



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0170

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FSS0493454
Dated: 29 July 2013**

Appellant: JOHN RALPH POULTON
Respondent: INFORMATION COMMISSIONER
On the papers: 8 JANUARY 2014
Date of decision: 3 February 2014

Before

ROBIN CALLENDER SMITH
Judge

and

DR HENRY FITZHUGH and NARENDRA MAKANJI
Tribunal Members

REPRESENTATIONS:

For the Appellant: Mr Poulton in person
For the Respondent: Ms Clare Nicholson, Solicitor for the Information Commissioner

Subject matter:

ENVIRONMENTAL INFORMATION REGULATIONS 2004

Exceptions, Regs 12 (4)

- Request manifestly unreasonable 4 (b)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 29 July 2013 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant owns three properties within the administrative area of the Basildon Council.
2. Over a number of years the Appellant has had disagreements with the Council about those properties. These have included issues such as the payment of council tax and requirements in relation to planning permission.
3. There has been litigation and the use of other appeal mechanisms together with a considerable amount of correspondence between the parties.
4. Basildon Council has taken steps to limit correspondence from the Appellant.
5. The information request which triggered the Council's response that is the subject of this appeal has this background as its context.

The request for information

6. On 3 January 2012 the Appellant wrote to Basildon Council asking for information in the following terms:

I note that the report submitted to the Development Control and Traffic Management Committee states that despite there being no tree preservation orders on the trees, permission would be required from the Forestry Commission to remove any of the trees. I would be most grateful if you could advise me of the Forestry Commission's contact address and as to exactly where the legislation is to be found upon which these claims are based so that I may look into this matter and if necessary make an application to the Forestry Commission.

7. Having received no reply to his request the Appellant wrote again on 19 March 2012 stating:

I am particularly and urgently requesting clarification as to where legislation is to be found, and where contact needs to be made with regard to the need for permission to be obtained from the Forestry Commission for trees at Glentowy to be removed as requested in my letter addressed to Mr Faux dated 3 January 2012. I am now formally requesting this information to be provided under the Freedom of Information Act.

8. On 23 March 2013 Basildon Council acknowledged receipt of that letter and wrote further to the Appellant on 11 April 2012. It stated that:

Any further issues which you raise which the Council considers closed will not be responded to. Again, I would remind you that your contact with the Council is limited to one letter per month.

9. The Appellant subsequently requested an internal review. On 24 August 2012 Basildon Council stated:

I have established that reference to permission from the Forestry Commission was made by the Council's Senior Arboriculturalist at the time. I have enclosed a copy of the committee meeting minutes which contain the reference (Development Control and Traffic Management Committee Tuesday 18 October 2011 Item 5 page 109 refers. I am still trying to establish what information the Council holds to support this statement.

The complaint to the Information Commissioner

10. The Appellant complained to the Commissioner challenging the Council's handling of his request.
11. The Commissioner established from a telephone conversation that the Council was seeking to rely on section 14 FOIA/ Regulation 12(4)(b) EIR in respect of the request dated 3 January 2012 for the reasons contained in decision notices FS50381386 and FS50399683 previously issued by the Commissioner.
12. The Appellant appealed those decision notices to the Tribunal under appeal references EA/2011/0302 and EA/2012/0059.

13. Both appeals were dismissed.

14. In the Decision Notice which is the subject of this appeal the Commissioner took into account the findings set out in FS50381386 and FS50399683. The Appellant's grounds of appeal refer to the appeals of those decision notices. He states that the Tribunal reached incorrect findings because of alleged errors in the information the Council provided to the Commissioner on previous occasions.

15. The Commissioner had considered the Appellant's complaint the context of "vexatiousness" – which was not defined in the legislation – and the decision in *Information Commissioner v Devon County Council and Dransfield* UKUT 440 (AAC) (28 January 2013).

16. Applying the issues identified in that case the Commissioner considered that the Appellant's request represented a continuation of his long-running dispute with Basildon Council relating to planning issues with his property. He had concluded that the serious purpose and value of the Appellant's request did not justify the disproportionate level of disruption, irritation and distress caused to the Council.

17. The Commissioner also noted that the previous decision notices which were unsuccessfully appealed to the First-tier Tribunal (Information Rights) had attracted the following comment from that Tribunal:

Viewed in the round it is clear that these applications for information part of the relentless challenge to the Council which has gone on for many years, at great expense and disruption to the Council, some distress to its staff, with negligible tangible results and little prospect of ever attain them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way.

18. The Commissioner added – as a rider to the Decision Notice – that he believed the Appellant's repeated use of requests for information and subsequent complaints to the Commissioner represented a pattern of vexatious behaviour. In future the Commissioner would consider whether it was appropriate for him to exercise his discretion under s. 50 (2) (c) to

refuse to make a decision in relation to any complaint about a request of a similar nature from the Appellant.

The appeal to the Tribunal

19. The Appellant considered that the Commissioner's conclusion that he was "vexatious" – and the background to the Tribunal's characterisation of him – only occurred because the Tribunal had ignored his warnings about the "seriously misleading" nature of correspondence written on behalf of the Council.
20. He reiterated much of the background that he felt was relevant. He asked the Tribunal to bear in mind that, after 14 years of being in dispute with the Council, there was now evidence that Glentowry did in fact have permitted development rights. As a result the value of the property had increased by well over £100,000.
21. Because the Council had been wrong about that property having permitted development rights he maintained that the Commissioner should not have classed his requests as frivolous or vexatious. He believed there was a public interest in demonstrating that the Council had been proved to be consistently wrong and consistently trying to overcharge application fees.

Conclusion and remedy

22. The Appellant's Grounds of Appeal set out only - in the very briefest of terms - why he considers that his request for information was not, in all the circumstances, manifestly unreasonable.
23. Also, if it was, why the public interest in disclosure of the information requested did not outweigh the public interest in maintaining Regulation 12 (4) (b) exception.
24. The Tribunal notes that the Appellant argues that the Council's conduct in other regards (relating to the factual background set out above) has been

inadequate. Those are matters outside the jurisdiction and competence of the Commissioner and the Tribunal.

25. If anything, the fact that the Appellant has been successful elsewhere in resolving the position with the Glentowy property makes any continuing requests to the Council more unnecessary and vexatious.
26. The Council might have articulated more clearly why it was not exercising its duty to advise and assist under Regulation 9 of the Environmental Information Regulations 2004.
27. The Tribunal is satisfied however that – in the context of the refusal in this case, the position found by an earlier Tribunal in relation to the Appellant's information requests and the fact that it had limited the Appellant's contact with it – its reasoning in respect of this was implicit and correct. The Appellant had demonstrably crossed the line into vexatiousness previously and in the instant request.
28. In *Information Commissioner v Devon County Council and Dransfield* UKUT 440 (AAC) (28 January 2013) the Upper Tribunal stated at Paragraph 28:

It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes - (1) the burden (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 or distress (of and to staff). However, these four considerations and the discussion that follows are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list. It is important to remember that Parliament has expressly declined to define the term "vexatious". Thus the observations that follow should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.

29. At Paragraph 43 of the same judgement it stated that there was

... no magic formula - all the circumstances need to be considered in reaching what is ultimately a value judgment as to whether the request in

issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.

30. The principles in relation to vexatiousness articulated in that judgement apply equally to the EIRs and have been applied in this case.

31. The Appellant has been refused permission to appeal the decision in his earlier, unsuccessful appeals. This appeal seeks to re-open, by a different route, old ground.

32. The Tribunal, in its finding in this appeal, can only echo the words of a previous Tribunal in respect of this Appellant's information requests of Basildon Council:

Viewed in the round it is clear that these applications for information part of the relentless challenge to the Council which has gone on for many years, at great expense and disruption to the Council, some distress to its staff, with negligible tangible results and little prospect of ever attain them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way.

33. Our decision is unanimous.

34. There is no order as to costs.

Robin Callender Smith

Judge

3 February 2014