



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

**Case No. EA/2011/0097**

**ON APPEAL FROM:**

**The Information Commissioner's**

**Decision Notice No: FS50295366**

**Dated: 24 February 2011**

**Appellant: Mr M P A Ainslie**  
**First Respondent: Information Commissioner**  
**Second Respondent : Dorset County Council**

**Heard at: Field House, London**

**Date of consideration: 5 September 2011**

**Date of decision: 31 October 2011**

Before

**Christopher Hughes**

**Mike Jones**

**Narendra Makanji**

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

**Subject matter: FOIA S.14 vexatious**

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

The Tribunal rejects the appeal for the reasons stated.

Signed Christopher Hughes Judge

Dated this 31<sup>st</sup> October 2011

## **REASONS FOR DECISION**

1. In November and December 2009 Mr Ainslie made a series of six requests to Dorset County Council for information. These requests included requests for copies of invoices, the guidance used with respect to contractors, operating rules relating to the use of equipment, the rules under which the council auditor operated, appendices to a report which had been previously supplied to the complainant, the names of the council's new cabinet members and their responsibilities, and a request for organisational information relating to the council.
2. On December 21, 2009 the Council refused all six of these requests, following further correspondence, the provision of certain information and an internal review on 20 January the council confirmed that it was refusing to supply information on the basis of section 14 (1) of the Freedom of Information Act; that is that the request for information was vexatious and therefore the council was not obliged to comply with it.
3. Mr Ainslie complaint to the Information Commissioner on 1 February 2010, on 24 February 2011 the Information Commissioner issued his decision notice. This upheld in part the council's decision but found that two of the requests were for environmental information and should have been considered under the Environmental Information Regulations and required the council either to disclose the information or to issue a refusal notice relying upon another exception under the regulations.
4. Mr Ainslie appealed against this decision. In his appeal he noted that he had become concerned following serious flooding in 2006 and that he had 55 years of international business experience. In his appeal document he evidenced his engagement with the County Council, his contact with the Cabinet Member for highways and his "continued encouragement and support from my MP". He alleged a protracted period of gross technical and administrative failure by Dorset County Council and provided a detailed time plan of his contact and various issues which had been of concern to him over the years. At point 22 it stated:

"I have had recently four hours of meetings at the invitation of the CEO with the Head of Highways to examine the status of the original concerns-the CEO has referred my views to the head of audit. (30. 3. 2011).

The writer has shown some patience over four years in trying in the public interest to remove flood risk, widespread fault and financial waste with the support of my MP and some councillors. Dorset county council's right-hand appears disconnected from the left. "

5. In his response the Information Commissioner who reaffirmed his decision notice and drew attention to the fact that Mr Ainslie had provided the note with his appeal extensive and detailed documentation relating to his underlying dispute with the council (in the bundle this extended for some 78 pages). He reaffirmed his analysis in the light of the guidance he has provided concerning his interpretation of the meaning of "vexatious" and in particular to factors which he felt were relevant to the specific case which were:-
- whether compliance would create a significant burden in terms of expense and distraction; and
  - whether the request can otherwise be fairly characterised as obsessive

6. Dorset County Council in its response supported the conclusion of the Information Commissioner. It noted that Mr Ainslie, in replying to a direction from the tribunal for clarification of the grounds of appeal:-

"rather than setting out grounds of appeal the letter is a repetition of the Appellant's contention that the county council has failed to act on his complaints.

The County Council has acted upon the underlying complaint, first of all through extensive correspondence with the appellant and then through an internal audit investigation commissioned by the Chief Executive. Aspects of the Appellant's complaint were upheld and an action plan was developed. This work also fed into an elected member panel on highway maintenance performance. The appellant has also complained through the Council's complaints procedure, to the Local Government Ombudsman and the Council's external auditor.

....

The reference to 4 hours of meetings with the head of highways underlines the disproportionate impact that one individual's obsessive behaviour can have upon Council's resources."

7. In a letter summarising its position which the Council wrote to the Information Commissioner on 30 July 2010 the council stated:-

"In conclusion we reiterate the statement that these requests, individually and in themselves, are not too onerous. It is in relation to Mr Ainslie's continued (and continuing) campaign against the authority that these requests have been consolidated and refused under section 14 of the Freedom of information act or the equivalent exception 12(4)b of the Environmental Information Regulations. Mr Ainslie comes from a private industry background with much experience of highways issues. He does not understand why the council operates its finances, health and safety etc in a different way to when he was in private business. We have tried to explain this to him at great length (over 150 hours of senior staff time), but without success. It was decided to refuse his requests as far too much senior officer time had been taken up already."

8. 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.

9. In considering this case it is necessary to look at the associated circumstances and in particular the history of the contact and its impact on the council. Mr Ainslie clearly had a justified concern arising out of the flooding in 2006. Since then however his concern has spread, he has raised numerous issues and he has repeatedly shown himself to be dissatisfied with the outcome is that he has obtained. One notable example of this is that being dissatisfied with the outcome of an internal audit investigation he has raised the issue of the guidance under which the internal auditor works and also referred issues to the external auditor – this is but one example of how his concerns and questions have spread widely. As Dorset County Council have pointed out dealing with Mr Ainslie and responding to him has consumed an enormous amount of senior officer time, at the latest estimate in excess of 150 hours. On any reasonable interpretation this is disproportionate. It must be seen as causing trouble by unjustified interference in the working of the council-in essence Mr Ainslie is trying to substitute his individual scrutiny and opinions for the framework of scrutiny and control which exists within the council. His actions have significantly impaired the functioning of the council by requiring a grossly disproportionate amount of time to be expended in responding to his questions and it is entirely appropriate that, in the light of this history, the council has determined that these requests for information vexatious. Accordingly the tribunal finds that the Information Commissioner in his decision notice in concluding that certain of these requests were properly viewed as vexatious under section 14(1) of the Freedom of Information Act 2000 came to a determination which was in accordance with the law and therefore the tribunal rejects this appeal.

**Chris Hughes**  
**Tribunal Judge**  
**31 October 2011**

**Reviewed 16 December 2011**