



IN THE FIRST-TIER TRIBUNAL

**GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2011/0302, EA/2012/0059, EA/2012/0060

ON APPEAL FROM:

**The Information Commissioner's Decision Notices No:
FS50381386, FS50395593, FS50399683**

Dated: 28 November 2011, 27 February 2012, 27 February 2012

Appellant: John Poulton

2nd Appellant: Ann Wheelwright

Respondent: The Information Commissioner

2nd Respondent: Basildon Borough Council

Heard on the papers: Field House

Date of Hearing: 23 July 2012

Before

Christopher Hughes

Judge

and

Jacqueline Blake and Rosalind Tatam

Tribunal Members

Date of Decision: 8 August 2012

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notices dated 28 November 2011, 27 February 2012, 27 February 2012 and dismisses the appeals.

Dated this 8th day of August 2012

Judge Christopher Hughes

REASONS FOR DECISION

Introduction

1. These three appeals to the First-tier Tribunal are the latest phase of an exceptionally long running dispute between the First Appellant (Mr Poulton) and the Second Respondent (Basildon District Council, “The Council”).
2. Mr Poulton owns several properties in the Council’s area including one of which the Second Appellant (Mrs Wheelwright) is the tenant. The status of that property in planning terms has been a disputed issue between Mr Poulton and the Council and there have been a number of other conflicts.
3. The information request from Mrs Wheelwright, although signed by her, was stylistically (typeface, language etc) and in terms of content similar to the requests from Mr Poulton. Mr Poulton has acted on her behalf in conducting the request and appeal to the Tribunal and the Council and Information Commissioner were justified in treating them as linked in the analysis of the requests.

The request for information

4. As indicated the three requests under consideration are related. The request of 5th November 2010 from Mrs Wheelwright is representative:-

“Under the Freedom of Information Act I am therefore now requesting the council to confirm or deny whether you hold any recorded information showing the date that the other issues I raised were closed by the council, the reason why they have been closed, and the name of the person that authorised these other issues to be closed.

Basildon Council have previously submitted a statement to the Planning Inspectorate in which they said [property identification redacted] had been registered by the council as unfit for human habitation since 1989. I am requesting to be told whether you have any recorded information showing [property] to currently be registered as unfit for human habitation, and if so do you hold any recorded details of why it is so registered, and whether you hold any records showing what works are considered by the Council to be necessary to make [property] fit for human habitation. If it is no longer registered as unfit for human habitation I am requesting to be told whether you

have any recorded information showing the date of when circumstances are said to have changed, and the reason why it is no longer registered as unfit for human habitation.”

5. In his requests Mr Poulton sought information about some of his long running disputes with the Council, information relating to a survey he claimed was carried out in 1978 and information relating to several other properties. The Council established that to search for those records in the off-site archive where the Council stored old documents would cost in excess of £1300. The Council concluded that the requests were vexatious and declined to provide the information sought relying on s.14(1) FOIA.

The complaints to the Information Commissioner

6. The Appellants were dissatisfied with this response and complained to the Information Commissioner. During the course of his investigation he concluded that much of the information requested fell within the category of environmental information and that the relevant framework for consideration of the request was the Environmental Information Regulations (EIR).
7. Having conducted his investigations the Information Commissioner concluded that the requests were either vexatious under FOIA or manifestly unreasonable under Regulation 14(2)b of EIR and the Council was therefore entitled not to comply with the requests.

The appeal to the Tribunal

8. In appeals against the Information commissioner’s Decision that requests are considered “vexatious” or “manifestly unreasonable” the burden of the appeals lies with the Appellant to show that the Information Commissioner was wrong. In the voluminous appeals to the Tribunal Mr Poulton put forward a number of grounds of Appeal, some of them raising issues beyond the scope of the Tribunal. In summary he argued:-

- The requests were neither vexatious nor manifestly unreasonable,

- With respect to environmental information the balance of the public interest lay with disclosure
 - There was unjustified delay in the Council's response to the request from Mrs Wheelwright.
9. In support of his requests for the information Mr Poulton indicated that he wished to have it for a planning appeal hearing, a council tax appeal and to provide the information to the police.
10. The Tribunal noted that the Information Commissioner had addressed the question of delay in his decision notice and found a breach of the EIR. The Tribunal was satisfied that the Information Commissioner was under no obligation to make further inquiry as to the cause of delay. Accordingly there was no error in law and this ground of appeal fails.

The issues for the Tribunal

11. In considering this appeal the Tribunal reminded itself of its powers which are set out in section 58 FOIA:
- “(1) If on an appeal under section 57 the Tribunal considers
- (a) that the notice against which the appeal is brought is not in accordance with the law, or
- (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
- The Tribunal shall allow the appeal ...
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”
12. The questions for the tribunal were therefore whether in the light of the evidence the Information Commissioner was or was not right in law to find that the requests were vexatious or manifestly unreasonable and if the requests were within EIR and manifestly unreasonable, that the balance of public interest lay in permitting the Council not to disclose the information.

13. The Tribunal did not consider it necessary to analyse in detail which parts of the information requested fell within EIR and which within FOIA. In order to resolve the issues proportionately it has looked at the requests in the round to determine whether the requests were vexatious/manifestly unreasonable and looked overall at public interest issues.

Evidence

14. In his decision notices the Commissioner has provided considerable detail of the history of contact between Mr Poulton and the Council. In DN 50381386 at paragraph 19 he noted:-

“Over a number of years, the complainant has alleged that there were “serious irregularities” in the planning department. A letter from the Local Government Ombudsman dated 10 December 2001 gives an idea of the wide scope and volume of complaints that the complainant was raising at this time, although the issues listed below are by no means the extent of the matters that the complainant complained about. Issues brought to the attention of the Ombudsman include:

- (i) The council’s position on the development rights relating to one of his properties was incorrect and that it had therefore mislead prospective purchasers of his property
- (ii) He had been overcharged in planning fees
- (iii) A false application was registered in his name and officers withheld this fact and mislead the court deliberately in this and other ways.
- (iv) The council had failed to register planning applications he had made
- (v) The council had not dealt with his complaints in accordance with its published procedure
- (vi) Council officers forced entry into the complainant’s property and took photographs without being authorised to do so in 1978
- (vii) Council officers recently entered [property name] without authority resulting in damage to the property.
- (viii) False photographs and other information were submitted with his planning application appeal to the Planning Inspectorate which had played a part in the appeal being dismissed

(ix) The council's monitoring officer failed to put cases of maladministration before the full council"

15. Those were the issues the Ombudsman was invited to consider 11 years ago. There has however been a sustained pattern of attempts by Mr Poulton to challenge the Council. From the bundle it is possible to identify a considerable number of other challenges to the Council:-

- Court proceedings in 1999
- A Planning Inspector in July 2002 found that Mr Poulton had been charged the wrong fee
- An audit investigation prompted by Mr Poulton cost the Council £6000 in 2003
- On 18 June 2008 a Valuation Tribunal hearing
- In 2010 Mr Poulton was arguing that a schedule of costs amounting to approximately £10,000 arising from an appeal against the Council which he had lost was "extortion"
- In 2010 the Audit Commission found the actions of the Council not unlawful in connection with its handling of council tax payments
- Two completed Police investigations into the Council and a third which in August 2011 appears not to have been completed.
- An unsuccessful planning appeal with respect to the property occupied by Mrs Wheelwright in 2012

16. Mr Poulton is understandably frustrated that different statutory frameworks affecting his properties appear to give different results. However it is clear that he has been in conflict with the Council for twenty years and still has not had a finding of substance which has given him what he desires – if he had achieved success in his planning applications it seems likely that he would not be pursuing so many challenges to the Council.

17. In considering these requests the Information Commissioner carried out an analysis using his standard methodology for considering whether a request is vexatious /manifestly unreasonable. This is of some utility in exploring the issues. He

considered that the volume and manner of the requests were obsessive and were an attempt to re-open other disputes which had not been resolved to Mr Poulton's satisfaction. He concluded that the requests had the effect of harassing staff, and compliance would create a significant burden on the Council. In his appeal and submissions Mr Poulton focussed on the minutiae of his disputes and did not adequately respond to these points made by the Commissioner.

Consideration

18. Vexatious and manifestly unreasonable are synonyms. They have a clear meaning in English. The Commissioner has in this case helpfully pointed out features which give rise to concern and the Tribunal accepts the force of these points. Viewed in the round it is clear that these applications for information are part of a relentless challenge to the Council which has gone on for many years, at great expense and disruption to the Council, some distress to its staff, with negligible tangible results and little prospect of ever attaining them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way.
19. In so far as the information falls within EIR it is necessary to consider the public interest in disclosure. In the view of the Council and the Commissioner the motivation for the request is entirely Mr Poulton's private interest. If indeed the police want the information they have powers to request it and do not rely on EIR. The Information Commissioner helpfully set out his consideration at paragraphs 33-34 of 50381386:-

“Both the FOIA and the EIR give the public unprecedented rights to access recorded information held by public authorities. In exercising those rights, members of the public must be responsible. It was not the intention of the legislation that compliance with requests would impede disproportionately and unfairly on the many other important duties that public authorities have to carry out, often with limited resources in place. Similarly, it is not the intention of the legislation to allow members of the public to pursue grievances against public authorities to an unreasonable extent.

34. The Commissioner considered that it was clear that on this occasion, the complainant had not exercised his rights responsibly and this had resulted in an unacceptable burden being imposed on the public authority's limited resources. The Commissioner considered that the complainant's requests are, in the main, an attempt

to pursue his own personal complaints against the authority because he can not accept the responses provided to him, and in view of that, the Commissioner did not consider that there was any public interest in compliance with these requests that would outweigh the particularly strong public interest in upholding the exception in order to protect the public authority's resources.”

Conclusion

20. The Tribunal endorses those comments. These linked requests for information are an abuse and serve no public interest. The Tribunal is satisfied that the Information Commissioner's decisions were correct in law and rejects all three appeals by Mr Poulton and Mrs Wheelwright.

21. Our decision is unanimous

Judge Christopher Hughes

Date: 8 August 2012