



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**Case No. EA/2011/0110**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FER0299722**

**Dated: 28 March 2011**

**Appellant: Nicholas Harding**  
**First Respondent: Information Commissioner**  
**Second Respondent : London Borough of Camden**

**Heard at: Field House, London**

**Date of consideration: 30 September 2011**

**Date of decision: 15 October 2011**

Before

**Richard Enderby**

**Richard Fox**

**Christopher Hughes**

**Appearances: This hearing was conducted on the papers.**

**Subject matter:**

FOIA: Vexatious or repeated requests, s.14.  
Environmental Information Regulations 2004: Exception: Request manifestly unreasonable, r.12(4)(b).

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal rejects the appeal for the reasons stated.

Signed

Christopher Hughes

Judge

Dated this 17<sup>th</sup> October 2011

## **REASONS FOR DECISION**

1. In a brief period up to 8 December 2009 Mr Harding submitted a number of requests for information to Camden Council in connection with a development in Dalby Street. Some of these requests were in several parts and, as reproduced in the information Commissioner's decision notice, extend over four pages. The council responded on 25 January 2010 and in reliance on section 12 (the cost of compliance exceeded the appropriate limit) and section 14 (the request was vexatious) of the Freedom of Information Act declined to provide the information requested. In its response it indicated that the total cost of meeting all his freedom of information requests between the 26 June 2009 and 1 December 2009 would be £1275. Among the points made in their letter was that the language adopted in several of the questions in the requests demonstrated that his purpose was to argue with the Council and not to obtain information that he did not already have. The Council felt that there was no serious purpose or value in the requests and they were causing disruption to the Council and had the effect of harassing the Council. It further declined to carry out an internal review and referred him to the Information Commissioner.
2. Mr Harding complained to the information Commissioner on 27 February 2010, on 28 March 2011 the Commissioner issued his decision notice. The Commissioner concluded that the requests related to environmental information and therefore fell to be considered under the Environmental Information Regulations 2004 rather than the Freedom of Information Act 2000. The

Commissioner concluded that the requests were manifestly unreasonable and the council was therefore entitled to refuse them under regulation 12 (4)(b) of the EIR.

3. Mr Harding appealed against this decision. In his appeal he referred to previous letters which he felt set out his position. He provided extensive information about his information requests from Camden Council and emphasised the large bulk of material by way of correspondence and documents which have been accessed by him in connection with the planning issue. He stated:-

"My interpretation of the decision notice is that there is essentially only one reason for endorsing Camden's ruling and that is the sheer number of requests. I am confident that anyone who scrutinises all, or even a random few requests will see that they are all justified. The quantity is a reflection of the number of "topics", sometimes of inconsistent information. "

4. The Tribunal has considered the letters to which he referred in understanding the nature of his case. In one letter to the information Commissioner he provided a detailed history of some of his involvement with Camden Council including attaching seven pages of e-mails dating from 2005 relating to his activities in campaigning for changes to cycle and pedestrian facilities at a road junction.
5. In a letter dated 18 January 2011 in response to the provisional views of the Information Commissioner, Mr Harding set out, in a letter of some 22 pages (including appendices), his position. Much of this correspondence was concerned with his view of inaccuracies and also errors in statements of the Council and its documents. He alleged that there were inconsistencies in the public statements and changes in the Council's position as a result of his campaigning. This he felt should merit thanks rather than "the accusation of being vexatious, obsessional etc". In one appendix to this letter he identified 91 items of correspondence passing between himself and the council since 2008 in connection with the Dalby Street issue. A further appendix gave background notes on 24 specific issues of concern that he had been pursuing in connection with this planning matter with the council. Another appendix identified 19 different council officers with whom he had been in correspondence. These included the Head of Legal Services, the Director of Culture and Environment, the Director of Finance and the Chief Executive (he acknowledged with respect to specifically the Chief Executive that

some correspondence was with PAs). A further appendix to the letter set out the FOIA requests he had made showing the topics and number of requests in connection with this development. The list extends over three pages.

6. In his response the Information Commissioner who reaffirmed his decision notice and drew attention to the impact on the Council of drawing staff away from their other duties and creating a significant burden of expense and distraction.
7. Camden Council in its response supported the conclusion of the Information Commissioner.
8. Camden council made a number of attempts to diminish the demands Mr Harding was making on their resources. On 22 January 2009 a director of Camden Council wrote to Mr Harding:-

"whilst I can assure you we have always sought to ensure that your comments had been taken into account in the process, I cannot continue to devote officers' time responding to your criticism of the scheme when the decision has been taken."

A further e-mail sent to him on 19 June 2009 addressing some of his points stated:-

"I apologise if some of the points raised in your letters have not been answered specifically. It would appear that some are not picked up due to the volume of correspondence that was received from you by several officers in the latter part of last year. As I'm sure you understand officers have devoted a considerable amount of time in seeking to address the points you raise but obviously you will appreciate the Council has finite resources and there is a limit to the time we can allocate answering queries that seek to revisit and reopen issues."

In an e-mail dated 18 September 2009 the Director of Resources attempted to draw a line under the continued correspondence:-

"I would also add the tracking in responding to your correspondence has proved an extremely resource intensive task because of the volume of your

communications, the fact that this has often been addressed in different versions to different people and the Council and because many of your queries have been asked repeatedly in slightly different forms.

The council will continue to respond to freedom of information requests. However given my duties to the residents of Camden as a whole I do believe it is not an appropriate use of resources and the Council to engage in further protracted correspondence about points that have not only been properly considered under the statutory processes and have also been comprehensively responded to. This approach is fair and reasonable and does not in my view constitute maladministration."

Mr Harding could not accept this position and wrote to the Chief Executive seeking to engage in detailed discussion of various issues. On 6 November 2009 the Chief Executive, referring to the communication from the Director of Resources stated:-

"I can only reiterate ... that it is not an appropriate use of resources for the Council to engage in further protracted correspondence about points that have not only been properly considered under the statutory processes that have also been comprehensively responded to."

9. In addition to raising these issues with Camden Council Mr Harding raised issues in connection with this planning and road issue with the Local Government Ombudsman. Having looked at some of the issues the Ombudsman concluded that there was no reason for him to investigate a complaint about this matter and closed the investigation on that basis.
10. The Tribunal was impressed by the attempts that the Council made to answer Mr Harding's concerns and the resources it has put in, over a considerable period of time, to responding to his requests for information and explaining its position.
11. In this case Camden Council considered the requests for information under the Freedom of Information Act. The Information Commissioner however concluded that the requests should have been considered under the Environmental Information Regulations. Having considered the Regulations it is by no means clear to the Tribunal that such a conclusion is correct; however the Tribunal has

not received or sought any submissions on the point which was accepted by all the parties to this appeal. In any event the tribunal is satisfied that the legal test to be applied whether the requests are "vexatious" under FOIA or "manifestly unreasonable" under EIR are indistinguishable.

12. The Tribunal, in considering this appeal has borne in mind that the word "vexatious" is an ordinary English word in everyday usage. While the Information Commissioner may have developed his own guidance with respect to this matter; from the perspective of the tribunal the common sense application of the ordinary meaning of the word to the actual circumstances of an individual case must be the correct approach to adopt. The Oxford English Dictionary provides useful guidance as to the meanings of vexatious and associated words. While this guidance extends over several columns it seems to the tribunal that a definition of "tending to cause trouble or harassment by unjustified interference" fairly summarises the meaning – the "tending to cause trouble ... by unjustified interference" is, in the view of the Tribunal, a clear case of something which is "manifestly unreasonable".
  
13. In considering this case it is necessary to look at the underlying history and the impact of the repeated requests on the Council. The Dalby St development has been the subject of the usual statutory processes. There has been an inquiry addressing road issues. Mr Harding has referred the Council to the Ombudsman who concluded that he should take no action. There has been an enormous level of contact between Mr Harding and the Council over the years on this issue and the Council have devoted considerable resources (which clearly must amount to some thousands of pounds of officer time during this period) to providing him with information, answering his queries and explaining the council's actions. From Mr Harding's own account (see paragraph 5 above) over the years the Council has provided him with a considerable amount of information and devoted considerable resources to his concerns. The simple truth of the matter is that he disagrees with the decision to permit the development and is challenging the Council by every means at his disposal on the issue. The rights and wrongs of the planning decision do not concern this tribunal being outside its remit. It appears that the development is going ahead and Mr Harding is not reconciled to this. There comes a time when it is appropriate to acknowledge that further action is unavailing. No serious purpose is now being furthered by his actions in seeking information from Camden Council. He has caused considerable expense

and disruption to the Council and the tribunal is entirely satisfied that these requests are an unjustified interference-they are manifestly unreasonable or vexatious.

14. Accordingly the Tribunal finds that the Information Commissioner, in his decision notice in concluding that these requests were properly viewed as manifestly unreasonable under Regulation 12(4)(b) of the Environmental Information Regulations 2004, came to a determination which was in accordance with the law and therefore the Tribunal rejects this appeal.

**Chris Hughes**  
**Information Judge**

**17 October 2011**