Tribunals Service
Information Rights

IN THE FIRST-TIER TRIBUNAL **Case No: EA/2009/0110**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL

Information Commissioner's
Decision Notice No: FS50188588
Dated: 22 October 2009

Appellant: Mr ROGER ALWYN BELL

Respondent: INFORMATION COMMISSIONER

On the papers

Date of Hearing: 1 June 2010

Date of decision: 22 June 2010

Before

Robin Callender Smith
Judge

and

Elizabeth Hodder
Dave Sivers

Submissions from:

Appellant: Mr Roger Bell
Respondent: Mr Mark Thorogood (Solicitor for the Information Commissioner)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Roger Bell ("the Appellant") wanted information from the Lancashire Constabulary in relation to a mobile safety camera site that was no longer in use at Earby, Sough A56. This site had been used to issue speeding tickets when it was active and the Appellant wanted detailed information about the weather conditions and the presence of sun visors in vehicles against which speeding tickets had been issued.

2. He also made a significant number of information requests under the Freedom of Information Act 2000 ("FOIA") about the operation of the site. The Lancashire Constabulary refused the Appellant's request under section 14 FOIA on the basis that they had become vexatious.

The requests for information

3. The way in which the requests were framed -- and the Lancashire Constabulary's responses -- can be seen from the following sample paragraphs of the Decision Notice:

"*2.* On 28 September 2007 the complainant asked the Constabulary for the following information in accordance with section 1 of the Act. *"As the site will no longer be used I request under the FOIA the DATES and TIMES for ALL speeding tickets issued at Earby, Sough A56 (outside park) in 2003, 2004, 2005 and 2006 including if possible the direction of travel."*

"3. On 24 October 2007 the Constabulary replied to the complainant information request. It informed him that his request would exceed the cost limits of the Act and would not be provided under section 12. It informed him that this was the case because the only way it could obtain the requested

information would be to view all the tapes in real time. It indicated that this would be impossible to do within the 18 hours allowed under the Fees Regulations. It offered to look into creating a fees notice should the complainant desire to pay for the work required to answer the request. It told the complainant that this was likely to be a large amount and asked him to confirm if he wanted an estimate.

"3. On 30 October 2007 the complainant responded to the Constabulary. He indicated that he wanted to narrow the request so that it was within the costs limit and offered an approach so that this could be done. He asked:

"I thought that you would have had the details on a database to print out. This not being so I request a sample approach, a subset of what was requested which will be more efficient on resources and still give me workable information.

*"What I propose you do is to look at the following tapes if they exist (I know this exists****) in the order below. This is to be done for 4 tapes if there are 3 hours long or 6 tapes if they are 2 hours long.*

First

*2005 Sunday, November 13, 20th****, 27th*

2004 Sunday, November 14, 21st, 28

2005 Sunday, November 6th

2004 Sunday, November 7th

2003 Sunday, November 16, 23rd, 30th

2003 Sunday, November 9.

Then any tape occurring 2005 between 13 to 27 weekdays (not Sundays) and 2004 any tape occurring between 1 and 28 weekdays (not Sundays)

Last

The information can be noted down in the following form

Tape date

Note Sunny 'S' or Dull 'D'.

Positive offence towards Kelbrook 'TK -- Number'.

Positive offence towards Earby 'TE -- Number'.

E.g.

20/11/05

S

TK 5.

TK 3.

Next tape.'

"5. On 1 November 2007 the Constabulary acknowledged the complainant's new e-mail. It informed him that it was possible to undertake in part the task suggested by the complainant. It informed the complainant that it

was unable to quantify how long it would take to locate, retrieve and view all the tapes. But if the complainant wanted it would undertake the work up to the cost limit in 'real time' once confirmation was received that the complainant was happy with the arrangement. It also informed the complainant the tapes over three years old were destroyed in accordance with its retention and disposal schedule and this meant the 2003 and perhaps the 2004 tapes he had requested would have been destroyed.

"6. On November 2007 the complainant responded to the Constabulary. He informed the Constabulary that if there was some overrun beyond the 18 hours that he will pay for those subject to an estimate from the police of the amount.

'A re-jigged time schedule discounting 2003 as follows.

First

2005 Sunday, November 13th, 20th****, 27th

2004 Sunday, November 14th, 21st, 28th

2005 Sunday, November 6th

2004 Sunday, November 7th

2005 January 16th, 23rd and 30th.

Then any tape occurring 2005 between 13 to 27 weekdays (not Sundays) and 2004 any tape occurring between 1 and 28 weekdays (not Sundays).

Last

The method of recording is as before.'

"7. On 8 November 2007 the complainant e-mailed the Constabulary to ask for the estimate to enable the information request to go ahead. On 9 November 2007 the Constabulary responded with a spreadsheet that included some data about historical tapes found at the central ticketing office. This information for 23 days contained the number of offences on a specific day and which direction they were in. It could not provide the directions for two of the dates because the tapes had been mislaid. It also said that to provide viewing information about the tapes was likely to take 80 hours and cost £2000."

4. The requests continued and the Constabulary informed the Appellant on 28 November 2007 that a second e-mail sent on 11 November 2007 -- indicating he was making a new FOIA request -- was vexatious within the terms of section 14 of the Act.

5 The 11 November 2007 e-mail from the Appellant stated: *"I have realised that I had not included whether or not the vehicle which had a positive offence was in sunny conditions, dull conditions or bright conditions when a positive offence took place and if the sun visor was down or up in my last FOI request. I have been unable to locate a suitably close weather station the sunlight data that keeps discrete debut records. The tapes are therefore the only source of this information ..."*.

6. The Lancashire Constabulary's response to the Appellant was in the following terms: "*We feel that in responding to your previous requests we have acted within our legal responsibilities/duty to assist applicants to utmost ability. It is hoped that further requests relating to the weather or to the use of the sun visor have no real significant purpose. When a person is caught speeding, the use of the sun visor or a change in the weather will not negate one's liability. As such, we feel that the requesting of such data serves no purpose except to harass the Constabulary. Therefore at present we feel that your*

request meets the ICAO's definition of 'vexatious'. However rather than refusing your request straightaway, we feel it would be appropriate to give you the opportunity to prove that this is not the case. As a result, please can you outline to as wide a request for whether or the use of sun visors has an 'real' purpose, as this would help us appreciate the value of your request."

7. The Appellant rejected the suggestion that his request was vexatious on 2 December 2007. He indicated he was researching the data available. On 13 December 2007 the Constabulary issued a refusal notice. It informed the Appellant it felt that the request 'inadvertently' fell within the categories of vexatious requests identified in the e-mail of 28 November 2007. It also informed the Appellant that the request was burdensome on the Constabulary. It advised him that if the data was essential for his case then he should obtain a court order for it. On 11 January 2008 the Constabulary acknowledged that the Appellant had requested an internal review -- which was conducted on 15 February 2008 -- and it then reiterated its opinion that the request was vexatious. The Constabulary felt the research had no serious purpose or value (with discernible public benefit), since vehicles were manufactured to specifications that would prevent them from fitting equipment that might be dangerous. If the sun visor obstructed view of the driver this would be deemed unsuitable for general road safety. The Appellant was told that if a court order was issued then the Constabulary would disclose the information.

The complaint to the Information Commissioner

8. On 24 December 2007 the Appellant complained to the IC. He specifically asked the IC to consider that he was not vexatious and that his requests followed a natural pattern:

"*to work with what the police can supply, have security of authenticity or can produce a method of checking sites a little after onset of enforcement and at a time after enforcement has ceased at temporary sites.*"

9. The Decision Notice (at Paragraph 16) identified that the Appellant focused on the request dated 11 November 2007.

10. From 5 March 2008 to 12 November 2008 there was detailed correspondence and enquiries between the IC, the Constabulary and the Appellant (set out at Paragraph 17 to 26) of the Decision Notice.

11. The IC, in making findings of fact, found the Appellant had made a number of requests about the specific mobile safety camera enforcement site after it had caught him speeding. The IC was aware that the Lancashire Constabulary had received five requests in relation to the site. The IC had also investigated a previous complaint from the Appellant about the total number of annual tickets issued at the same camera site. That case had been closed under the IC's procedures because the Constabulary had provided the requested information prior to investigation.

12. The site in question had been made redundant by the local authority at the time of the request. That was why the exemptions in relation to Section 31 [Law Enforcement] and section 38 [Health and Safety] were not relied on by the Constabulary in responding to requests about the site. There had been a subsequent Crown Court case about the validity and legality of the ticket that was issued by the site to the Appellant and the result find in favour of the Constabulary.

13. The IC had spent some time considering what information was held by the Constabulary in order to assess the application of the exclusion. The IC found the Constabulary held three types of recorded information about speed camera offences from temporary enforcement units.

14. The first was the video record of the offence which was held on tape. The second was COGNOS which contained relevant information about the Notice of Intended Prosecution but did not contain information about direction, weather, or sun visors. The third was a CD of photos of each offence. For each offence there were three appropriate photos (a close-up picture of the car, a second photograph of the offence with a date and time and then a picture of the registration mark of the car). The information on the CDs could not answer the question about sun visors in at least one of the two directions and the weather was not determinable in the photographs. The IC concluded that in order to process the request the Constabulary would have been required to go back to the videos.

15. In considering the question of vexatiousness the IC adopted the view of the Information Tribunal expressed in the case of *Ahilathirunayagam v Information Commissioner [EA/0006/0070]*. That case concluded that "vexatiousness" must be given its ordinary meaning of being likely to cause distress or irritation. The enquiry was an objective one and the test was the likely effect on a reasonable public authority.

16. The IC had considered the context and history of the request together with the strength and weaknesses of both parties' arguments in relation to 5 specific factors. These were:

    (1) whether compliance would create a significant burden in terms of expense and distraction;
    (2) whether the request was designed to cause disruption or annoyance;
    (3) whether the request had the effect of harassing the public authority or its staff
    (4) whether the request could otherwise fairly be characterised as obsessive; and
    (5) whether the request had any serious purpose or value.

17. The Constabulary believed that conditions 4, 1 and 5 were satisfied and concluded that the request was vexatious.

18. The IC had considered whether the request could fairly be characterised as vexatious and concluded this was the case. The Appellant had been caught speeding, successfully prosecuted and his subsequent appeal was unsuccessful. The IC was aware the Appellant had written over 200 letters about that specific offence. The IC analysed the time taken over a single issue (the validity of the speeding ticket) and concluded that there was a lack of proportionality in using the Act multiple times to investigate every aspect of the site. That contributed to the request being obsessive.

19. The IC was satisfied that the Constabulary had provided helpful responses in other requests made by the Appellant about the speeding ticket site and that there had been a significant burden on their resources, in trying to allay the Appellant's concerns. The IC was satisfied that it was likely that, even if the information were provided, it would not be adequate for the Appellant. While there is a fine line between persistent and being obsessive, this request was obsessive.

20. The IC -- in considering whether the request was obsessive -- considered whether the information request could also be seen as manifestly unreasonable. The IC believed that was the case because of the nature of what had been requested. The IC did not feel that it was possible to determine whether the weather was 'sunny', 'intermediate' or ’dull’ as the categories were open to interpretation and did not have consistent definition. The information effectively lost the purpose that it was being asked for because of this.

21. The IC was also satisfied that the request placed a significant burden on the Constabulary in terms of expense and distraction.

22. In terms of the Appellant's previous behaviour in terms of requesting information, the IC considered in detail the evolution of the request and

acknowledged that the Appellant had been reasonable in attempting to narrow down his request so that it fell within the cost limit. He also noted that the Constabulary could have provided more relevant advice and assistance in relation to earlier requests for information.

23. In considering whether the request had any serious purpose or value the IC concluded the arguments were finely balanced but had not been convinced that the information requested would provide a meaningful additional area of accountability.

24. The IC did not believe the request was designed to cause disruption or annoyance to the Constabulary. In terms of the request having the effect of harassing the Constabulary or its staff the IC believed that it had had that effect although he did not believe it was the intention of the Appellant to cause this.

25. Overall the IC concluded that it was reasonable for the public authority to conclude that the request was vexatious. The IC was unconvinced that the request for information would provide any additional accountability and believed that the request was obsessive, but overall the request had no serious purpose or value and that it had had the effect of harassing the Constabulary.

The appeal to the Tribunal

26. The Notice of Appeal was dated 29 November 2009 and grounds were contained in a letter dated 15 December 2009. A significant amount of additional documentation that accompanied the Appellant's notice of appeal had been sent to the Tribunal and was forwarded to the IC on 6 January 2010.

27. The points raised in the Appellant's letter of 15 December 2009 made it clear that the Appellant disputed the IC's conclusion in relation to vexatiousness.

Preliminary Issues for the Tribunal

28. There were two preliminary issues that arose for the Tribunal.

29. The first of these arose as a result of the Telephone Directions Hearing on 1 April 2010. The Appellant wanted to know whether the Tribunal Judge had made any declaration about Freemasonry on appointment as Judge. The Appellant had been warned in advance of the Telephone Directions Hearing that this was not a matter that the Tribunal Judge was prepared to entertain as an issue in the disposal of the appeal. Whether or not the Tribunal Judge had or had not made any such declaration was not a matter for the Appellant. The Appellant had advanced no cogent reasons for seeking this information in respect of this particular appeal.

30. Despite that warning the Appellant did raise the matter and subsequently the Appellant referred the Tribunal Judge's conduct in respect of this issue and his refusal to grant an adjournment of the appeal (sought on the basis that the Appellant was standing as an Independent Parliamentary Candidate in his home area at a time when the date for the General Election had not been set but was expected to be 5 May 2010, and refused on the basis that the appeal hearing itself was not due to take place until 1 June 2010, some three and a half weeks after the expected date of the General Election) to the Office for Judicial Complaints. At the time of determining this decision that complaint remained outstanding and is a matter of record.

31. The second point was that the Appellant was specifically reminded, at the same directions hearing, that any material that he wished to serve should be served not only on the Tribunal but on the IC. He sent a DVD of evidence that he wished the Tribunal to consider in the appeal proceedings. He had been told that the Tribunal was not prepared to copy this material on his behalf and send it to the IC. He was told that, if he had evidence that he wished the Tribunal to consider, then it should be properly served by him on the Respondent. In the event he did not serve a separate copy on the IC.

32. At the full consideration of the appeal on the papers the Tribunal considered whether it should play this material. It had the equipment at the appeal hearing to do so. The Tribunal Judge had checked to see that the DVD would play and had determined that the equipment worked and that the evidence could have been seen. The Tribunal decided unanimously that, because the Appellant had not served the material on the IC -- to allow the IC to comment on it as he saw fit -- as required in the directions, it was not in the interests of justice to view the material. As a result, it was not played.

Conclusion and remedy

33. In general, the tone of the Appellant's requests to the Lancashire Constabulary was polite, courteous and generally measured. He attempted to narrow down the parameters of what he was seeking.

34. It is the Tribunal's view that a key portion of what the Appellant was requesting was not information that – ultimately – could ever have been supplied to him because issues in relation to the weather and sun visors in cars travelling on that section of the road could never categorically have been resolved from the information retained by the police.

35. In that sense, if the police had grasped this nettle (or realised its significance) at an earlier point then it is quite likely that the matter would not have dragged on as it did. The longer it progressed, the greater was the danger that the Appellant would move into the area covered by Section 14 in terms of vexatiousness and repeated requests.

36. In so far as the IC decided (at Paragraph 61) that the request was designed to cause disruption or annoyance, the Tribunal does not agree but this does not alter the final outcome because it is only one element for judging vexatiousness.

37. Against that background – and an observation that the IC's Decision Notice included material from Paragraph 46 - 52 in relation to the background to the

request which had to be recorded because of the police's submissions to him – the Tribunal is satisfied to the required standard (the balance of probabilities) that the Appellant's request which is the subject of the appeal was vexatious in that it was obsessive.

38. Our decision is unanimous.

39. Although this appeal started as an appeal to the Information Tribunal, by virtue of The Transfer of Tribunal Functions Order 2010 (and in particular articles 2 and 3 and paragraph 2 of Schedule 5) we are now constituted as a First-tier Tribunal. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure an appeal against a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to the Tribunal for permission to appeal within 28 days of receipt of this decision.

40. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can found on the Tribunal's website at www.informationtribunal.gov.uk.

Robin Callender Smith
Judge

22 June 2010

IN THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)

RULING on an APPLICATION for PERMISSION to APPEAL
by

Robin Callender Smith
First Tier Judge

1. This is an application dated 20 July 2010 from Mr Roger Alwyn Bell for permission to appeal the decision of the First Tier Tribunal (Information Rights) ("FTT") dated 22 June 2010.
2. That decision dismissed the appeal of Mr Bell and upheld the IC's Decision Notice FS50188588dated 22 October 2009.
3. The right to appeal against a decision of the FTT is restricted to those cases which raise a point of law. The FTT does not accept 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").

GROUNDS OF APPEAL

4. The Appellant claims that the FTT decision should be suspended to allow "the video tape issue to be investigated and the videotapes preserved, without destruction".

5. The Appellant had always maintained that this appeal should be stayed until after a separate FFT decision in a case he describes as "the Masonic issue".

6. He wanted time to research what was entailed in proceeding to the 2nd Tier process of an appeal to the UTT.

7. The Appellant claims that evidence vital to the "correct judgement of the case" did not appear in the final bundle of documents and that the FTT decision was – as a result – unlawful. Those documents he states were emails to Lancashire Constabulary "showing that the constabulary had ignored his first request for the videotape and then on enquiring about it, it was supposedly logged, but nothing came of it.

8. The administration process was flawed and illegal.

REASONS FOR REFUSAL

9. Before coming to a decision in respect of this application for leave to appeal against the original FTT decision made on 22 June 2010 I have re-read all the

papers in respect of this matter including the original decision of the Information Commissioner and the decision of the FTT in relation to this appeal.

10. The facts and matters relied on by the FTT were set out – comprehensively – it its decision to dismiss his appeal.

11. In essence, the information he was seeking was never held – and probably could never have been held - in a form (beyond the information he actually received from the Lancashire Constabulary) which could have been supplied to him. Nothing has changed.

12. The relevance of the "Masonic" issue he claims has a bearing in relation to this appeal is a matter on which he is convinced is relevant. The FTT was and remains un-persuaded of any relevance of this issue in this appeal and no evidence has been advance by the Appellant – then or now – to alter the FTT's view.

13. No points of law or substance have been advanced in this appeal beyond matters raised and rejected by the FTT.

14. Under rule 21(3) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended Mr Bell has one month from the date this Ruling was sent to it to lodge an appeal there.

Robin Callender Smith

Judge
First-tier Tribunal (Information Rights)
1 August 2010