



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF  
INFORMATION ACT 2000**

EA/2011/0224

**B E T W E E N:-**

**ROGER CONWAY**

**Appellant**

**-and-**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL**

**Brian Kennedy QC**

**Dave Sivers**

**Henry Fitzhugh**

**Date of Hearing: 23<sup>rd</sup> February 2012**

**DECISION OF THE FIRST-TIER TRIBUNAL**

1. The Tribunal allows the appeal and requires the Council to identify the Information sought by the Appellant in his request of the 5<sup>th</sup> August 2010 and deal with it according to its responsibilities under and within the FOIA.

**Brian Kennedy QC  
Tribunal Judge**

**Date: 1 March 2012**

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL  
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF  
INFORMATION ACT 2000**

**REASONS FOR DECISION**

**Introduction**

2. This is an appeal by Mr Conway (the “Appellant”) under section 57 of the Freedom of Information Act (“FOIA”) against decision notice (“DN”) FS50370481 issued by the Information Commissioner (the “Commissioner”), on 15 September 2011. The relevant public authority is the Somerset County Council (“the Council”).

**Background**

3. The background to this matter is set out in some detail at paragraphs 2 – 12 of the DN and is not therefore repeated in full here. The Appellant has been in communication with the Council for some years in the course of which he has raised concerns that the role of “Senior Responsible Officer” (“SRO”) and the “Section 151 Officer” were held by the same individual, which, in his view, represented a conflict of interests.
4. Due to his concerns regarding the potential conflict of interest, the Appellant contacted the Chartered Institute of Public Finance & Accountancy (“CIPFA”) about a named council employee and CIPFA member. CIPFA is a professional body for those working in public finance. CIPFA dismissed the Appellant’s complaint about the named council employee. The Appellant received a redacted copy of CIPFA’s investigation report in July 2010. On 5 August 2010 the Appellant made the request for information to the Council with which this appeal is concerned. The request was as follows:

*Q1. Has the Council been asked to contribute to a CIPFA investigation into a complaint from the Appellant involving the CIPFA member and Officer (named council employee).*

*Q.2 List all dates of contributions by the County Council and list all the officers involved in formulating those Council contributions to CIPFA?*

*Q.3 Has the County Monitoring Officer had a role in the County Council's submissions to CIPFA? If so, what was that role and what were the dates of involvement?*

*Q.4 Has the Officer and CIPFA member (named Council employee) had at any time input or influence into any of the County Council contributions? How was separation between County Council contributions and (named Council employee's) contributions impartially achieved?*

*Q.5 Was the CIPFA investigation brought to the attention of any of the Council's Boards, Panels, or Committees? If so, the names of Boards, Panels or Committees and dates of involvement please?*

*Q.7 Did the Council see an un-redacted copy of the investigation report? Does the Council still hold an un-redacted copy of the CIPFA investigation report?*

*Q.8 What involvement in redaction did the Council have? Was that as the Authority or as the Officer concerned?*

*Q.9 Was any redaction carried out for reasons of commercial confidentiality? If so, please state the areas considered commercial in confidence."*

5. The Council refused the Appellant's request of 5 August 2010 under section 14(1) FOIA on the grounds that it was vexatious. The Commissioner upheld the Council's position because he determined that the request was obsessive and that it was harassing the Council and causing distress to the named individual subject to the CIPFA investigation.

**Relevant law**

6. Under section 1(1) FOIA a person who has made a request to a public authority for information is, subject to other provisions of FOIA: (a) entitled to be informed in writing whether it holds the information requested, and (b) if it does, to have that information communicated to him. This is subject to, among other provisions, the exemptions in Part II of FOIA.

7. Section 14 FOIA provides as follows –

*(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

8. The term “vexatious” is not defined in FOIA. However, the Commissioner’s guidance states that he:

*“... will be sympathetic towards authorities where a request, which may be the latest in a series of requests, would impose a significant burden and:*

- clearly does not have any serious purpose or value;*
- is designed to cause disruption or annoyance;*
- has the effect of harassing the public authority; or*
- can otherwise fairly be characterised as obsessive or manifestly unreasonable.”*

9. The Tribunal has considered the application of the Commissioner’s guidance to the request as follows:

“Would impose a significant burden”:

10. The Commissioner concluded that there was insufficient evidence to support this factor. In particular, the Commissioner was not persuaded that the Council had sufficiently demonstrated that compliance with this request would lead to a significant number of subsequent requests and complaints. See paragraphs 42-43 DN. The Tribunal also finds insufficient evidence to support this factor.

“Serious purpose or value”:

11. The Commissioner in its DN unequivocally accepted that the request had both a serious purpose and value. See paragraphs 49-50 DN. The Tribunal also finds that the request had both a serious purpose and value.

“Designed to cause disruption or annoyance”:

12. This was one of the factors originally cited by the Council in its decision to declare the request vexatious. Subsequently, it withdrew its reliance on this factor. The Commissioner therefore did not consider this factor. See paragraph 44 DN. The Tribunal finds insufficient evidence to support this factor.

“Has the effect of harassing the public authority”:

13. The Commissioner’s consideration of this factor is set out in full at paragraphs 34-41 DN. The Commissioner concluded that a reasonable person would consider the request as harassing or distressing.
14. “Harassing” is not defined in FOIA or in the Commissioner’s guidance. The Tribunal finds that “harassing” should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute.
15. The Council in its internal review accepted that the questions raised by the Appellant are legitimate concerns of governance, which are of significant public interest. The Council also accepted that the named Council employee as a senior officer and in a position of executive authority must expect to have his judgments and decisions questioned by the electorate. The Council further accepted that the subject matter of the request, namely the contract with SWOne, is a very high profile project that involves many millions of pounds of public money over 10 years, and that it has attracted a high degree of public interest in the press and on the internet.
16. However, the Council argued that the Appellants conduct in relation to his request had the effect of harassing it on two grounds:
  - (i) The volume of correspondence and requests submitted by the Appellant on these related matters has created a significant strain on the Council’s resources.
  - (ii) The number of repeated questions raised by the Appellant concerning the named Council employee’s professional conduct in the public domain and the CIPFA enquiry initiated by the Appellant, placed a

significant degree of stress on the named Council employee and associated administrative support.

17. In respect of paragraph 0 above, whether the request creates a “strain on resources”, that is not relevant to the question of whether it is vexatious. If the Council wished to argue that they ought not to be required to comply with the request on this basis, then it ought to have relied on section 12 FOIA. It did not do so. In any event, as discussed at paragraph 10 above, the Commissioner considered whether the request would create a significant burden (strain) on the Council and concluded that there was insufficient evidence to support this factor.
18. The Tribunal’s focus in terms of deciding whether the request is harassing, therefore, is the effect it has on the named Council employee and associated support staff. The Tribunal acknowledges that the CIPFA enquiry initiated by the Appellant may have placed a significant degree of stress on the named Council employee and associated administrative support. However, the Tribunal finds that in the particular circumstances of this case as outlined at paragraph 15 above, it is arguably inevitable that members of the public would ask questions. Moreover, such questions may be numerous and may on occasion be repeated. In those circumstances, the Tribunal is not persuaded that the request can be said to have the effect of “harassing” the Council.
19. In reaching this conclusion, the Tribunal considered the Tribunals’ decision in the case of *Rigby v IC and Blackpool NHS Trust* (EA/2009/0103), [2011] I Info LR 643 (“*Rigby*”). *Rigby* concerned section 14(1) FOIA. In the circumstances of *Rigby*, the request was held to be “vexatious”. In *Rigby* the following factors contributed to the Tribunal’s conclusion that the request was “vexatious”:
  - (i) The public authority fielded 56 separate requests from the Appellant. See *Rigby*, at paragraph 34.
  - (ii) The “*provocative nature*” of some of the Appellant’s comments aimed at staff within the public authority lead to the conclusion that the effect of the request would have been to harass the public authority and its staff. See *Rigby*, at paragraph 34.

- (iii) The Appellant had “*repeatedly ascribed a lack of integrity and ill-intent to the [public authority’s] staff. He accused them of lying to him and he used language which it [is] reasonable to expect would have caused offence and distress to the recipients*”. For example, “*You have lied and deceived throughout*”. See *Rigby*, at paragraph 45.
  - (iv) The evidence of the staff of the public authority was that: “*...the negative tone of [the applicant’s] letters, frequently questioning our competence and sometimes accusing us of deliberate wrongdoing has caused considerable distress and reduced staff within the department to tears*”. See *Rigby*, at paragraph 45.
20. The Tribunal finds no such factors present in the circumstances of this case. In particular, the Tribunal finds:
- (i) No evidence of a similar level of requests from the Appellant, compared to the level of requests made by the Appellant in *Rigby*;
  - (ii) No evidence of the Appellant making comments aimed at the Council’s staff of a “provocative nature”;
  - (iii) No evidence of the Appellant ascribing a lack of integrity or ill-intent to the public authority’s staff;
  - (iv) No evidence that the Appellant’s request had the effect of reducing the named Council employee or other staff members to tears.
21. The Council and the Commissioner in considering whether the request had the effect of “harassing” the council, appear to have attached significant weight to the CIPFA enquiry initiated by the Appellant. The Tribunal has not seen a copy of the Appellant’s enquiry to CIPFA, dated 21 January 2009. However, the questions raised by the Appellant are summarised at page 3-4 of the report by CIPFA, dated 30 September 2009. The Tribunal has carefully considered that report and its contents. The Tribunal finds that the enquiry instigated by the Appellant was explicitly and exclusively focussed on the issue of whether there was a conflict of interest in the named council employee simultaneously acting as the SRO and as the Section 151 Officer of the Council. The Tribunal finds no evidence of a personal attack or comments of a provocative nature made by the Appellant against the named council employee. On that basis, the Tribunal is not

persuaded that the instigation of the CIPFA enquiry by the Appellant and or the request(s) by the Appellant amounts to harassment.

“Can otherwise fairly be characterised as obsessive or manifestly unreasonable”:

22. The Commissioner considered this factor at some length. See paragraphs 20-33 DN. In considering this factor, the Commissioner’s view was that the wider context and history of a request is important. The Tribunal agrees with the Commissioner that in considering this factor, the wider context and history of a request is important.
23. The Commissioner concluded that a reasonable person would view the request as indicative of behaviour of a *‘reasonably obsessive nature’*. The Tribunal does not agree with this conclusion.
24. The Tribunal finds that the Appellant’s request was concise and precise. The Appellant’s request arose directly as a result of the CIPFA report. In general terms, the request concerned: the Council’s input to the CIPFA investigation; whether the CIPFA investigation was disclosed to Councillors; whether the Council received an unredacted copy of the CIPFA report; what involvement, if any, the Council had in redacting the report; and whether any redaction was carried out for commercial reasons. The Tribunal is unable to identify anything of an “obsessive nature” in this request. On the contrary, the Tribunal finds that the Appellant’s request seems quite reasonable.
25. Further, the Tribunal has considerable difficulty in understanding the Commissioner’s reference to the “*wider context and history*” of the request. The Appellant’s request arises directly from the CIPFA report which he only received in July 2010. It relates specifically to that report. Therefore, the Tribunal does not find that there is a significant relevant “*wider context and history*” to the request.



26. Furthermore, in the absence of the information sought being ‘exempt’ information– which the Council at no time suggested – the Council could, and should in our view, have easily dealt with and answered the Appellant’s request.

**Conclusion**

27. For the foregoing reasons, the Tribunal finds that the Appellant’s request was not vexatious. In particular, the Tribunal finds: that the request has a serious purpose and value; it would not impose a significant burden on the Council; it was not designed to cause disruption or annoyance; it does not have the effect of harassing the Council; and it cannot be characterised as obsessive.
28. The appeal is allowed. The Tribunal requires the Council to identify the Information sought by the Appellant and deal with it according to its responsibilities under and within the FOIA.

**Brian Kennedy QC**

**Tribunal Judge**

**1 March 2012**