appellant to the Parish Council were vexatious under Section 14(1) FOIA.
10. The Commissioner submitted that in his grounds of appeal, the Appellant had admitted to intentionally burdening the Parish Council and recognised the Parish Council’s limited resources. Two Council members had been “harassed and/or targeted” by the Appellant. The “cumulative burden” of the Appellant’s requests since 2014 should be taken into account, even if they had ceased for a period. The fact that the PIR had now been published further reduced the value and serious purpose of the Request.
11. The Commissioner’s application for strike out was refused on 12 January 2022.

Determination on the papers

12. All parties consented to this matter being dealt with on the papers and the Tribunal was satisfied that it was fair and in the interests of justice to do so.
13. In reaching its decision, the Tribunal took into account all the evidence and submissions before it. This consisted of an open bundle of 279 pages which included the Parish Council’s records of correspondence from the Appellant since 2014. Our findings were made on the balance of probabilities.

The Law

14. Section 1(1) FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing whether it holds information of the description specified in the request and if so, to have that information communicated to him.

15. Section 14(1) FOIA provides that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.
16. In *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC), the Upper Tribunal concluded that “vexatious connotes manifestly unjustified, or involving inappropriate or improper use of a formal procedure” [paragraph 27]. The Upper Tribunal suggested four broad issues or themes to be considered when assessing vexatiousness, namely (i) the burden on the public authority and its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the request in terms of objective public interest in the requested information, and (iv) any harassment of or distress to the public authority’s staff. The Upper Tribunal stressed the importance of taking a holistic and broad approach.
17. The Upper Tribunal’s approach was broadly endorsed by the Court of Appeal in its decision (reported at [2015] EWCA Civ 454), emphasising the need for a decision maker to consider “all the relevant circumstances”. Arden LJ observed 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. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one and that is consistent with the constitutional nature of the right” [paragraph 68].
18. In *Dransfield*, the Upper Tribunal observed in relation to “burden” that the “present burden may be inextricably linked with the previous course of dealings” [paragraph 29]. The context and history of the request must be considered, in particular the number, breadth, pattern and duration of previous requests.
19. The Upper Tribunal noted the “FOIA mantra that the Act is both “motive blind” and “applicant blind”” [paragraph 34]. However, the application of section 14(1) “cannot side-step the question of the underlying rationale or justification for the request” and “the wider context of the course of dealings” between the individual and the public authority. A request arising from a genuine public interest concern may become “vexatious by drift” where that proper purpose is “overshadowed and extinguished” by the improper pursuit of a longstanding grievance against the public authority (*Oxford Phoenix v Information Commissioner* [2018] UKUT 192 (AAC)). Public interest is not a trump card (*CP v Information Commissioner* [2016] UKUT 0427 (AAC)).
20. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“(1) If on an appeal under section 57 the Tribunal considers -

 - (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

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.

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

21. The Tribunal stands in the shoes of the Commissioner and takes a fresh decision on the evidence before us. The Tribunal does not undertake a review of the way in which the Commissioner’s decision was made.

Discussion and Reasons

22. In reaching its decision, the Tribunal took into account all the evidence and submissions before it, whether or not specifically referred to in this Decision. We applied the law as set out in paragraphs 14 to 21 above.

23. In relation to the burden of the Request, the Tribunal found that, although multi-headed, the Request itself, taken in isolation, was not burdensome. The Parish Council had already responded to much of it.

24. The Tribunal went on to consider the wider course of dealings between the Appellant and the Parish Council, and in particular, the findings of the 2019 Tribunal about the burden of the Appellant’s requests for information, complaints and correspondence, from 2014 to 2018. That Tribunal found that the Appellant had sent 690 emails to the Parish Council between January 2014 and August 2018 and that his language was at times abusive and had caused distress. It concluded:

“Mr Woodhouse’s case is almost a paradigm illustration of the abuse of the important constitutional right to freedom of information which s14 is designed to counter.... the effects of his behaviour in causing not only huge and wildly disproportionate disruption but also personal distress are precisely the kinds of consequences which the section seeks to guard against.” (paragraph 36)

25. However, there had been a significant and substantial change in the Appellant’s behaviour and correspondence with the Parish Council since that decision in 2019. The current Tribunal accepted that the Appellant had made no FOIA requests to the Parish Council for 18 months and that he had sent only six emails to them in 2020, ten in 2021 and eight in 2022. This was not disputed by the Commissioner or the Parish Council and was supported by the Parish Council’s records of correspondence from the Appellant.

26. There was evidence before this Tribunal of only one complaint made by the Appellant since 2019, in November 2020. There was no evidence to support the Parish Council’s claim that it was spending over 80% of its time dealing with the Appellant’s emails and the Tribunal found this highly unlikely, given the low level of correspondence. Even in 2019, when this figure was also proposed, the previous Tribunal had declined to make findings about a particular percentage (although it did find that the Appellant’s correspondence “accounted for a very substantial proportion of the Council’s time” (paragraph 31)).

27. This Tribunal took into account the context and history of the Request, the long and difficult relationship between the Appellant and the Parish Council, the small size of the Parish Council, and the number, breadth, pattern and duration of the Appellant's requests for information from 2014 to 2018. We noted that the 2020 complaint made implicit reference back to previous complaints (accusing the clerk of failing "yet again") and that the focus of the Request continued to be the conduct and governance of the Parish Council.
28. Nevertheless, this Tribunal concluded on balance that, because of the significant and substantial change in the Appellant's behaviour and correspondence since the previous Tribunal, the burden of the Request was not "inextricably linked" to that previous course of dealings. The Request was not in itself onerous, and as it was the first request for information under FOIA, and only the tenth email from the Appellant, in the 18 months since the previous Tribunal, it was not part of an unduly onerous course of dealings.
29. In relation to motive, the Tribunal accepted that the dispute between the Appellant and the Parish Council had escalated out of all proportion to the size of the parish and the issues at stake and had become personal. The Appellant's language reflected this: he described the Parish Council as "the very, very worst small council... in the UK", accused it of operating as an "unaccountable 'Private Members' Club" and submitted that its Chair lacked judgment, had a "huge ego" and a "bad attitude towards democratic Accountability". The Appellant had reported another councillor to the police for allegedly threatening behaviour towards his wife.
30. However, the Tribunal found that the Appellant did have a serious purpose. There is a well-established general public interest in transparency in relation to the activities, spending and financial management of public bodies, however small. In the view of the Tribunal, the public interest and serious purpose were more, and not less, significant in this case in light of the findings of the external auditor. It is not the role of the Tribunal to comment upon governance or accountability at the Parish Council, but the external auditor had identified significant weaknesses, including failures to comply with FOIA and previous external audit action plans, and published a PIR to bring these to the attention of the public. Neither the Commissioner nor the Parish Council disputed the Appellant's assertion that this was an unusual course of action.
31. The Tribunal did not accept that the Request had become "vexatious by drift". The Appellant's proper purpose had not been "overshadowed and extinguished" by the date of the Request: the external audit into the Parish Council's accounts from 2017 to 2020 was then still ongoing and the PIR was not issued until after the date of internal review.
32. The Tribunal noted with concern the findings of the Tribunal in 2019 in relation to the Appellant's harassment of the Parish Council's staff, which had resulted in one individual seeking medical help. The Appellant continues to use excessive and disproportionate language in his correspondence and to make unnecessarily personal, bullying and accusatory comments; for example that: "the hopeless clerk continues to blunder on, regardless of the blatant unlawful activity". The Tribunal accepted that, in light of the previous course of dealings between the Parish Council

and the Appellant, such language would cause distress – and noted that a similar tone was evident in his correspondence with Commissioner’s staff.

Conclusion

33. The Tribunal concluded that the Request contained hallmarks of vexatiousness, in particular the Appellant’s language and tone which was liable to cause distress. However, we found that the burden of the Request was not inextricably linked to the previous course of dealing between the Appellant and the Parish Council because of the change in his behaviour and the long gap between requests for information. Given the constitutional nature of the right to information and the high threshold set by Arden LJ in *Dransfield*, the Tribunal found that the Appellant was entitled to “another chance” and could not be permanently barred from exercising his rights under FOIA, in particular given the serious purpose of the Request which was still current when the Request was made and subsequently endorsed by the findings of the external auditor.
34. The Tribunal concluded on balance, taking a broad and holistic approach, that the Request was not vexatious and allowed the appeal.

Signed: Judge CL Goodman

Date: 6 June 2023