



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

EA/2015/0182

JOHN RUDKIN

Appellant

And

THE INFORMATION COMMISSIONER

Respondent

And

BLACKPOOL BOROUGH COUNCIL

Second Respondent

Hearing

Held at Field House on the papers.
Before Mike Jones, Andrew Whetnall and Judge Taylor.

Decision: The appeal is unanimously dismissed.

Reasons

Background

1. The Appellant is a former employee of Blackpool Borough Council ('the Council'). He had previously worked for it on a project funded by the European Regional Development Fund ('ERDF') called 'Interactive Community Access Network' ('I-CAN').
2. The I-CAN project was set up to provide the local communities with easy access to 'ICT facilities' offering information, support and interactive links.¹
3. Section 14(1) of the Freedom of Information Act 2000 ('FOIA') allows a public authority to decline to make a substantive response to an information request that is found to be 'vexatious'.

The Request

4. On 8 November 2014² the Appellant made a request of the Council as follows:

"Reference here is made to Blackpool Council's published and public policies. According to the Council's "Data Protection Act - Council Policy" created on behalf of Blackpool Council (ICT/0008/01, August 2013, Authorised by [named redacted] ICT (Information Guidance), I ask a question regarding the following entry:

That "In Compliance with the Data Protection Principles" "To enable it to fully comply with the DPA", Blackpool Council will "Follow the Council's published Corporate Retention Schedule"

The Corporate Retention Schedule is [published] information, published at: <https://www.blackpool.gov.uk> ... Issue Date 05/10/04, Version/Issue Number 1.2, Effective From Date 7 February 2005

According to Page 70 (and associated pages) this Corporate Retention Schedule, Blackpool Council retains ERDF (European Regional Development Fund) records for a period as follows (required by EU Directive), as well as for Audit purposes.

"Minimum 3 years after final payment of the programme is made to UK Government BUT ... Currently to be kept until 31/12/2025 or until destruction date is advised.

Note: Do not destroy without first receiving confirmation from the North West Development Agency (or any successor body or CLG) that the 2007-2013 Programme has officially closed."

¹ This is taken from a document on page 317 of the Open Bundle.

² We note that the Decision Notice and both Respondents' submissions date the Appellant's request as of 23 October 2014. However, the copy of the request on page 249 of the Bundle shows the request to have been made on 8 November 2014. The discrepancy is not material to our decision (concerning s14 FOIA), since there is no discrepancy as to the substance of the request (ie the text of the request).

This retention and disposal schedule covers:

Project Documentation including:

- *Project Bids*
- *Project briefs and business cases*
- *Project logs, risk logs etc.,*
- *Invoices*
- *Banks statements*
- *Bank Reconciliation records*
- *Salary allocation (incl. Timesheets)*
- *General records and client files*

Partner Organisation records

Public funding records

Paper Records (MUST BE ORIGINALS)

I require access to the specific project records and finances created for the following Project:

I-CAN (Interactive Community Access Network); Final Report 2008; Project Closure 2009; Closure Audit 2010; GONW5220 EUR, Interactive Community Network Project 18

I require access to the project progress reports (as they were originated complete) and financial reports (as reported and officially signed, including match funding). This documentation is all part of the original paper records.'

(Emphasis Added.)

5. On 21 November 2014, the Council asked whether the Appellant was requesting to inspect or be provided with copies of the requested information. The Appellant confirmed that he wished to inspect the information.
6. On 9 December 2014, the Council refused to respond to the Appellant's request claiming it to be vexatious under s14(1) FOIA. The Appellant progressed the matter in the usual way, resulting in the Information Commissioner ('IC') investigating it and deciding that the request was vexatious because the request did not hold sufficient value to justify the diversion of public resources. His reasoning included:
 - a. There were no prescriptive rules as to why a request might be refused as vexatious, but there were generally typical characteristics and circumstances assisting in making a judgment. □ A commonly identified feature of vexatious requests was that they could emanate from a sense of grievance or alleged wrong-doing by the authority. □
 - b. The IC's guidance emphasised proportionality was the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must consider whether the purpose and value of a request outweighs the impact that the request would have on the public authority's resources in providing it.
 - c. The purpose and value of the request:
 - i. Whilst there was a strong public value in ensuring that public monies were managed properly and with due oversight, it was

clear that the project and its funding had been subject to audit by the Council on several occasions, and there was no evidence provided to the IC supporting the Appellant's allegations.

- ii. There was no evidence suggesting an investigation was being undertaken by ERDF auditors. It was reasonable to conclude that any further audit or investigation would be undertaken by the proper national or European authority, rather than an individual in a private capacity. Whilst the Appellant had been in communication with a councillor and that the councillor might also be seeking held information, it was clear that the Appellant was the requester, and the interests of another individual could not be considered in a determination on this case.
- iii. The Appellant had suggested that the purpose for his request was also to understand how the project could be replicated, as he had been asked by a third party to provide advice on a similar project. However, the project would be of limited use to any current or future projects, due to the ERDF funding no longer being available. It was reasonable to assume that third parties interested in replicating the project would already have access to formal support from the ERDF, without recourse to the FOIA by an individual acting in a private capacity.

- d. The burden on the Council: The IC considered that there would be considerable costs for the Council to comply with the request. These were in retrieving the information and organising an inspection by the Appellant. The IC noted that whilst the Appellant had been a former employee, disclosure under FOIA would equate to full public disclosure.

□

The Law

- 7. Section 14 FOIA provides:

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

- 8. We have the benefit of higher court decisions to help apply this section. These inform us that a request is vexatious if, having taken into account all the material circumstances of the case, it demonstrates a ‘manifestly unjustified, inappropriate or improper use’ of the FOIA procedure³. The caselaw shows us that an important aspect of the balancing exercise may involve considering whether or not there is an adequate or proper justification for the request, whether it has a ‘reasonable foundation’, and whether or not it lacks proportionality - having borne in mind the context of a statute designed to ensure greater public access to official information and to increase accountability and transparency.

- 9. In the Upper Tribunal consideration of Dransfield, Judge Wikeley stated:

³ See the Upper Tribunal decision in *Information Commissioner v Devon County Council and Dransfield* [2012] UKUT 440 (AAC) (*‘Dransfield’*), para.43. This approach was upheld by the Court of Appeal in *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 545 (*‘Dransfield CA’*).

“... 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.” (Emphasis added).

10. As regards the ‘value or serious purpose’, Judge Wikeley explained

- a. While FOIA is axiomatically motive blind, *“the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request”.* (Dransfield, para. 34.)
- b. *“... Usually bound up to some degree with the question of the requester’s motive, is the inherent value of the request. Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests (especially where there is “vexatiousness by drift”) may not have a continuing justification. In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident.”* (Dransfield, para. 38– emphasis added.)

11. As regards the burden on the public authority and its staff, Judge Wikeley explained in the Craven case⁴:

- a. *“... if the public authority’s principal reason (and especially where it is the sole reason) for wishing to reject the request concerns the projected costs of compliance, then as a matter of good practice, serious consideration should be given to applying section 12 rather than section 14 in the FOIA context. Unnecessary resort to section 14 can be guaranteed to raise the temperature in FOIA disputes. In principle, however, there is no reason why excessive compliance costs alone should not be a reason for invoking section 14, just as may be done*

⁴ *Craven v Information Commissioner and Department for Energy and Climate Change* [2012] UKUT 442 (AAC).

under regulation 12(4)(b), and in either case whether it is a “one-off” request or one made as part of a course of dealings.” (Craven, para 31.)

Our Role

12. Our task is to consider whether the decision made by the IC is in accordance with the law or whether any discretion it exercised should have been exercised differently.
13. The Tribunal is independent of the IC, and considers afresh the Appellant’s complaint. The Tribunal may receive evidence that was not before the IC, and may make different findings of fact from the IC. This is the extent of the Tribunal’s remit in this case.
14. We have received a bundle of documents and submissions, and further arguments in response to our further directions, all of which we have considered even if not specifically referred to below. We were also provided on a ‘closed’ or confidential basis with an unredacted version of Appendix G related to the letter of 10 April 2015 from the Council to the IC.

Grounds of Appeal

15. The Appellant contended that reliance on s14 FOIA was unfounded. His reasoning included that the IC’s Decision Notice was based on factual inaccuracies; that he had been asked to help replicate or advise on the I-CAN project; and had alleged mismanagement of finances in the project and had been assisting a most senior councillor and ERDF Auditors.

Evidence

16. The Appellant included in his Notice of Appeal text which was described as a letter from Councillor Williams of April 3rd 2015. This stated:

“To whom it may concern

Around 2011/12 in my capacity as a councillor and portfolio holder I was given a presentation on the ICAN scheme being developed for education support by Blackpool Council in partnership with Granada learning.

Much later in 2013 as a governor of Anchorsholme Primary Academy I was made aware of a new software system for the school that provided a comprehensive live monitoring of progress of both classroom and individual pupils. The system had been developed by Mr. Dan one of the school’s teachers. The software and its use immediately reminded me of the ICAN programme I had been introduced to at the earlier presentation.

Both the school and Mr. Dan were very keen to have the programme launched into other schools on a commercial basis and I promised to try and help them achieve this.

Through a fellow councillor I made contact with Mr. Rudkin who had been involved with ICAN and had also been a lead member of the team who provided the original

presentation I understood at that point that the ICAN project had been abandoned and also that Mr. Rudkin had left the local authority. I wanted advice on how to market Mr. Dan's software and also a third party review on the schools system and its actual value.

When Mr. Rudkin and I subsequently met we discussed Mr. Dan's software programme and also the demise of the ICAN project. Mr. Rudkin expressed his disappointment that the original ICAN program had been shelved and that he also believed he had been treated badly by the authority in regard to his dismissal.

Mr. Rudkin was also concerned in regard to the ERDF funding for the ICAN project and he expressed his belief that some of the returned funds had been absorbed into in-house projects and not paid back to the ERDF as required in the funding agreement.

I informed Mr. Rudkin that whilst I could not comment or be involved in his dismissal situation I would ask for copies of the financial summary of the ICAN program and clarify for myself whether or not the funding regulations had been adhered to. I then subsequently issued an FOI to the council for sight of the relevant documents.

Some time later I received a phone call from Mr. Rudkin advising me that totally unsolicited he had personally received a response in regard to my FOI request.

*This was most unusual as he had neither been party to my FOI nor had he any knowledge that I had in fact made such a request. My presumption was that the council had believed that Mr. Rudkin and I were in collusion in regard to my request, which was not the case, and that someone at the council had taken it upon themselves to wrongly include Mr. Rudkin in their response which of course is both wholly inappropriate and a breach of data protection. **Being the leader of the Opposition party on the council I had both a political reason and also a duty to assess for myself if any funds had been wrongly allocated.***

At that point I decided to ask Mr. Rudkin exactly which documents I should request to ascertain if indeed the funding had been diverted and with this information I immediately issued a subsequent FOI asking for specific information. During this period I also met with two officers from the ERDF to ascertain exactly what steps I should take in regard to any the relevant funding shortfall and was advised to request an internal audit and if still not satisfied I should report back to the ERDF. I then met with the Chief Executive and head of democratic services of Blackpool Council and explained my concerns whilst at the same time requesting that an internal audit be carried out. **This audit was completed in due course by Mr. Lee Frugg (Frudd - correction) an officer of the council and his report indicated that the accounts in regard to the ICAN project were in order and that any unreturned surplus was within the accepted parameters of the ERDF requirement. I subsequently confirmed this information by email to Mr. Rudkin and considered the matter closed. There was no reason for Mr. Rudkin or I to have any further contact in regard to this or any other subject. Mr. Dan has now left Anchorholme Primary Academy and I believe he is in fact working with Mr. Rudkin and others in further developing his original concept and delivering it to other educational providers.**

I have reviewed my own historic correspondence with other council officers in regard to the ERDF funding and further information has come to light which I will discuss fully with senior council officers and the auditor in due course. I outline the history of my involvement with Mr. Rudkin and the details of my ICAN enquiries as a matter of record and consider this to be an 'open' document available to anyone who

wishes to understand my own involvement in the situation. I also confirm that I have forwarded a copy of this by email to Mr. Rudkin and the chief Executive of Blackpool Council.

Cllr. Tony Williams

Councillor for Anchorsholme Leader of the conservative group Blackpool Council.”
(Emphasis Added.)

17. The Appellant had written to the Tribunal office on 1 March 2016 stating:

“Councillor Williams has stated that he is not satisfied that the information has been declared openly, and continues to question the £100,000 unaccounted for which could not be identified in the Audit carried out by the Council’s internal audit team.”

18. An email of 3 January 2013 from the Appellant to an officer at the Council:

“...Can I just say that whatever prompted you to make it impossible to get access to the I-CAN files has only added to suspicions that something is being hidden... But then- you know there are **hidden skeletons** there.

So it WAS [redacted] FOI? That was established because of the “mistake”. Thanks for that. **It has given me a new pathway for my appeals** (although he is most professional and says he cannot enter into discussions relating to my redundancy). Cllr [redacted] had asked me to meet with him to talk through the B4Me early stages (I was flattered), however I now understand that the delays in me actually doing that have arisen because of “internal concerns about commercial issues”, Eh? It has even been suggested that the files are being “surrounded by suspicious secrecy”. You know what you should do? Just let him have what he needs. He also knows he can approach [redacted] who trained him, although to be fair she has tried to put her own bad experiences (and what I saw as [redacted] hatred of her) behind her, I see no reason he shouldn’t approach her as well!!

...It is about time that the suspicions were put to bed – and so I intend to document the issues I know exist. I wasn’t going to, but my situation really leaves me no option. If Cllr [redacted] wants to use B4Me as a model, he needs to be aware that its costs were imho [sic] financially corrupt. You really can separate the fact from the fiction.

I look forward to that meeting.

[redacted] you may want to advise your representatives that – while imho corruption extends further into the ICT you led. As I ‘whistleblew’ on at least two occasions, to you personally, to the ERDF team, to [redacted] and all were ignored. New documentation ...now due in just 5 days time will be added to the court document bundle – **along with a few other prime, and as yet undisclosed gems, that friends of mine (from around you) have offered me. You’ll remember them.**

Honest New Year, John” ((Emphasis Added.)

Submissions

19. The IC's submissions included:
- a. There was no evidence before the IC to support the Appellant's allegations of mismanagement.
 - b. There is a strong public value in scrutinising public expenditure. However, the project had already been audited a number of times and there had been no evidence of mismanagement. Nor was disclosure under FOIA necessary to facilitate future audits by the relevant authorities. The mere fact that the information sought was retained pursuant to a retention policy did not prevent it from being of limited value, nor did it prevent that value being outweighed by the considerable inconvenience to the public authority that compliance would involve.
 - c. Contrary to the Appellant's assertions, it is not the Appellant who determines the value of the request for the purpose of s.14(1) FOIA.
20. The Council's submissions to the Tribunal or IC included:
- a. The request was vexatious as the accounts that formed the subject of the Appellant's request had been subject to audit. The Appellant's original request was not for accounts, but rather for *“project progress reports (as they were originated complete) and financial reports (as reported and officially signed, including match funding). This documentation is all part of the original paper records.”* When the project was live, it was subject to a number of audits, undertaken by the Council's Internal Audit Service and by external auditors, including the funders (ERDF). The audit process had been exhausted by qualified individuals and the appropriate regulatory bodies for this project. After the project closed, it was referred by the Chief Executive for an audit in respect of a disputed funding amount and alleged mismanagement. This audit was to satisfy an enquiry from an elected member and focused on certain financial records only. It did not require a retrieval of the 41 files held in archive. As the Appellant had stated that he had a copy of the audit undertaken for the elected member. His contention that his request would have value to prove his allegations of mismanagement was without merit and the disclosure would not contribute to transparency of externally funded projects as the project had been subject to exhaustive scrutiny.
 - b. The Appellant has also suggested that the requested inspection would help him understand how the project could be replicated, as he had been asked by a third party to provide advice on a similar project. However, the project would be of limited use to any current or future projects, due to the ERDF funding no longer being available. It was reasonable to assume that third parties interested in replicating the project would already have access to formal support from the ERDF, without recourse to the FOIA by an individual acting in a private capacity. Since the Appellant had led the project that the information related to, he would already have the knowledge to assist on similar projects. In any event, the information would not aid another project as the processes and opportunities were now different.

- c. Having previously described the burden on the Council if it were to fulfil the request to be 'grossly oppressive'⁵, it explained that the 41 files were in archive and would require the contents to be reviewed to determine if they could be disclosed to the public or were pertinent to the request, where consideration would also need to be given to the conditions of funding to determine this. Allowing the Appellant the opportunity to scrutinise the documents would require first formatting them and two council officers would be necessary to facilitate the viewing (one for photocopying what the Appellant required). It would not have been possible for the Appellant to refine his request in a way that would reduce the burden on the Council as the files would still need to be reviewed to find the relevant information.
- d. The Council considered the following circumstances as of relevance:
 - i. The Appellant sending the Council an email sent to the Parliamentary Health Service Ombudsman was said to be 'indicative of the behaviour and correspondence from the Appellant', as was his changing his mind as to whether his request was under FOIA or not.
 - ii. The Appellant having already conversed with elected members and external fund auditors in an attempt to prove fraud. Since there had been exhaustive scrutiny, the Appellant's request was an inappropriate use of the FOIA procedure.
 - iii. The Appellant claiming different reasons for requiring access to the information in correspondence and his blogs, suggested to the Council that there was no serious or consistent purpose for the request and that the disclosure would not contribute to transparency on this or similar projects.
 - iv. From his blogs and correspondence, the Appellant had raised the question of fraud.
 - v. He was unreasonably persisting in an attempt to reopen matters that had already been dealt with and subject to independent scrutiny.
 - vi. The Appellant was made redundant in 2011, and unsuccessfully challenged the process through the Employment Tribunal and associated courts. He had persistently contacted the Council and posted comments on blogs/fora, and published any correspondence received from the Council officers or elected members including any provided in confidence.
 - vii. The Council considered there had been a need to support officials from harassment or undue persistent contact the officials identities would be withheld by using a general email address.

21. The Appellant's submissions included:

⁵ See page 92 of the Open Bundle.

- a. It was for the Appellant to decide the value placed on the information required by the Appellant.
- b. That the request dealt with information that has already been defined and retained by the funders as to be retained.
- c. No independent verification of the financials had been provided, and an internal audit has been openly challenged by Councillor Williams as failing to provide any information about the whereabouts of the payments in question. Although he had highlighted this whilst at the Council, he had been ignored. He had been made redundant despite having 'whistle-blown'. He had been asked to suppress information at the time, which resulted in him experiencing stress and eventually becoming ill. He was interested to see and therefore better understand a project to the value of the public, and considered that Councillor Williams and the auditors (see below) were also interested in this. Essentially, the person requesting the information was leader of the opposition and member of the Council. The request was of value in answering Councillor Williams, on how the monies had been spent in achieving delivery on a community requirement which the councillor had considered of value, when the councillor had become concerned about this. The cost of setting this up and running it had clearly been important to the councillor.
- d. He said he had a sense of what was right, and could not capture in words the persistent way in which individuals had treated the issue. He claimed £100,000 had disappeared from an account, which could have benefited a number of people or programmes in the town. That it was possible to pinpoint its receipt in Blackpool ICT should be enough to help simply show where it went, such that he asked why there was no audit trail. On leaving, he had been pushed to agree under contract not to speak openly, and said he had been hounded through three years of tribunals. The Council had apologised. If he could help to close this case he would, but the Council seemed to continue to fight him.
- e. He stated that on 7th January 2015, Councillor Tony Williams, and the Appellant met with Mr David Green senior auditor, Internal Audit Investigation Team and Kevin Keltie following previous contact with Jim Philips. The outcome was that Councillor Williams was to clarify the Council's position, the Appellant was to pursue the FOI claim and the auditors would perform their own investigation as they had insufficient answers to the questions on the project to the value of the public.
- f. The Council's internal audit did not meet the expectations of Councillor Williams because the £100,000 that had been cited as having been returned back to the Council had not been effectively identified or traced.
- g. The Appellant had observed the decision made with funding first hand and personally attempted to ensure that financial management outside of his control was correctly carried out. He believed that funds that should have been recorded as returned to the project as a cash refund were not correctly recorded, and was aware that in the financials he worked with, the value of £100,000 in question (however applied) was never accounted for. At the time this situation created a great deal of stress for him, especially when he was asked to keep quiet about the refund during

the externally run audit. He had reason to be concerned that the actions might reflect on his professional standing in the future.

- h. A genuine interest had been raised in understanding how a relevant part of the project was planned, engineered, what processes, specifications and costs were concerned, it seems totally justified to ask for access to the original record files which were supposed to be archived appropriately by the funders. The request it was of value as it was similar to a project (in its use of a public portal and the way it was successfully managed). He was looking to use the learning from the project in his own ward.
- i. That ERDF funding was no longer available did not affect the argument. The I-CAN project had been ERDF funded. The request was about what was done and how much it cost, not about how to access the same funding. In any event, the ERDF Audit Team made clear to Councillor Williams and him that at the time of the request, the ERDF funding stream was not closed, and remained open for further investigation.
- j. Regarding the Respondents' arguments that the request imposed a disproportionate burden:
 - i. In an argument we consider best deployed in refuting the costly nature, he argued that the information was officially identified to be retained under the requirements of the 'The Corporate Retention Schedule, required by EU Directive', as well as for Audit purposes and currently to be kept until 31/12/2025 or until destruction date is advised.
 - ii. He also argued that as he had prior knowledge of the requested information, there was no need for the Council to spend time considering redactions, such that there would not be a disproportionate burden.
 - iii. The fact the Council had 'audited' the I-CAN project suggested that the information is accessible.
 - iv. The information requested solely related to the "I-CAN" project. In fact, the request was to look at just a part of that project, the online portal named Blackpool4Me.

Our Findings

22. Our starting point is to consider whether the request has any reasonable foundation, taking into account all the relevant circumstances. The emphasis of submissions have been on examining the value or serious purpose of the request and the burden on the staff and whether it is proportionate. In the circumstances of the case we have considered this a fitting approach to take.

Value or Serious Purpose of Request: Proposition 1

23. The Appellant has advanced various propositions as why the information may be of value. First, he claims that it is for him to decide the value placed on the information required by the Appellant. This is plainly incorrect, as the words

of the section 14 imply some objective standard and were it otherwise, it would essentially mean that it was for the Appellant and not the public authority, IC or courts to decide whether the request was vexatious in this regards.

Value or Serious Purpose of Request: Proposition 2

24. Second, the Appellant asserts that the request dealt with information that has already been defined and required by the funders as to be retained. The panel presumes that the Appellant is arguing that as the funders required the information to be retained, it must have value. We do not think this argument has merit as it does not provide a reason where there would be value in disclosing the information under FOIA as opposed to retaining it to be accessed by the authority or funders.

Value or Serious Purpose of Request: Proposition 3

25. Third, the Appellant claims he needs the requested information to investigate alleged financial mismanagement. He supported this proposition by claiming that a senior councillor and auditors were interested in the information and in him deriving it. (*See for instance paragraph 17 above*). However, by the Appellant's own evidence, this is plainly not correct. The text in paragraph 16 above shows that a) the councillor was able to make his own enquiries by virtue of his role as well as his own FOIA requests to satisfy his needs and did so such that he had no need for the Appellant to make any request on his behalf or to use the information gained by the Appellant; b) the councillor made extensive efforts to investigate the matter and became satisfied that the matter was closed (and informed the Appellant as such), following an internal audit that indicated that the I-CAN accounts were in order and any unreturned surplus was within the accepted parameters of the ERDF requirement; and c) he had met with officials from ERDF who had recommended that the councillor seek an internal audit and return to them if not satisfied. The councillor was satisfied with the Council's response on the specific concerns raised by the Appellant such that he considered the matter was now 'closed', and intended to discuss other issues further with senior officers and the auditor in due course.

26. To conclude, we find the Appellant allegation of financial mismanagement lacks credibility because:

- a. The Appellant has provided nothing to support it and indeed has provided evidence to contradict it. Neither the councillor nor auditors needed the information.⁶
- b. We accept the Council's arguments that the project had been subject to extensive audits at the time of the request. Whilst the Appellant had failed to provide anything to support his allegations, an internal audit has concluded that there was no financial mismanagement in regard to the particular area of concern to the Appellant and this further supports that there was no basis in the Appellant's assertions. The audit satisfied a senior councillor and implicitly the ERDF was not unsatisfied, such that

⁶ The assertions in sub-paragraphs 21 (c) and (f) also appear to have been contradicted by the text of the letter from the councillor.

we have no reason to doubt its soundness. This is supported by the lack of interest in the allegations by the funders who were informed of the allegation, again contrary to the Appellant's assertions. Further, as the EDRF were aware of the allegations, as funders of the project their access to appropriate information and audit would not have been dependent on the Council responding to the Appellant's FOIA request.

- c. The Appellant's explanation for a value in investigating financial mismanagement has rested on the interest of the councillor and ERDF, and also that he had highlighted the failure to provide any information about the whereabouts of the payments in question, and had been asked to suppress information at the time. The Council disputes this. Unfortunately, the contradictory nature of his evidence and lack of any detailed evidence to show that it is more than a 'mere assertion' (particularly after it had been taken seriously by the councillor and investigated) leads us to question its overall validity. There was no other evidence or argument that the Appellant made that we found supported his case on 'proposition 3'. Page 78 of the bundle provides a more coherent explanation of the issues in question than those advanced by the Appellant, and is more persuasive in that it is consistent with the text in paragraph 16 above⁷. It is not our role to investigate the Appellant's allegations of financial mismanagement. It is our role to consider whether the Appellant's request for information under FOIA has any reasonable foundation. Based on what we have seen, we conclude that it does not.

27. We consider this to be reason enough to satisfy our conclusion. However, we are fortified in this finding because even if there had been potential financial mismanagement to investigate, we do not accept the Appellant's assertions that he needs the requested material to assist the auditors or councillor. First, the auditors or councillor would be able to make their own request or investigation. Second, if that had really been the Appellant's intention, copies of the relevant information would have been of more use where the Appellant had asked to inspect the files and not for copies. Third, it seems that the Council, Councillor Williams and EDRF all seemed satisfied that there had not been alleged financial mismanagement on the points he had raised. From the evidence before us, it seemed that only the Appellant seeking to find mismanagement.

28. We have come to this conclusion on this point for the reasons set out above. We note that we have not accepted all arguments posed by the Respondents:

- a. We do not accept that the IC's argument that any further audit or investigation would be undertaken by the proper national or European authority, rather than an individual in a private capacity. This is because, as stated by LJ Arden in *Dransfield CA*, the FOIA is a constitutional statute enabling ordinary citizens to obtain the information held by an authority and thus to know what the authority knows. It is conceivable that requesters such as the media can and have audited or investigated financial matters of a public authority. The IC additionally argued that

⁷ See for instance paragraph 16 "the accounts in regard to the ICAN project were in order and that any unreturned surplus was within the accepted parameters of the ERDF requirement".

there was no evidence to support financial mismanagement. We would note that the Appellant's own statement constitutes evidence, however for the reasons above we have not found it at all compelling.

- b. The Council asserts that the Appellant's request was not for accounts and that the material would not serve to help in proving financial mismanagement where the internal audit had been carried out without these files. The Appellant asked for financial reports, and in our view this could include accounts. Further, we cannot know whether searching the files would assist in trying to find evidence of financial mismanagement. However, in any event, it would seem that providing 41 files of material in order for the Appellant to effectively attempt to discover something incriminating or newsworthy evidence without any real reasonable foundation would not be justifiable.⁸
- c. The IC stated that whilst there are no prescriptive rules as to why a request might be refused as vexatious, there were generally typical characteristics and circumstances assisting in making a judgment. □ It explained that a commonly identified feature of vexatious requests was that they could emanate from a sense of grievance or alleged wrongdoing by the authority. We would note that as each case must be considered on its own facts, and any suggestion that a sense of grievance or wrongdoing by the requester might in itself be evidence of vexatiousness on a generic basis, would seem problematic. The process of pursuing an FOIA request can at times be onerous, such that the requester might need to be particularly determined to follow through. A successful requester may thus be fuelled by a sense of grievance, and depending on the circumstances, this may be fitting or it may not.

Value or Serious Purpose of Request: Proposition 4

- 29. The fourth proposition is that the information was of value to understand how a relevant part of the project was planned, engineered, costs, processes, and specifications where this seemed justifiable given the material had been archived appropriately in accordance with the funder requirements. The Appellant stated that this was of value for a similar project of value to the public, (in its use of a public portal and the way it was successfully managed), and that the councillor was looking to use the learning from the project in his own ward.
- 30. The Council's response was partly that the documents would be of limited use to any current or future projects due to the ERDF funding no longer being available and that parties interested in replicating the project would already have access to formal support from the ERDF). This seemed to us to lack rigour as the Council has assumed the Appellant's interest was related to ERDF funding where the Appellant had not stated this.
- 31. The Council also argued that since the Appellant had led the project that the information related to, he would already have the knowledge to assist on a similar project and the disclosure would be unlikely to add value, where in any event the information would now be obsolete as processes would have now

⁸ In this, we have taken into account the broader circumstances referred to in paragraph 33 below from: *"The Appellant's motivation in requesting the information..." to the end of the paragraph.*

moved on. In the absence of any specific or convincing arguments from the Appellant as to why the information would be of particular value, the Council's argument seems compelling. The Appellant mentions the use of the portal and how it was managed, but in the absence of further information, it is difficult to see why disclosing the requested information under the FOIA mechanism would be a proportionate measure where the Appellant is likely to know or be able to access other information on this. Such vague reasoning would seem to weaken considerably any argument that there was value in the disclosing 41 files⁹ on the basis of some rather general unfocussed justification of transparency.

32. Whilst the Appellant has argued the relevance of the fact that the archived material being required to be kept, we do not accept that this indicates that a disclosure of it would be of value where the reasoning for maintaining proper records does necessarily overlap with disclosing them.

33. In any event, the Council has cast doubt on whether the Appellant's assertion in proposition 4 is authentic. It contends that he had altered his reasoning in such a way that there was no serious or consistent purpose for the request. It seems clear to us that there is some validity in this argument. The Appellant's motivation in requesting the information seems to be linked to his continuing dissatisfaction with his dismissal and treatment by the Council where this has already been considered in other courts. He has raised questions that have been addressed by the Council's internal audit, and also appears to have raised issues with the police and Ombudsman. It appears that the Appellant is using FOIA to persist with dissatisfaction that has been subject to extensive independent processes. This is supported by his extensive efforts to meet people to pursue this goal, his somewhat ill-advised readiness to accuse the Council of fraud without any substantive evidence, his relaxed approach to making assertions to the court and IC, (for instance in the claim of fraud, and the claim of support from the councillor as someone in a position of authority where his own evidence indicates this to be inaccurate in – see paragraph 25 above), and that the vast amount of the evidence presented focusing on his claim for mismanagement and not on the value of the information for some other project. It is clear that the Appellant is motivated by a sense of an underlying grievance and the email set out in paragraph 18 demonstrates this, where his tone does not seem fitting or respectful of the official he writes to.¹⁰

Burden and Proportionality

34. The Appellant has argued that the Council is required to retain the information. We do not accept that this demonstrates that it would be justifiable or proportionate to disclose it.

35. The Council has argued that the burden of responding to the request would be 'grossly oppressive'. It supports this as follows:

⁹ Which in this case means the Council retrieving and reviewing all information and then making arrangements to enable the Appellant to inspect them.

¹⁰ The tone of his email on page 442 of the Open Bundle, seems likewise inappropriate, but we think this should be overlooked given the extenuating personal circumstances that are referred to in the chain of correspondence.

- a. That the 41 files were in archive and would require the contents to be reviewed to determine if they could be disclosed to the public or were pertinent to the request, where consideration would also need to be given to the conditions of funding to determine this. We accept that reviewing 41 files to consider whether any FOIA exemptions applied would take a considerable amount of time. (We think that the Council might have asked the Appellant - who likely knew the contents of the files - whether he would be willing to narrow his request by specifying which of the files as identified in the open bundle were of relevance to him. However, we consider that given the Appellant's background, he would in anyway have made clear if he was willing to narrow the request. He seemed to be looking for 'hidden skeletons', such that had the Council asked, it is highly likely that he would still have asked for a considerable proportion of the files.
 - b. The Council asserted that it would need to first format the documents before providing them for the Appellant. It was not explained or evident to us as to why this would be necessary.
 - c. The Council asserted that it would have needed two officers to facilitate the Appellants viewing of the material. It is not clear to us why this would be so since the Appellant had made clear he was seeking to inspect the documents rather than receive copies. We accept that the Appellant would likely have wished to see a considerable amount of documentation and this would have necessitated someone being present whilst the Appellant scrutinised the material.
36. The Appellant has argued that as he had prior knowledge of the requested information, there would be no need for the Council to spend time considering redactions. This is not correct because the Council has a right (and in certain circumstances a duty) to consider whether the material may be disclosed to a member of the public under FOIA as well as considering the terms required by the funders.
37. He also argued that the information requested was solely to look at part of the I-CAN project, the online portal "Blackpool4Me". This does not accord with the text of his request which only mentioned I-CAN.
38. In short, whilst the Council has not given an estimate of the likely costs, we accept that complying with the request would be most likely to require the Council to spend a very considerable amount of time in reviewing the material, and being present whilst the Appellant reviewed it, and that this burden would be substantial. Given that we find that the request lacked a value or reasonable foundation or that disclosure of the material itself would be of importance, we do not consider the burden of complying with the request would be proportionate.

Conclusion

39. To conclude, for the reasons set out above, we have not found the request to have a reasonable foundation and in the circumstances responding to it would be a manifestly unjustified, inappropriate and improper use of the FOIA procedure.

40. The Appellant wishes to see the information to investigate financial mismanagement on the part of the Council. He claims validity in this as coming from a senior councillor. However his own evidence shows this not to be the case. The matter having been investigated, we have been shown no reasonable foundation for the claim. The Appellant has then asserted that he would find value in the information to assist on a similar project. We have not been shown any serious purpose for this. To the extent that there is any genuine desire to see the information to help in advancing a separate project, the use of the FOIA mechanism requiring disclosure of extensive files does not seem to be in any way a proportionate means to satisfy that interest. This is particularly because we have looked at the request and circumstances in the round and found that that the Appellant has demonstrated an unreasonable persistence to seek (somewhat publicly) to demonstrate mismanagement by the Council and this seems to be his primary motivation. Where FOIA is designed to ensure greater public access to official information and to increase accountability and transparency, an improper use of it detracts from its broader utility and efficacy.
41. To the extent that we have not referred in our findings to other arguments made by the parties, we have not accepted them as being sufficiently demonstrated.
42. Our decision is unanimous.

Tribunal Judge

24 May 2016