



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0275

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50496954
Dated: 13 December 2013**

Appellant: BRIAN WOODS

Respondent: INFORMATION COMMISSIONER

Heard at: IPSWICH MAGISTRATES' COURT

Date of hearing: 30 APRIL 2014

Date of decision: 17 MAY 2014

Decision promulgated: 20 May 2014

Before

ROBIN CALLENDER SMITH
Judge

and

ANDREW WHETNALL and MARION SAUNDERS
Tribunal Members

Attendance:

For the Appellant: Mr Brian Woods

Written Submission:

For the Respondent: Mr Mark Thorogood, Solicitor for the Information Commissioner.

Subject matter: FOIA 2000

- Vexatious requests s.14

Cases:

Alan Dransfield v IC and Devon County Council UKUT 440 (AAC) (28 January 2013).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 13 December 2013 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. Mr Brian Woods (the Appellant) had a troubled history with the library service of Essex County Council.
2. In 2008 he was banned from using the library service as a result of correspondence which the Council considered to be “vitriolic and personal in context”. The Council took the view that the correspondence had caused “unjustifiable distress, alarm and anxiety to staff within the service”.
3. In March 2009 that ban was lifted. Further incidents occurred in 2010 and the Appellant was warned in writing that his actions could be seen as harassment.
4. During 2012 members of the library service completed a number of incident reports about their dealings with the Appellant. There was correspondence between the Appellant and the Council.

5. The Appellant complained to the Local Government Ombudsman about the way the Council had dealt with him. That complaint was rejected on 13 November 2012.
6. On 26 November 2012 he was again banned from the library service for a further six months on the basis of what the Council considered to be his inappropriate behaviour towards library staff.
7. Between 26 November 2012 and 11 April 2013 the Appellant wrote to various members of the Council and the library service about the ban.
8. In January 2013 there was a further incident report and the Council's chief executive wrote to the Appellant's MP stating the ban would only be lifted if the Appellant agreed to abide by the bylaws of the libraries. A meeting was arranged with the Appellant and his local Councillor but the ban remained.
9. On 16 April 2013 the Appellant made the request for information that is the subject of this appeal.

The request for information

10. The Appellant asked for the following information:
 - (1). Between 1990 – to 2013 How many people have been banned from Harwich Library?
 - (2). Between 1990 – to 2013 How many people have been banned from Clacton-on-Sea Library?
11. The Council refused that request on 25 April 2013 because it considered it was vexatious. That view was upheld on an internal review. The Council considered that the request – with other correspondence and requests made by the Appellant – were all associated with his ban from the libraries.

The complaint to the Information Commissioner

12. The Appellant complained to the Commissioner about this refusal on 7 May 2013.
13. The Commissioner, in the light of the Upper Tribunal decision in *Information Commissioner v Devon CC & Dransfield*¹, considered whether the request was likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
14. The Appellant told the Commissioner that in 2012 he had been given permission to display an event poster in both libraries. He saw that the poster had been displayed in the Harwich library but was unsure if the one in Clacton was on display. The Appellant believed that the management at Harwich library had taken exception to his enquiries and that had caused the incident reports about harassment and trying to find out the names of staff members, both matters which the Appellant denied.
15. The Council had informed the Commissioner that it believed the Requests – and any future requests on the subject – were designed to waste time and were not genuine attempts to find out information. Rather, they were attempts to overturn the banning order. From 26 November 2012 up until the date of the information request on 16 April 2013 (period of 20 weeks) the Council had received a total of 16 letters and numerous phone calls that related to the Appellant's ban from libraries.
16. The Council's position was that incident reports, correspondence and face-to-face meetings caused by the Appellant had an impact on its resources. It provided the Commissioner with copies of two letters sent by the Appellant to the home addresses of two staff members. One of the letters was dated 13 September 2013 and the other had a post date on the envelope of 12 September 2013. The Council stated that had placed a

significant and unjustified stress on the employees involved and had resulted in them taking leave. It had also involved the police, because of the Appellant's behaviour, and believed a Harassment Warning had been served on the Appellant on 19 September 2013 in relation to the two employees he had written to.

17. The Appellant told the Commissioner – and this was a position he maintained throughout the appeal – that his requests were not designed to cause irritation or to try to force the Council to remove his library ban. He simply wanted to clear his name as he considered that there had been unfair and irregular practices at Harwich library and, by comparing that library's performance with the one at Clacton, he could then produce a final report about that topic.

18. The Commissioner concluded that the Council had been correct in deeming the Appellant's request vexatious. He considered the context of the history between the Council, the libraries and the Appellant. The Commissioner was satisfied that Appellant's request was a way for him to continue correspondence with the Council and libraries while the ban in respect of him was in place. To reply to the request would add to the disproportionate impact being placed on the Council's resources which outweighed any value or purpose in respect of the request.

The appeal to the Tribunal

19. Both in his Ground of Appeal and at the oral hearing of his appeal – at which the Commissioner did not attend and relied on his written submissions – the Appellant maintained the following points:

- (1) He had been unfairly "black listed" by the Essex library service because of a clash of personalities.
- (2) He had never breached any byelaws.

¹ UKUT 440 (AAC) (28 January 2013).

- (3) The Commissioner had been misled and made factual errors in his Decision Notice. For instance he already knew the names of staff because they wore name badges and the letters he sent to two of them were not abusive or threatening.
- (4) The Council had only escalated matters so as to avoid his FOIA request.
- (5) Corruption in local government was a matter of legitimate public concern.
- (6) He never wanted – or intended - to use the Essex County Council library services ever again.
- (7) It was a simple and straightforward matter for the Council to provide him with the requested information.
- (8) He wanted to publish a book about the matter and that was a legitimate reason for making the information request.
- (9) A correct application of the balance of probabilities test would resolve the matter in his favour.

The questions for the Tribunal

20. Was the Appellant's information request properly determined as vexatious within the terms of s.14 FOIA by the Council and the Commissioner?

Conclusion and remedy

21. Given the lengthy history of this matter it is unsurprising that the Essex County Council libraries service came to the conclusion that the Appellant's request on 16 April 2013 was vexatious within the terms of s.14 FOIA.
22. The Appellant himself feels hard done-by in the passage of this dispute because it is clear – having heard his oral submissions – that he does not believe there are in existence any valid library byelaws which could bind him and he does not regard this request as vexatious.

23. As the Commissioner has noted, the Council has complied with other requests made by the Appellant since April 2013 which it did not consider as linked to the “banning” issue.
24. The Council, the Commissioner and this Tribunal have focussed on whether the request – rather than the requester – is vexatious.
25. In *Dransfield* (a copy of which was sent to the Appellant at the Judge’s request before the oral hearing of the appeal so that the Appellant could consider it) four broad issues were identified in any consideration of whether a request was vexatious.
26. Without being formulaic, these were: the burden placed on public authority and staff in respect of the information request; the motive of the requester; the value or serious purpose of the request and, finally, any harassment or distress of and to staff.
27. In this appeal the ongoing burden placed on the public authority and issues of harassment and distress to members of staff are the significant factors which make the request vexatious.
28. The Upper Tribunal Judge in *Dransfield* observed:
- vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive.... As noted previously, however, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within s.14.
29. Harassment and distress to members of staff, however, is evident from incident reports by library staff members in 2012, the Appellant’s conduct had been reported to Essex Police in October 2013, two letters had been sent by the Appellant to the home addresses of two members of staff at the library and a Harassment Warning had been issued in respect of the Appellant by Essex Police on 19 September 2013.

30. Although those last two events postdate the information request they are still relevant in respect of providing the Tribunal with a fuller context in relation to it. Another First Tier Tribunal (*Hepple v IC & Durham County Council* EA/2013/0168) recently noted at Paragraph 36:

We have stressed the need to consider the circumstances existing at the date when the information request was refused. However, that does not preclude us from taking into consideration evidence about the possible use to which the Appellant might have put the information at the time it had been disclosed to him. The fact that the evidence came to light much later, does not alter the fact that it discloses an attitude of mind likely to exist at that earlier stage.

31. Considering all the factors identified above the Tribunal is satisfied that s.14 FOIA was correctly applied by the Council and the Commissioner to the Appellant's information request which is the subject of this appeal.

32. Our decision is unanimous.

33. There is no order as to costs.

Robin Callender Smith
Judge
17 May 2014