



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

Appeal No. EA/2013/0080

BETWEEN:

ALAN WALPOLE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

WALBERSWICK PARISH COUNCIL

Second Respondent

1. This appeal is against the decision of the Information Commissioner (“the Commissioner”) set out in Decision Notice, reference number FS50465045 dated 25 March 2013. It arose from a request for information under the Freedom of Information Act 2000 (“the Act”) made by the Appellant, Mr Walpole to Walberswick Parish Council (“the Council”).
2. On 8 February 2012 the Appellant had made the following request for information to the Council:

“13. In order to have a public record, and to prevent having to re-do the work, did you keep a proper sequentially numbered record all FoIA requests, as they were submitted, in the same way that SCDC does? Will you please provide me with all the information regarding the FoIA requests that you have received, responded to or have refused up to the end of 2011. Please also provide me with information regarding EIR information requests that Walberswick Parish Council has received and responded to, or refused, in the same period as the five hundred and forty-seven (50 + 497) FoIA requests”

3. The Tribunal understands that Mr Walpole had made this request in order to refute a statement previously made by the Council, also made as a result of a Freedom of Information request, which stated that there had been 547 requests made to the Council in the recent years up to the end of 2011. Mr Walpole

believed this to be false and told the Tribunal that his request was aimed at exposing malpractice at the Council.

4. There is a long standing disagreement between the Council and certain local residents, including the Appellant. This originally arose as a result of a proposed development in the parish area to which Mr Walpole objected. This appeared over time to have transmuted into a wider and different set of issues including the way in which the Council treated Freedom of Information requests. In Mr Walpole's own words, he had had a *"long, torturous, difficult and time consuming relationship"* with the Council.
5. This request was refused by the Council under section 14 of the Act, on the basis that the request was "vexatious". Mr Walpole complained to the Commissioner, who after an investigation, issued the above Decision Notice, upholding the decision of the Council. The Tribunal has no hesitation in concluding on appeal, that the Council and the Commissioner in turn correctly decided this matter. This appeal is dismissed.

RELEVANT LAW

6. Section 14(1) FOIA provides that "section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious". The Upper Tribunal ("the UT") has now considered the meaning of the term 'vexatious' at Section 14 FOIA in further detail in the binding decision in *The Information Commissioner v Devon CC & Dransfield GIA/3037/2011*. Its overall analysis of what may constitute a vexatious request under section 14 FOIA is found at §§ 24-39 of that decision.
7. By way of overview, in *Dransfield* Judge Wikeley considered the purpose of section 14 FOIA, stating that:

"The purpose of section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..."

"To that extent, section 14 of FOIA operates as a sort of legislative "get out of jail free card" for public authorities. Its effect is to relieve the public authority of dealing with the request in issue, except to the limited extent of issuing a refusal notice as required by section 17. In short, it allows the public authority to say in terms that "Enough is enough – the nature of this request is vexatious so that section 1 does not apply."

(Dransfield §§ 10 - 11).

8. He continued at §24:

"24 'Vexatious' is a protean word, i.e. one that takes its meaning and flavour from its context...the term in section 14 carries its ordinary, natural meaning within the particular statutory context of FOIA. It follows, I believe that the ordinary dictionary definition of "vexatious" as "causing or tending or disposed to cause...annoyance, irritation, dissatisfaction, or disappointment" can only take us so far. I accept as a starting point that, depending on the circumstances, a request which is annoying or irritating

to the recipient may well be vexatious – but it all depends on those circumstances... (emphasis in original).

“25 In particular, we must also not forget that one of the main purposes of FOIA is to provide citizens with a (qualified) right to access to official information and thus a means of holding public authorities to account. It may be both annoying and irritating (as well as both dissatisfying and disappointing) for politicians and public officials to have to face FOIA requests designed to expose possible or actual wrongdoing. However, that cannot mean that such requests, properly considered in the light of all the circumstances and the legislative intention, are necessarily to be regarded as vexatious.

.....

“27. The common theme underpinning section 14(1), at least insofar as it applies on the basis of a past course of dealings between the public authority and a particular requester, has been identified by Judge Jacobs as being a lack of proportionality... for the reasons above I agree with the overall conclusion that the FTT in Lee reached, namely that “vexatious” connotes “manifestly unjustified, inappropriate or improper use of a formal procedure.” (Commissioner’s emphasis)

(Dransfield, §§ 24 – 27)

9. Therefore, whilst making it clear that they were *“not intended to be exhaustive, nor ... meant to create an alternative formulaic check-list”* Judge Wikeley took the view that misuse of FOIA may be evidenced in a number of different ways and it was helpful to approach the question of whether a request was truly vexatious by considering four broad issues or themes, which were:-

- (1) The burden placed on the public authority and its staff;
- (2) The motive of the requester;
- (3) The value or serious purpose of the request; and
- (4) Any harassment of, or distress caused to, the public authority's staff.

(Dransfield §28)

CONSIDERATION

10. It was clear that in its determination of whether the section 14 exception was properly applied, the Tribunal needed to consider the wider context in which the request was placed. The dispute underlying this matter was long standing; the depth of disagreement had led to reporting in both the local and national media. A representative sample of those stories was produced to the Tribunal. The Tribunal considered whether it was sufficient essentially to rely upon media reports as the evidence of the impact of Mr Walpole’s and the wider Freedom of Information requests upon the authority. It concluded that it would be highly unlikely that the broad facts reported were materially inaccurate given the length of period they spanned and their different sources. Moreover the Council reports and minutes before the Tribunal supported their content.
11. In this regard, the Tribunal read with interest the recent decision of Harvey v Information Commissioner EA/2013/0022 which concerned almost the very same factual background as appeared here. The appeal in that case, which was

also refused, concerned one of the other individuals in the Parish area engaged in making requests under the Act. In addition, the Tribunal were aware of their having been 12 Decision Notices issued by the Information Commissioner following individual investigations in relation to this small Parish Council. Most of these appeared to be broadly related to the same subject matter (dating back to the planning application which was the start of this unrest). The media reports stated that there had been over 100 requests for information, the Council having previously said there had been 547 requests (although it appeared that the Council had been counting the number of items of request rather than the number of items of correspondence). In any event, the exact number was unimportant as it was clear that there had been multiple requests concerning broadly the same matters, albeit not all made by Mr Walpole.

12. Critically, the Tribunal considered whether there was sufficient evidence before it to conclude that Mr Walpole had been acting in concert with other individuals. This was denied by Mr Walpole and it was indeed the case that there was no direct evidence of this. However, given the similarity in the requests in terms of the time period, their content and their trigger (ie: the planning application), the Tribunal accepted that it was more likely than not that a number of residents had, at the very least, been pursuing a common aim and using requests under the Act as a common mechanism to achieve that aim. In such a small environment where there had been so much national and local press interest, it would be inconceivable that Mr Walpole had not been acting with these other requests in mind. Indeed, as stated in paragraph 3 above the request which is the subject of this appeal was prompted by an FOIA response to another council resident. It was in this way, that the Tribunal decided that it should appropriately consider the request in the context of the wider impact that all of the requests under the Act had been having on the Council. Mr Walpole, by his own account, was well informed as to Council affairs and their ongoing problems in dealing with the numerous requests being made under the Act. Whilst perhaps not acting directly in concert with the others, he appeared to share an overall aim of bombarding the Council with requests under the Act and causing as much administrative burden as could be generated through this mechanism.
13. The overall effect of the requests made under the Act had been a major cause of the resignation of the entire Council. The District Council had had to put in temporary Councillors just to keep the Parish Council going. This overall effect had also been a major cause of the resignation of the Town Clerk.
14. The Tribunal noted, as had the Commissioner, the shortcomings in the Councils' approach to handling FOIA requests (including the issuing of unlawful so-called Exclusion Orders, one of which had named Mr Walpole). It was not however the job of Mr Walpole to try and resolve the Council's failures under the Act by further engaging the Council in information requests. Mr Walpole seemed to be saying that had the Council apologised earlier, *"when it first became aware that they should not have issued me with an unlawful Exclusion notice in November 2-10 [what] followed was unlikely to have happened"*. It is true that the apology came almost one year after the request was made, but that was no justification for the request in the context of all the other requests made by Mr Walpole and the other requests made by the other individuals engaged in this dispute. Whilst, as noted by Judge Wikeley in *Dransfield*, *"one of the main purposes of FOIA is to provide citizens with a (qualified) right to access to official information and thus a means of holding public authorities to account"*, FOIA provides just that and not more. It is intended to provide a right of access to official information; it is not intended, *in*

itself, to provide a means of censure. Such matters are for the Ombudsman or the Administrative Court. Whilst providing accountability through a legitimate right of access to official information, the Act is not, and is not intended to be, a stick for the public to beat a public authority with.

15. Mr Walpole claims that he did not ask for all the information arising from the requests since 2011, but it is apparent from the request set out in paragraph 2, that he had. His request had been disproportionate to any legitimate purpose it might be said to have had.
16. In the present case, the repeated and concerted requests by Mr Walpole, taken in context with the wider requests, had had a debilitating and highly detrimental impact on the day to day operation of a small Parish Council which has, on any reasonable view, limited resources. As matters stand, the effect of Mr Walpole's requests, taken in context, had compromised the Council's ability to fully discharge its wider duties and responsibilities, including its duties to other members of the public.
17. It was not, in the Tribunal's view that the tone and detailed content of the requests were in themselves offensive – although the Tribunal considered Mr Walpole's suggestion that the previous Town Clerk had strung out the compliance with the information requests in order to increase her potential remuneration, to be a notable exception. By and large Mr Walpole's correspondence was polite if insistent. It was the effect, rather than the particular tone and content that had had such a negative effect.
18. In the Tribunal's view, the Council had been wholly correct to say, in the words of Judge Wikeley in *Dransfield (at §11)*, "*Enough is enough*" and to refuse to answer the Appellant's request relying upon section 14.

CONCLUSION

19. Mr Walpole's grounds of appeal provided no basis for overturning the Decision Notice. In the context of the overwhelming way in which this Council had been faced with requests and the way in which they had been pursued, there was no doubt in the Tribunal's mind that this appeal should fail.

Melanie Carter
Tribunal Judge

2nd October 2013