

FOIA s.16(2) - Duty to advise and assist

FOIA s.14 – vexatious or repeated requests

Mr David Billings v IC

EA/2007/0076

6th February 2008

Cases:

Facts

The Appellant objected to a number of matters included in a Decision Notice that had been substantially in his favour and which had been promulgated after the main aspect of his dispute with the public authority on disclosure of information had been resolved.

The public authority had originally rejected the request for information on the basis that it was vexatious under FOIA s.14. It maintained that, having reached that conclusion, it did not have an obligation to provide advice and assistance under s.16. This was because s.16(2) provided that a public authority would not be treated as being in breach of the section if it complied with the code of conduct under s.45 and that code provided that *“An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of s.14 of the Act”*.

The IC decided that it had been inappropriate to rely on s.14. He also decided that the PHSO’s handling of the request had been in breach of FOIA s.17(5) because of the delay in telling the Appellant that it relied on s.14.

Findings

Four out of the five points raised were dismissed as being completely without merit. The fifth point concerned the obligation of the public authority to provide assistance under FOIA s.16.

The Tribunal noted that the obligation to provide advice and assistance is qualified by the words *“so far as it would be reasonable to expect the authority to do so”*. Although it was arguable that the only effect of those words was to place a limit on the extent of the assistance that must be provided they were also capable of meaning that the obligation was not triggered at all in circumstances where a public authority reaches a rational conclusion that a request was vexatious. This conclusion not only represented an appropriate construction of the language of the section but also reflected the common sense approach adopted in the Code of Practice. Its effect was that if a public authority came to the reasonable conclusion that a request was vexatious it would not be open to criticism, (if the IC or Tribunal subsequently disagrees with its assessment), for having failed to engage in further communications with the person who had made the request.

Conclusion

S.16 did not apply if the public authority had reasonable grounds for treating the request as vexatious under s.14. The Appeal failed on all grounds.