FOIA s.14 – vexatious or repeated requests

Graham Betts v IC

EA/2007/0109

19th May 2008

Cases:

Facts

This appeal arose from a decision by East Riding of Yorkshire Council ("the Council") to treat a request by the Appellant as vexatious. The Tribunal found this to be a borderline case and it was decided on a majority basis.

The Appellant was involved in a road accident and made a claim against the Council for failure to maintain the highway. The Appellant sought – via numerous requests under FOIA over a two-year period – to obtain information to show that the Council could not avail itself of a defence to the claim. The previous requests mostly concerned risk assessments and inspection period assessments for the Council's highways. The request which was the subject of this appeal asked for information and explanations in relation to the Council's health & safety policies and procedures.

It took the Council a long time to respond to certain of the requests and the situation was considerably confused by the provision of incorrect information in a letter dated mid- 2005. It took the Council some considerable time (ie: not until February 2006) to realise its mistake, to clarify the information and to apologise to the Appellant for the confusion. By this stage the Appellant was convinced that the actions of the Council were based on deception and made a series of complaints against a variety of officers.

The Appellant complained to the IC under section 50 of FOIA. The IC in turn concluded that the Council had been entitled to reject the request on the grounds that it was vexatious.

Findings

The Tribunal noted that on the face of it and if taken in isolation, there was nothing vexatious about the content or terminology of the request that was the subject of the appeal. It was concerned moreover that responding to the request would most probably, at least in the first place, be a simple matter, not involving a significant burden in terms of cost or labour. For this reason, the Tribunal's starting point was one of caution and concern that section 14 should not be inappropriately applied. The Tribunal was concerned moreover that the Council could, as the IC put it, "*have done better*".

The Tribunal found that the request – albeit asking for health & safety information, ostensibly not related to highways – ***was*** linked to the previous FOIA requests. It referred to risk assessments and indeed built upon a comment he made in an earlier email dated 14 August 2006 in which he referred to the Health & Safety at Work Act. It was clear to the Tribunal that the Appellant was not – at least

from February 2006 onwards – truly seeking information but was rather seeking to obtain an admission that the Council did not have an inspection regime in place and therefore a particular statutory defence to his road accident claim did not apply. The Tribunal noted that it was not the purpose of FOIA to assist requesters in placing undue pressure on a public authority either as part of a campaign to expose maladministration or in order to force

it into an admission of liability.

The Appellant's refusal to let the matter drop and the dogged persistence with which he pursued his requests, despite disclosure by the Council and explanations as to its practices, indicated that the latest request was part of an obsession. The Tribunal accepted that in early 2005 the Appellant could not be criticised for seeking the information that he did. Two years on however and the public interest in openness in this matter had been outweighed by the drain on resources and diversion from necessary public functions that were a result of his repeated requests.

The Appeal was dismissed and the Decision notice upheld

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Observations

The minority lay member considered that the request was in fact unrelated to those previously made (ie: it concerned health & safety and not highways risk assessments). He was of the view that the Appellant's conduct in relation to the previous requests had been vexatious but that the Council needed to treat this latest request differently on the basis that it concerned a different matter. In addition, he did not accept that the provision of an existing policy document on health and safety would, by itself, impose a significant burden. He pointed to the existence of such documents on the Council's website in this regard. Particular care should be taken, he felt, before imputing a motive demonstrated in relation to one function of the local authority, to a request in respect of a different function.

Conclusion

The Tribunal held that the request for information was vexatious and so the appeal was dismissed and the decision notice upheld.