



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL GENERAL
REGULATORY CHAMBER UNDER SECTION 57 OF THE FREEDOM OF
INFORMATION ACT 2000**

Information Tribunal Appeal Number: EA/2009/0080

Information Commissioner's Ref: FS50204940

Heard on the papers at Fox Court

On 2nd February 2010

Decision Promulgated

15th April 2010

BEFORE

Fiona Henderson

And

Ivan Wilson

And

Henry Fitzhugh

BETWEEN:

TONY WISE

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

Subject matter:

FOIA -Section 8 information request

Section 14(1) vexatious or repeated requests

Cases:

Coggins v the Information Commissioner EA/2007/0130

Welsh v IC EA/2007/0088

Hossack v IC and DWP EA/2007/0024

Gowers v IC and LB Camden EA/2007/0114

Ahilathirunayagam v IC EA/2006/0070

Decision

The Tribunal upholds the decision notice FS50204940 dated 10th April 2009 and dismisses the appeal.

Reasons for Decision

Introduction

1. Two allegations were made to Social Services in May and June 2006 concerning the Appellant. The investigation at the time revealed that there was no evidence that these allegations were true.
2. On 17th May the Appellant complained to the Police about the way they had handled their involvement in the investigation. The matter was referred to the Independent Police Complaints Commission (IPCC). In February/March 2007 pursuant to the investigation of the IPCC complaint, the detail of the allegations were disclosed by Lancaster County Council (the Council) to the Police and the IPCC but without the caveat that they were considered baseless at the time and including inaccuracies which had been clarified by Mr Wise at the time.
3. Mr Wise became aware that there had been contact between the Council and Lancashire Constabulary and the IPCC pertaining to these allegations. When he sought to establish

what information had been passed on, the Council initially denied that such contact had taken place.

4. Mr Wise underwent a 3 stage complaints process in relation to the Council. Initially the Council maintained on 28th March, 17th May and in response to the stage one complaint in August 2007 that no discussion or contact had taken place between the Police/IPCC and the Council. This was despite Mr Wise having sought details of the contact from the Police/IPCC and having provided the name of the social worker concerned to the Council prior to the first stage of the complaint hearing.
5. In October 2007 at the second stage of the complaint process the Council produced a file note dated 14th June 2007 recording the fact of a telephone conversation around the relevant time [2nd March 2007]. This file note was not contemporaneous with the phonecall it recalled. On its face it states that it was created in response to a request for confirmation from the Police as to when the conversation took place. This file note predated the first stage investigation. Mr Wise disputes the integrity of this document and maintains that it does not detail all of the contact that there was relating to his personal data between the Police/IPCC and the Council¹.
6. The Council explained that the investigation had predated the creation of the file note and the files were not rechecked when the fruits of the earlier investigation were reiterated in August 2007. They apologized for having provided wrong information. A third stage of the complaint process took place in December 2007 when the Council again acknowledged that the contact had taken place and apologized. The Council has never accepted that their conduct in sharing the information was improper.
7. During the Complaints procedure, the Information Commissioner was approached for his view as to whether the sharing of this data was criminal. The Information Commissioner looked at the circumstances and notified the Council of his view that there was no strong indication of a likelihood that the Council had failed to meet the requirements of the DPA 1998.
8. Mr Wise complained about 3 named social workers to the General Social Care Council (GSCC) they did not uphold the complaints.

¹ The IPCC in their letter of 22nd March 2007 referred to "extensive consultation" with the Council and Police

9. Following the conclusion of the third stage of the complaints procedure Mr Wise was advised that he could appeal to the Local Government Ombudsman, which he did. From the papers before us, it is not clear when this complaint was made, but the investigation was in train by March 2009.

The request for information

10. The Appellant sent an email to the Council on 5th May 2008 in which he asked:

“Please provide me with all the Lancashire County Council’s written procedures, protocols and policies in relation to information sharing with other public authorities”.

11. The Council initially relied upon section 14(2) FOIA (that this duplicated an earlier request of 25th July 2007) in relation to this request. In their internal review dated 16th June 2008 the Council upheld the refusal continuing to rely upon section 14(2) but also relying upon section 14(1) FOIA that the request was vexatious:

“..it is clear from the nature and tone of your repeated requests for information that they are vexatious..

You do of course have the right to complain to the Information Commissioner regarding his decision as previously notified. It is also quite clear from your correspondence that you have no faith in the County Council’s consideration of your requests for information and I therefore suggest that in future you direct any complaints direct to the Information Commissioner.”

12. The Appellant submitted 2 further requests dated 23rd July and 12th August 2008² which contained within them 11 requests (comprising more than 20 separate items or documents requested) the majority of which were encompassed within the information requested in the 5th May request. The Council wrote to the Appellant on 14th August 2008 refusing the “recent request” (this would appear to be the request dated 23rd July) under section 14(1) FOIA. In this letter the Council stated that:

“Given that your enquiry relates to a matter that has been considered exhaustively under the Authority’s Complaints procedure, and addressed in our responses to your previous requests, I am of the opinion that your continued requests for information are an abuse of

² The 6 information requests between 5th May and 27th August 2008 are set out in full at Annex A of the Decision Notice.

the rights conferred by the Act, the aim of which can only be to cause annoyance and put the Authority to unnecessary inconvenience and expense.

I am therefore not prepared to divert further publicly funded resources from their intended use in support of dealing with this or any other similar requests for information you submit...” It advised the Appellant to direct any complaints to the Commissioner.

13. Notwithstanding the terms of the letter of 14th August 2008:

- The Appellant asked for an internal review of the letter dated 14th August.
- The Appellant also made additional information/subject access requests on 21st August and twice on 27th August.
- The Appellant wrote chasing the internal review of the letter of 14th August on 26th August and asked for acknowledgments of his requests of 12th and 21st August.
- The Appellant wrote on 2nd September 2008 reminding the Council of the date by which he expected a response to the two emails dated 27th August 2008.

14. The Council did not respond to any of the Appellant’s correspondence after the letter it sent dated 14th August 2008.

The complaint to the Information Commissioner

15. On 16th June the Appellant complained to the Commissioner in relation to the 5th May request.

16. On 26th September 2008 the Appellant made another complaint relating to the 5 information/ subject access requests of July and August 2008.

17. These complaints were dealt with together and following his investigation:

- the Commissioner did not uphold the Council’s reliance upon section 14(2) FOIA in relation to the request of 5th May 2008, since a reasonable time had elapsed between the two requests.
- He found that point 2 of the request dated 21st August 2008 and the two requests of 27th August 2008 were subject access requests.³

³ This finding is not subject to a ground of appeal.

- In relation to the remainder of the requests, he found that the requests were:
 - Obsessive,
 - Harassed the public authority and caused distress to staff,
 - Imposed a significant burden in terms of expense and distraction,
 - Lacked any serious purpose or value.

when considered in the context of the complainant's previous behaviour, the Commissioner found that the requests were vexatious and that the Council was entitled to rely upon section 14(1) FOIA.⁴

18. The Commissioner also found that there had been procedural breaches in relation to the refusal notice and review these are not before the Tribunal.

The appeal to the Tribunal

19. On 17th September 2009, the Appellant appealed to the Tribunal in an 18 page document. five grounds of appeal were identified by the Commissioner in his reply and have been adopted by Mr Wise as accurately reflecting the issues to be determined by this Tribunal. These grounds are dealt with individually below.

20. In his grounds of appeal Mr Wise enclosed a request to the Council dated 29 January 2008. This request for information was not included in the Decision Notice FS50204940 and the Tribunal therefore has no jurisdiction in relation to that information request.

Evidence

21. The Tribunal has considered all the evidence before it in reaching its decision, specific parts of the evidence are referred to in the analysis set out below.

Legal submissions and analysis

22. Section 14(1) FOIA provides:

⁴ The Commissioner did not find that the requests were designed to cause disruption or annoyance. This relates to the Appellant's intention and the Commissioner conceded that it could be argued that the Appellant was seeking access to recorded information that he believed could help him to challenge the Council's position further.

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

From this it is apparent that it is the request that must be vexatious and not the requestor. Vexatious is not defined in the Act. In Ahilathirunayagam v IC EA/2006/0070 the Tribunal noted:

“There is no statutory definition for the term vexatious and its normal use is to describe activity that it likely to cause distress or irritation, literally to vex a person to whom it is directed.”

23. Additional assistance is obtained from the Commissioner’s Guidance on Vexatious Requests. This sets out certain factors which may help to identify a vexatious request:

- Can the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

24. The Commissioner’s Guidance does not suggest that these are the only factors to be taken into consideration, however, his Decision Notice is structured around the application of these factors. Mr Wise does not challenge the considerations identified, but rather disputes that he falls within these categories. The Tribunal is satisfied that the guidance reflects the existing case law and that whilst not exhaustive of the factors to take into consideration there is no reason to depart from its structure.

Ground a)

Mr Wise did not intend to harass the Council or cause distress to its staff.

25. The Commissioner argues that the test is whether in fact the Council were harassed and the staff distressed. The Tribunal agrees with this analysis. In deciding whether a request

will be vexatious it is appropriate to look at its effect. In applying this test the Tribunal follows the approach set out in Gowers v IC and LB Camden EA/2007/0114 which noted:

“it cannot have been the legislative intention that a public authority should be relieved of its obligation to disclose information because a particularly sensitive member of staff may be distressed by it, nor that a request to one public authority should be subject to a different standard from that made to another public authority... the standard to be applied is an objective one”

26. From the evidence before us the Tribunal is satisfied that the Appellant adopted an aggressive, accusatory and harassing tone in relation to correspondence. He repeatedly:

- Accused the Council and named members of staff of being corrupt, dishonest, unethical, liars.
- Repeated allegations that the diary entry has been corruptly fabricated to cover up criminal behaviour. (Despite the Commissioner’s indication that the disclosure was not criminal).
- Regularly threatened legal action against individuals and the Council although none has been forthcoming.
- Correspondence was long, involved and changes in type face used to convey an aggressive tone. Individual officers were named and singled out for serious allegations. The Appellant gave the impression that the Council would not be able to satisfy him and his behaviour would continue to escalate.

27. Mr Wise argues in his grounds of appeal that the Council have disregarded the *“many items of conciliatory and even moderately friendly correspondence that do exist”*. He does however, concede that *“some of my wording has been intemperate and certain sarcastic phraseology has been used in the correspondence... This behaviour has purely been out of inordinate frustration ...in my opinion this sometimes intemperate behaviour has always been justified because of the amazing decision of the Council and its officers in total ignorance of the rules of evidence, the facts of the case..”*

28. Additionally Mr Wise argues that the tone of the information requests themselves were polite and that he was not being harassing during the presentation of the requests.

29. The Tribunal adopts the approach set out in Hossack v IC and DWP EA/2007/0024 which noted:

“ On its own, there is nothing in the wording or nature of the request to suggest it could be vexatious. But there is no reason to restrict consideration to what appears on the face of the request, and it would be artificial to do so. Clearly, context and history are important...”.

30. Therefore the fact that the information requests themselves may have been appropriately worded cannot be divorced from the correspondence upon the same topic being sent to those at the Council tasked with answering the information requests. In his letter of 18th February 2008 Mr Wise is deliberately provocative:

“If you are of the mind that my recent correspondence has an wholly inappropriate tone and falsely questions the integrity and corrupt activities of employees of the County Council, then please take the appropriate action against me. The County Council is very resourceful and has a very efficient and well funded legal department.....if you are so sure that I am in the wrong the please take action against me. It would be quite routine for the County Council to achieve an injunction against if what I am alleging continually in writing is in any way false. However the central issues would then be in the public domain and that wouldn't fit in with the ongoing corruption at the County Council ... Open public courts are not the ideal place for corrupt public officials to wash their dirty linen.....For clarity I have copied this email to the persons of concern in order that they can endeavour to protect their own personal integrity and take action against me unilaterally if they think it appropriate. Lofty persons such as these cannot have totally misguided and ill informed individuals making scurrilous, false and very serious allegations against persons with such amazing integrity, ethics and probity. It is clearly their duty to protect their totally untainted reputations...”

31. The Tribunal rejects Mr Wise's contention that the Council's actions provide justification for this level of accusatory and abusive correspondence. He has addressed the Tribunal at length in relation to his underlying complaints.

Whilst it provides the context of his case, it is not material to the decision because it is not the Tribunal's role to determine the merits of these. The Tribunal observes that the complaints have been investigated numerous times, apologies offered and record keeping methods strengthened. We are satisfied that in the context of such provocative correspondence even a politely worded information request would add to the distress and harassment encompassed within Mr Wise's campaign against the Council and their staff.

Ground b

Mr Wise did not intend to impose a significant burden in terms of expense and distraction on the Council.

32. Again the Tribunal agrees with the Commissioner that what is being considered here is the consequence of the request and not Mr Wise's intention, and that consequently the test is whether in fact the request would impose a significant burden in terms of expense and distraction on the Council.

33. The Appellant argues that he has only ever had one FOIA request answered by the Council (in July 2007) all other requests since then have been treated as vexatious. He seeks to distinguish between requests for information made under "*customer relations*" to the data protection department and "*direct questions concerning the conduct of the Council... in the context of my then 3 stage corporate complaint*" from valid requests under FOIA.

34. Just because a request for information does not state that it is a request under FOIA does not absolve the Council from treating it as such. Under FOIA a request is defined in section 8 as:

(1) In this Act any reference to a "request for information" is a reference to such a request which—

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

35. The Tribunal notes that there were:

- Two subject access requests in 2007.
- Three requests for information that were responded to under FOIA in 2007.

In addition to this Mr Wise sent voluminous correspondence with lists of questions during this period. For example pursuant to the second stage of the Council's complaints procedure he compiled a list of 16 questions submitted in writing on 8th October 2007 (all of which were answered), and then 110 questions submitted by the Appellant on 27th October 2007 (which were not individually answered) and in relation to the third stage of the complaints procedure a further list of 12 questions for the panel to consider during their deliberations pursuant to an email of 6 December.

36. The Appellant argues that the 3 stage complaint process took 5 months from July –December 2007 and would necessarily have generated a large amount of correspondence. The Tribunal accepts this, but notes the nature and tone of the correspondence and that the Council engaged with Mr Wise during this time and it is after the exhaustion of the complaints procedure that they categorize his requests as vexatious.

37. Mr Wise does not accept that the Council engaged with him, as he considers the 3 stage procedure to be a travesty. However, he ignores the responses and meetings that he has had with the Council to try to resolve the position. The Tribunal is satisfied that Mr Wise was never going to be satisfied with any response. He argues that he would be satisfied but the Tribunal finds that in effect this would only be if the Council admitted fault with him on each point; which is not a reasonable prospect in the circumstances of this case. His correspondence is littered with indications that he has no faith in the system and consequently will never be satisfied. These include (but are by no means limited to) the examples below:

- Letter of 19th November 2007 – “...*However my faith in this procedure is non existent but I will use it nonetheless for experience if nothing else*”.
- Letter of 26th November 2007 – “...*Can I please confirm that I will not be accepting your apology because you are a grievous and unashamed liar?*”
- Letter to the Commissioner 14.7.08 stated - “...*I requested an internal review on 11/06/08 in a cursory way because I knew that they wouldn't comply no matter who conducted the internal review*”.

38. From the correspondence before the Tribunal it is apparent that any response to Mr Wise is likely to result in additional requests and correspondence. For example the Tribunal notes that Mr Wise did not wait for the response to one information request before making the next. Mr Wise explains that this was because there was too much to request at once. The Tribunal considers that to be an acknowledgment that the answering the requests would have been burdensome.

39. For the reasons set out above, the Tribunal was satisfied that answering the requests was time consuming and consequently expensive and would have placed a significant burden on the Council who would have had to divert considerable time to address the requests raised.

Ground c

The requests had a serious purpose.

40. The Tribunal agrees with the principle set out in Welsh v IC EA/2007/0088 namely that:

“For the request to be vexatious there must be no proper or justified cause for it.”

And as set out in Coggins v the Information Commissioner EA/2007/0130:

“the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed vexatious...”

41. This was amplified in Gowers v IC and LB Camden EA/2007/0114 which provided that:

“..a request cannot be vexatious just because the applicant is seeking information which the public authority or any of its staff may prefer not to disclose, for example, because it does not reflect well on them. Distress, annoyance, irritation or worry arising from the possible consequences of disclosure cannot turn an otherwise proper request into a vexatious one.”

42. Mr Wise argues that this is the case here, there is a serious purpose behind his information requests and they are being refused because the Council is covering up discreditable behaviour.

43. Ordinarily FOIA does not take into consideration the reasons behind an information request, however this Tribunal applies the following principle as stated in Welsh v IC EA/2007/0088:

“When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious...”

44. From the papers and pleadings before it, the following are relied upon by Mr Wise as the justification for the information requests:

- a) In his letter dated 16.6.08 he stated that he was trying to check whether the data controller’s processing of his personal data unlawfully infringed his privacy.
- b) There is public interest in exposing wrong doing by a Council,
- c) He wishes to overturn the indication of the Information Commissioner that the disclosure of the information was not in breach of the DPA,
- d) Children’s social services is a statutory body charged with the security and integrity of confidential and personal data belonging to children and their parents:
 - it is in the public interest that there is trust in this public body
 - It is in the public interest that policies and protocols are sufficient to meet their data protection obligations,

- It is in the public interest that there is a secure and effective personal data sharing regime.

45. The Tribunal also noted that Mr Wise was told on 13th December pursuant to the 3rd stage review that if he remained dissatisfied he could pursue the matter with the Local Government Ombudsman. The LGO's investigation was underway in March 2009 therefore whilst the Tribunal does not have the date that the complaint was made it is likely that it had not been made when the information requests were made. The Tribunal took into consideration that the information requests might have been made to assist in that process.

46. Additionally at the time of the information requests the Council had not added a note to the file to deal with the quality of the information contained therein. The Council has now added a file note (in July 2009) to indicate that they had no evidence to indicate that the allegations were true at the time of the referral. As at the date of the Appeal, Mr Wise considers that this correction is insufficient as he argues that they had compelling positive evidence in his favour and this is what should be added to the referral file.

47. Mr Wise argues that having made headway in relation to some of his aims it is all the more important that he continues to be persistent. Whilst each of these may be a serious purpose if taken out of context, the Tribunal is satisfied that objectively many of these aims had been achieved already, or would not have been achieved by the disclosure of the requested information (e.g. none of the requests was directly relevant to amending the information held).

48. The Tribunal considers it appropriate to consider the timing of the requests. A proper purpose may become less easy to justify if its pursuit becomes disproportionate. By May 2008 the Council complaints procedure had been exhausted. The Commissioner argues that it is appropriate to take into consideration that Mr Wise's concerns have been investigated previously:

- There had been a 3 stage complaint which culminated in the Council admitting some failings and apologizing for them.

- The Information Commissioner has looked at the circumstances of the disclosure and notified the Council of its view that there was no strong indication of a likelihood that the Council had failed to meet the requirements of the DPA 1998.
- The Information Commissioner's office has drawn the lack of contemporaneous, formal recording keeping to the Council's attention with the object of promoting best practice.
- The findings of the 3rd stage of the complaint procedure acknowledged that:

"the Committee were conscious that if proper records had been kept these difficulties would not have arisen and they will be stressing to the Director for Children and Young People the importance of emphasising to staff the necessity of accurate record keeping and storage of those records."

- On 2nd January Mr Wise complained about three named social workers to the General Social Care Council (GSCC). On 3rd January 2008 they wrote to indicate that "the information does not amount to a complaint and therefore no further action will be taken by the GSCC with regard to this matter".

49. The Tribunal adopts the approach outlined in Welsh v IC EA/2007/0088

"There must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested."

50. In the Commissioner's guidance it states that: *"if the request forms part of a wider campaign or pattern of requests, then the purpose or value must justify both the request itself and the lengths to which the campaign or pattern of behaviour has been taken"*.

51. The Tribunal adopts this approach. Whilst it accepts that Mr Wise believes that he has a genuine grievance in relation to the data that was shared and that this was compounded by the wrong information that he was given by the Council, the Tribunal is satisfied that there comes a time when in light of what has gone before there is no longer a serious purpose. As set out in para 32 Et seq above the Tribunal is satisfied that Mr Wise was never going

to be satisfied no matter what information he was provided with and these requests were part of his campaign against the Council.

Additional Matters

52. The Tribunal notes that the grounds of appeal do not explicitly deal with the question of whether the request can fairly be seen as obsessive. From the material before the Tribunal it is clear that Mr Wise does not accept that he or his request are obsessive. The matter has been touched upon in considering grounds of appeal a-c above, but for the sake of clarity the Tribunal lists here the factors it has taken into consideration in concluding that the requests can fairly be seen as obsessive which it relies upon in upholding the Decision Notice.

53. The Tribunal was satisfied that:

- These information requests all arose out of the same grievance namely what he believed was inappropriate sharing of inaccurate personal data.
- This had expanded to include challenges to the Council's investigation of the complaints procedure, and record keeping.
- This was a campaign against the Council using every available method of challenge.
- When these were exhausted he persisted and was provocative (being deliberately insulting to provoke a response).
- There is considerable information to support his stated aims already.
- He pursues tangential elements and does not follow things up.
- He does not wait for a response before making the next request.
- He was never going to be satisfied with the response.

54. The Commissioner did not find that the requests were designed to cause disruption or annoyance. The Tribunal is satisfied that this is consistent with the remainder of the Commissioner's findings. This relates to the Appellant's intention and is therefore subjective. The Commissioner conceded that it could be argued that the Appellant was seeking access to recorded information that he believed could help him to challenge the Council's position further. This does not constitute an acknowledgement that the information request would have

helped him to achieve his stated aims and consequently is consistent with the Tribunal's findings in relation to serious purposes.

Ground d

The Commissioner did not deal assiduously with the matter.

55. Mr Wise argues in his grounds of appeal that the Decision Notice is factually inaccurate. In particular the Commissioner recorded that:

- the complaint procedure was in 2 stages (and not 3), and
- the Council admitted that contact had taken place once they knew that Mr Wise had approached the Police and the IPCC; when in fact they were aware of this prior to the first stage of the complaint when they did not accept that the data sharing had taken place.

Neither of these matters affects the analysis of the issues in the Decision Notice. The Tribunal is not satisfied that there are any factual inaccuracies of a material nature that would affect the substance of the Decision.

56. Additionally Mr Wise argues that matters he put before the Commissioner did not seem to be reflected in the decision notice and the Commissioner did not approach him for additional information e.g. in relation to whether his requests had a serious purpose.

57. The Tribunal does not consider these complaints to be well founded. The Commissioner had a lot of evidence before him and the Tribunal is satisfied that he took the relevant matters into consideration. Most of the evidence would appear to relate to the merits of the underlying grievances, subject access requests and other matters not material to the issues before the Commissioner and now the Tribunal. Whilst there are times when it may be appropriate for the Commissioner to ask for further detail as to e.g. the "serious purposes", the Tribunal is satisfied that this was only one factor amongst many to be taken into consideration in deciding whether the requests were vexatious, and that the Commissioner had sufficient evidence of context to make the findings that he

did. In any event the Tribunal is a complete rehearing of the evidence at which the Tribunal is entitled to review any material finding of fact or law as provided for in section 58 FOIA:

(2) On such an appeal [against a decision Notice], the Tribunal may review any finding of fact on which the notice in question was based.

58. Additionally Mr Wise argues that in the Decision Notice the Commissioner has not addressed:

- his allegations that the Council have breached their own confidentiality policy,
- or additional data protection, information sharing, consent and other privacy and confidentiality points that he has raised.

59. The Commissioner's functions in relation to a decision notice are limited as set out in Section 50 FOIA:

(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I. ...

Consequently the additional matters raised were outside the remit of a decision notice and similarly are not justiciable by the Tribunal.

Ground e

The Council has not been blameless in that it was reluctant to engage with the Commissioner.

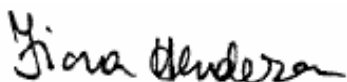
60. This arises from the Commissioner's comments at the end of the Decision Notice which noted that the Council had not been assiduous in its engagement with the Commissioner during his investigation. Their approach initially was casual and they did not stick to deadlines. These comments do not form part of the Decision under section 50 and as such cannot form part of the appeal. The Tribunal has no jurisdiction to consider this.

Conclusion and remedy

61. For the reasons set out above the Tribunal upholds the Commissioner's decision and refuses the appeal.

62. Our decision is unanimous.

Signed

A handwritten signature in black ink that reads "Fiona Henderson". The signature is written in a cursive, slightly slanted style.

Fiona Henderson

**Tribunal Judge
2010**

Dated this 15th day of April



**IN THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)**

RULING on an APPLICATION for PERMISSION to APPEAL

By

Mr Tony Wise

1. This is an application dated 4th May 2010 by Mr Tony Wise for permission to appeal the decision of the First Tier Tribunal (Information Rights) (“FTT”) dated 15th April 2010. That decision dismissed the appeal of Mr Wise and upheld the Information Commissioner’s (IC) Decision Notice FS50204940 dated 10th September 2009.
2. The right to appeal against a decision of the FTT is restricted to those cases which raise a point of law. The FTT accepts that this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (“the Rules”).
3. The FTT has considered whether to review its decision under rule 43(1) of the Rules, taking into account the overriding objective in rule 2, and has decided not to review its decision because the grounds of the application do not raise an error of law for the reasons stated below.
4. The FTT refuses the application for leave to appeal because the grounds of the application do not raise an error of law for the reasons stated below.

Grounds of Appeal

5. Mr Wise in his notice of appeal challenged the Decision on the grounds that it was:
“Legally unbalanced under section 14(1), unjust, unfair, contains factual errors and in parts irrational”. These points are expanded at length but may be summarised as:

- a) The Tribunal erred in law in that its determination was inconsistent with its finding of fact at paragraph 2 of the Decision.
- b) The Tribunal erred in failing to take account of the context in which the requests were made in particular that the Council's actions have provoked or merited the response they got from Mr Wise.
- c) The Tribunal has made factual errors and:
 - I) These are themselves errors of law
 - II) These were material to the Tribunal's Decision to find that Mr Wise was vexatious.
- d) The Tribunal erred in fact relating to his motives for requesting the information and this was material to their decision.
- e) The Tribunal erred in failing to give sufficient weight to the evidence relied upon by Mr Wise.

Reasons

Ground a) The Tribunal erred in law in that its determination was inconsistent with its finding of fact at paragraph 2 of the Decision.

6. The Tribunal found at paragraph 2 of its Decision:

“In February/March 2007 pursuant to the investigation of the IPCC complaint, the detail of the allegations were disclosed by Lancaster County Council (the Council) to the Police and the IPCC but without the caveat that they were considered baseless at the time and including inaccuracies which had been clarified by Mr Wise at the time”.

7. In its Decision there is no finding by the Tribunal that Lancashire County Council (the Council) acted improperly in disclosing the information or were dishonest or deliberately lied to Mr Wise in their response to his information requests.
 - The Tribunal recited (at paragraph 6) the Council's explanation for the provision of an incorrect response to Mr Wise namely that the investigation had predated the creation of the telephone note.
 - The Tribunal noted that the telephone note was not contemporaneous on its face (para 5).

- The Tribunal recorded the Council's acknowledgement that the situation would not have arisen with better record keeping (para 48).
- Additionally the Tribunal relied upon the Commissioner's view expressed during the Complaints procedure that "*there was no strong indication of a likelihood that the Council had failed to meet the requirements of the DPA 1998.*" (para 7) and that the Council has never accepted that their conduct in sharing the information was improper (para 6).

8. At paragraph 31 the Tribunal observed that:

" [Mr Wise] has addressed the Tribunal at length in relation to his underlying complaints. Whilst it provides the context of his case, it is not material to the decision because it is not the Tribunal's role to determine the merits of these. The Tribunal observes that the complaints have been investigated numerous times, apologies offered and record keeping methods strengthened..."

9. Mr Wise sets out the conclusions he draws from point 2 in a-d of page 2 of his document "grounds 1" and repeats this underlying thesis throughout his application for leave to appeal/review. However, whilst the Tribunal's finding is clearly that wrong information was given to Mr Wise in response to his requests, in the absence of a finding by the Tribunal that the Council were dishonest or deliberately lied points a-c are therefore conclusions that are not available for him to draw from the Decision. In relation to point d) whilst the initial responses to his information requests were misleading and incomplete it was not the finding of the Tribunal that this was "proven deceit" as Mr Wise asserts.
10. I am satisfied that there is no inconsistency or irrationality between the Tribunal's finding at paragraph 2 and its conclusions and that this ground discloses no error of law.

Ground b) The Tribunal erred in failing to take account of the context in which the requests were made in particular that the Council's actions have provoked or merited the response they got from Mr Wise.

11. This is largely a reiteration of the point argued before the Tribunal upon appeal that was rejected by the Tribunal for the reasons set out at paragraphs 26 et seq of their Decision,

however it is now made in the context that Mr Wise now mistakenly believes that the Tribunal has accepted his arguments that the Council's conduct was illegal, dishonest and a deliberate cover-up through its findings at paragraph 2. For the reasons set out at paragraphs 6-10 above this was not the finding of the Tribunal and this ground of appeal discloses no error of law.

Ground c)The Tribunal has made factual errors and:

I) These are themselves errors of law

II) These were material to the Tribunal's Decision to find that Mr Wise was vexatious.

12. Mr Wise gives the example that in his view the Tribunal has wrongly summarized one of the Commissioner's findings of fact. The Tribunal did record at paragraph 17 of its Decision:

"In relation to the remainder of the requests, [the Commissioner] found that the requests.....

Lacked any serious purpose or value.

when considered in the context of the complainant's previous behaviour, the Commissioner found that the requests were vexatious and that the Council was entitled to rely upon section 14(1) FOIA."

13. This was a summary of the Commissioner's finding in his Decision Notice at paragraph 56

*" In this case there was no evidence presented to the Information Commissioner that would suggest that any serious purpose or value the requests had **was sufficient enough to mean that, despite other findings, the requests should not be considered to be vexatious**"*

14. Even if the Tribunal's summary at paragraph 17 was an oversimplification of the Commissioner Decision Notice it was not material to the determination and does not of itself constitute an error of law because:

- It was the Appellant's ground of appeal (ground c) that his request was not vexatious because the requests had a serious purpose and to that extent he appeared to be challenging the Commissioner's findings on this point.
- The Tribunal did not reach its legal conclusions on the basis of the contents of paragraph 56 of the Decision Notice, but reconsidered this matter afresh in detail as set out in paragraphs 40-51 of its Decision. The Tribunal identified serious purposes and values which were applicable at the relevant time, however, the Tribunal's judgment was that

there comes a time when in light of what has gone before there is no longer a serious purpose to the information request (para 51).

Ground d) The Tribunal erred in fact relating to his motives for requesting the information and this was material to their decision.

15. Mr Wise argues that he was “never concerned for my personal data”,(page 8 of Grounds 1) and that in referencing this as a factor in the Decision (e.g. paragraph 5 and 53) the Tribunal has incorrectly determined the reasoning behind his anger, and that this was material to their decision.
16. This information request was made in the context of Mr Wise making 3 Subject Access Requests to the Council around the time of the information requests relating to the same topics. Factually the Data relating to Mr Wise is interlinked with that of his daughter. Additionally in his letter dated 16.6.08 (paragraph 44a) he stated that he was trying to check whether the data controller’s processing of **his personal** data unlawfully infringed his privacy. It is plain from the Decision that the Tribunal was clear that the motivation behind Mr Wise’s requests was intricately bound up with his distress at the disclosure of information relating to his daughter.
17. I am therefore satisfied that there was no error of fact and no consequential error in law.

Ground e) The Tribunal erred in failing to give sufficient weight to the evidence relied upon by Mr Wise

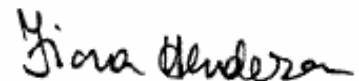
17. Mr Wise argues that:
 - Weight has not been given to various pieces of evidence because they have not been specifically referred to,
 - The Tribunal has ignored vital items of evidence and rejected evidence that demonstrates misconduct and dishonesty from the public authority.
18. The Tribunal has indicated at paragraph 21 of its Decision that it has considered all the evidence before it. This ground of appeal largely seeks to re-argue the merits of the appeal

and the conclusions that Mr Wise would have liked the Tribunal to draw from the evidence before it. If further seeks to reopen other investigations by other bodies. The Tribunal indicated (at para 31) that it was not necessary to determine the merits of the underlying requests to determine the appeal. This ground does not disclose a legal error.

19. It follows that the appeal has no prospect of success and that permission to appeal is refused.

20. Under rule 21(3) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended Mr Wise has one month from the date this Ruling was sent to him to lodge the appeal with:

Upper Tribunal (Administrative Appeals Chamber)
5th Floor,
Chichester Rents,
81 Chancery Lane,
London
WC2A 1DD.



Fiona Henderson

Judge

First-tier Tribunal (Information Rights)

12th May 2010



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. GIA/1499/2010

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Name: Mr Tony Wise
Tribunal: First-tier Tribunal (Information Rights)
Tribunal Case No: EA/2009/0080
Tribunal Venue: London, Fox Court
Hearing Date: 2 February 2010

**NOTICE OF DETERMINATION OF
APPLICATION FOR PERMISSION TO APPEAL**

I refuse permission to appeal.

This determination is made under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rules 21 and 22 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS

1. In this case the Information Commissioner had originally issued a decision reaching certain conclusions in relation to the applicant's requests for information from the County Council. These included the conclusion that in relation to certain of those requests the County Council was entitled to rely on section 14(1) of the Freedom of Information (FOI) Act 2000, namely that those requests were vexatious in the light of the applicant's previous behaviour. The Information Commissioner also ruled that certain requests were actually subject access requests, rather than FOI requests, and that the County Council was not able to rely on section 14(2) of the 2000 Act in relation to one particular request.

2. The First-tier Tribunal dismissed the applicant's appeal in a lengthy and comprehensive decision running to some 18 pages. The applicant now seeks permission to appeal from that decision. The First-tier Tribunal has already refused permission to appeal, again in a detailed ruling on file.

3. There is a right of appeal to the Upper Tribunal from a decision of the First-tier Tribunal but only on a point of law (according to section 11(1) of the Tribunals, Courts and Enforcement Act 2007). There is no right of appeal on issues of fact. It is also not the role of the Upper Tribunal to teach the First-tier Tribunal how to weigh and evaluate the evidence it receives.

4. The applicant's main point is that, in his submission, the tribunal has not applied rule 2 of the Tribunal Procedural Rules and so has failed to deal with it justly and fairly. His argument is that the County Council has lied all along about its actions and the tribunal disregarded evidence to that effect. In summary, he argues that the tribunal's decision is perverse and irrational. He has expanded on this basic point in a detailed 6-page statement.

5. For example, the applicant argues that in the light of the tribunal's finding of fact in paragraph 2 of its Statement of Reasons, the tribunal should inescapably have come to the conclusion that the County Council had repeatedly lied in order to conceal its alleged improper disclosure of personal data. Therefore, he argues, his FOI requests had a serious purpose in that they were designed to reveal the County Council's alleged improper behaviour and subsequent "cover-up".

6. I am not persuaded that this point is arguable. The applicant is seeking to place far too much weight on the tribunal's comments in paragraph 2 of its Statement of Reasons, which is an introductory passage setting the context for the appeal. There is no evidence that the tribunal regarded its statement in paragraph 2 as a significant assertion of fact. It is, in any event, questionable whether there is sufficient evidence for a conclusion that the full details of the allegations were communicated by the County Council's staff member to the police officer, in the absence of sight of the letter from DCI Critchley. Reading the tribunal's Statement of Reasons as a whole, there is no evidence that the tribunal reached a conscious conclusion that the details of the allegation had been communicated, rather than simply the limited information that the mother was applying for a residence order. The First-tier Tribunal Judge deals with this point at paragraphs 6-10 of her ruling. I am also not persuaded, for the reasons set out above, that the evidence which the applicant relies on to justify his assertion that the County Council did in fact disclose all the details of the allegations is in reality the proof he believes it to be.

7. Even if I am wrong on this point, and the First-tier Tribunal's decision involves an express finding that the County Council disclosed more information than it later (belatedly) admitted, this will not necessarily assist the applicant. Indeed, it is difficult to see how the applicant's FOI requests could actually assist in achieving his stated aim. The only potentially relevant requests were initially found to be exempt as requests of personal data, although this information appears subsequently to have been released. The other FOI requests, relating to such matters as data protection policies and County Council procedures, could not prove that any such deception as alleged by the applicant had occurred.

8. As indicated, the main thrust of the grounds of appeal in effect is that the tribunal's conclusions were perverse. A claim of perversity or irrationality means that it must be arguable that the tribunal's findings were so "wildly wrong" as to merit being set aside (see Sir John Donaldson MR in the Court of Appeal's decision in ***Murrell v Secretary of State for Social Services***, reported as Appendix to Social Security Commissioner's decision *R(1) 3/84*). That is a high threshold and simply is not met in the present case. To the extent that the grounds of appeal deal with other matters, and are not based on a claim of perversity or irrationality, they are essentially an attempt to re-open issues of fact which are for the First-tier Tribunal to determine.

9. In my assessment the First-tier Tribunal directed itself properly on the relevant law, made appropriate findings of fact on the evidence before it and gave comprehensive reasons for its decision, including its decision that the appeal should be dismissed as the requests lacked a serious purpose and were caught by section 14(1) of the 2000 Act. The tribunal reached a decision it was entitled to do and its decision displays no arguable error of law. In the light of all the considerations above, I therefore must refuse this application for permission to appeal.

10. It should be noted that rule 22(3) to (5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698, as amended) provide that the applicant may apply for this decision to be reconsidered at an oral hearing before the Upper Tribunal, but any such application must be made within 14 days.

(Signed on the original)

**Nicholas Wikeley
Judge of the Upper Tribunal**

(Dated)

19 July 2010