



FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER

Appellant: Mr Tony Wise	Tribunal Ref EA/2010/0166
Respondent: The Information Commissioner	

DECISION NOTICE

1. Mr Wise appeals against a decision notice issued by the Information Commissioner on 6 September 2010 to the effect that a request for information which he submitted to Lancashire County Council on 12 March 2009 was vexatious.
2. Nearly five years ago now Mr Wise was the subject of troubling and unfounded allegations made to the Council and to the local police. Mr Wise was and remains critical of both organisations in relation to their conduct and in relation to the evidence which they have offered to various investigating bodies.
3. He followed the Council's complaints procedure right through to a hearing of its appeals and complaints committee which took place on 10 December 2007. He has invoked the Independent Police Complaints Commission and the Local Government Ombudsman. He has asked the Information Commissioner to assess the Council's compliance with the Data Protection Act. He also complained to the General Social Care Council about actions taken by some of the Council's employees. None of these bodies has provided, in Mr Wise's view, adequate redress.
4. It is significant that between July 2007 and March 2009 Mr Wise made a number of requests for information to the County Council. These are listed at pages 7-8 of the bundle. Some of these requests are wide in scope and specific in detail. (Mr Wise accepts that these requests were made. He argues that they were not all made or

Decision Continued**Appellant:** Mr Tony Wise**Date of direction:** 18 May 2011**Tribunal Reference Number:** EA/2010/0166

dealt with under the Freedom of Information Act but, for present purposes, it is the fact that the requests were made which is important). By September 2008 the Council had begun to regard Mr Wise's requests for information as vexatious (pages 381-2). This approach was confirmed by the Commissioner and then by a Tribunal last year.

5. On 19 February 2009 Mr Wise made another request concerning the Council's publication scheme. He was dissatisfied with the way they dealt with that request so asked for an internal review. It was in the course of the review that Mr Wise made the request with which this appeal is concerned. It appears at page 105 in the bundle and asks for several policy documents concerning the processing of information.
6. Mr Wise explained the request by saying that he had seen regular reports about the "Baby P" case and the consequences of lack of data sharing. He himself had "gone through the mill" because of data sharing and he wanted to compare the two experiences and to point up the differences in treatment. He added that the information, if produced, would have been used in a court action against the police.
7. Mr Wise's evidence on this point meant that we were unable to accept his assertion that the request was "completely unrelated to previous requests". In our judgement his experiences since 2006 were firmly in his mind and the information request was another episode in a long struggle.
8. Section 14(1) relieves a public authority of any duty to comply with a request for information "if the request is vexatious". The Council refused Mr Wise's request on this ground. Mr Wise's challenge to the Council's decision failed before the Commissioner and he now appeals to the Tribunal.
9. It is convenient here to mention some procedural issues.
10. The summary of the Commissioner's decision (page 1) gives the impression that he confined himself to asking whether a reasonable public authority could find this request for information vexatious. We were happy to accept the assurances of

Decision Continued**Appellant:** Mr Tony Wise**Date of direction:** 18 May 2011**Tribunal Reference Number:** EA/2010/0166

Counsel for the Commissioner that this was misleading. As the decision notice shows, when read in full, the Commissioner has reached his own conclusion.

11. The bundle prepared by the Commissioner included a document (page 307) which had been redacted. It seems that the missing material indicated the information which is the subject of the request. At the hearing Mr Wise accepted that the redaction was reasonable. At the same time an unedited copy of the document had been supplied to the Tribunal, although there was no direction in respect of a closed bundle. We did not look at the full document and both parties agreed that we need not do so.
12. In an email just before the hearing, Mr Wise complained, with justification, about the very late arrival from the Commissioner of a skeleton argument and a bundle of authorities. Only one of us had received the skeleton argument and it turned out that the bundle of “authorities”, which seemed to consist of other decisions of the First Tier Tribunal, was not referred to at the hearing. Mr Wise did not ask us to put the case off and we were satisfied that, in the event, there was no prejudice to him and that it was safe to proceed.
13. After Mr Wise explained to us the reasoning behind his request, Ms Clement, for the Commissioner, referred to the detailed reasoning in the decision notice. In particular she referred to the Commissioner’s policy in relation to vexatious requests which identifies five factors to be “balanced”. One or more of those factors may well be present in many cases in which a request is regarded as vexatious but there is a risk that in regarding our task as that of “balancing” those factors that we stray from the statutory language.
14. Having considered all the evidence, we concluded that the request made on 12 March 2009 was indeed vexatious. It has to be viewed in the context of Mr Wise’s dealings with the Council described in paras 3-5 above. The request was in our judgement still motivated by the grievance he felt and, in our judgement, he was using the Act as a weapon to prolong his battle unreasonably. We might have reached a different conclusion if it seemed to us that Mr Wise had some other good

Decision Continued**Appellant:** Mr Tony Wise**Date of direction:** 18 May 2011**Tribunal Reference Number:** EA/2010/0166

purpose behind the request but in our view there was none. The documents requested were Council policy statements only and related to 2009. It was difficult to discern how they could have been of any advantage in connection with any proposed litigation against the police.

15. We therefore agreed with the conclusion reached by the Council and the Commissioner and we dismissed the appeal.

Signed: NJ Warren
Chamber President

Date: 18 May 2011

N Makanji

M Clarke



FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER

Appellant: Mr Tony Wise	Tribunal Ref EA/2010/0166
Respondent: The Information Commissioner	

DECISION NOTICE

1. Permission to appeal is refused.
2. The issue before the Tribunal was whether Mr Wise's request for information dated 12 March 2009 was vexatious. That was a conclusion of fact for the Tribunal.
3. The Tribunal considered all the written evidence and gave both sides a full opportunity to state their respective cases at the hearing. The hearing did not end until after both sides had been given the opportunity to add anything further.
4. The Tribunal's written decision was approved by all three members of the Tribunal. The omission of the members from the decision notice was a clerical error which will be corrected.

Signed: NJ Warren	Date: 16 June 2011
Chamber President	



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

UPPER TRIBUNAL CASE NO: GIA/1871/2011

APPLICATION FOR PERMISSION TO APPEAL TO THE UPPER TRIBUNAL

Tribunals, Courts and Enforcement Act 2007, section 11
Tribunal Procedure (Upper Tribunal) Rules 2008

Appellant: Tony Wise
Respondent: Information Commissioner
First-tier Tribunal no: EA/2010/0166
Date of hearing: 28 April 2011

DECISION

Permission to appeal is refused.

REASONS FOR DECISION

A. INTRODUCTION

1. This was one of two applications that I heard on 31 January 2011 at the Civil Justice Centre in Manchester. The other application bore reference number *GIA/2560/2011*. Mr Wise attended the hearing on his own. The Information Commissioner was not represented. I am grateful to Mr Wise for the patience and courtesy with which he presented his case and responded to my questions.

B. THE LAW

2. An appeal to the Upper Tribunal lies on 'any point of law arising from a decision' (section 11(1) of the Tribunals, Courts and Enforcement Act 2007). I have a discretion to give permission to appeal if there is a realistic prospect that the First-tier Tribunal's decision was erroneous in law or if there is some other good reason to do so (Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538).

C. BACKGROUND

3. The history of this case dates back to allegations that were made, to the police and to the local authority's social services Department, about Mr Wise's care of his daughter. Those allegations were unsubstantiated and were subsequently proved to be so, to the satisfaction of both the police and the Department. As part of their investigations, the police took the daughter's mother to the school. Mr Wise told me that she was drunk and frightened her daughter, who ran off home and hid in a cupboard. This led Mr Wise to complain to the police and, when they did not respond, to the Independent Police Complaints Commission. The

course of the Commission's investigation caused him to become concerned about the disclosure of information that the social services Department had made to the Commission. This led to freedom of information requests from the local authority and a complaint to the Local Government Ombudsman.

D. THIS CASE

4. On 12 March 2009, Mr Wise asked the local authority to disclose information, essentially relating to its confidentiality policies. It replied that it considered the request vexatious. The significance of that is that the local authority was not obliged to comply with the request by virtue of section 14(1) of the Freedom of Information Act 2000.

5. Mr Wise complained to the Information Commissioner, who decided that the request had been vexatious. Mr Wise exercised his right of appeal to the First-tier Tribunal. The tribunal considered whether it should strike out the appeal as having no prospect of success. Judge McKenna decided that that was not the appropriate course of action and left the appeal to be decided at a hearing. The hearing took place on 28 April 2011 and the tribunal's reasons are dated 18 May 2011. The tribunal dismissed the appeal.

E. ANALYSIS

6. Mr Wise told me that his complaint about the First-tier Tribunal was that it had not heard his appeal at all. He understood Judge McKenna to have decided that that is what would happen and it did not take place.

7. Mr Wise has misunderstood what Judge McKenna decided and, therefore, what took place at the hearing. All that Judge McKenna decided was that the appeal should not be struck out. She did not decide that the tribunal at the hearing had to hear and decide every issue that Mr Wise wanted to raise. The decision under appeal was that the request to the local authority had been vexatious. That was the issue that the tribunal had to decide first. If it decided (as it did) that it was vexatious, no other issue arose. The short answer to Mr Wise's criticisms of the tribunal is that the tribunal did not have to deal with any other issues. Indeed, in strict legal terms, it had no jurisdiction to deal with them.

8. The issue for me, therefore, is whether the First-tier Tribunal made any error of law in deciding that the request was vexatious. I consider that it did not. The tribunal applied its own caselaw on the meaning of 'vexatious'. That caselaw is, on general principle, not binding on the tribunal itself. Authoritative guidance will, in an appropriate case, be provided by the Upper Tribunal. I have approached the issue on the normal meaning of the word. I have already dealt with an issue of vexatiousness in a previous application by Mr Wise – *GIA/1499/2010*. What follows largely repeats what I said that.

9. As there was no dispute about what Mr Wise had done or about the circumstances in which he did it, the issue for the tribunal was whether the request was properly classified as vexatious. That involved a matter of judgment. This affects the way that the Upper Tribunal approaches the question of whether the First-tier Tribunal made an error of law. It is the nature of matters of judgment that different panels, each acting quite properly and on the correct understanding of the law, may come to different conclusions. It is not for the Upper Tribunal to substitute its own judgment in such cases. The Upper Tribunal's role is to decide if the

First-tier Tribunal was *entitled* to exercise its judgment as it did. I consider that it was for the following reasons.

10. Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it. As I have told Mr Wise before, his requests have become disproportionate to his original aim. There are numerous ways in which requests can become vexatious. The background that I have outlined shows what might be called a classic example of vexatiousness by drift. Mr Wise's concern began with the behaviour of the police, which has led him to the police themselves, the Commissioner, the local authority and the Ombudsman, tracking issues and searching out information as he went. And along with drift the requests have become wider in scope. The request in this case concerned the policy and practice of confidentiality. That is a very long way from Mr Wise's original concern: why did the police take his drunken wife to their child's school? That alone justifies the First-tier Tribunal's decision.

11. There is also this factor. Mr Wise told me that he had subsequently found some, but not I believe all, of the information he had requested on the authority's website. To make requests for information that is readily available in that way merely adds to the burden on the local authority's resources. That further supports the tribunal's decision.

12. For these reasons, I have refused permission to appeal. There is no realistic prospect that the decision involved the making of an error on a point of law and there is no other reason for giving permission.

**Signed on original
on 6 February 2012**

**Edward Jacobs
Upper Tribunal Judge**