



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

**Case No. EA/2015/0271**

**ON APPEAL/APPLICATION FROM:**

**Information Commissioner's Decision  
Decision Notice No: FS50593162  
Dated: 25 November 2015**

**Appellant:** Ronald Etherington

**Respondent:** The Information Commissioner

**Date of hearing:** 5 April 2016

**Heard at:** Exeter Magistrates' Court

**Before  
Chris Hughes  
Judge  
and  
Suzanne Cosgrave and John Randall  
Tribunal Members**

**Date of decision:** 9 April 2016

**Subject matter:**

Freedom of Information Act 2000 section 14(1)

**Cases:**

Information Commissioner v Devon County Council and Dransfield GIA/3037/2011

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 25 November 2015 and dismisses the appeal.

### **REASONS FOR DECISION**

#### Introduction

1. The Appellant in these proceedings, Mr Etherington, has a long-standing concern about the number of houses in multiple occupation (HMOs) on the estate where he lives, there is one each side of his home. Interviewed by the local newspaper (bundle page 216) he stated:-

*“We’ve had problems for over seven years. We are suffering the consequence of Ashford Borough Council’s planning department allowing free rein to property developers who buy up three storey properties on our estate and convert them into HMOs. We have for yours now had to put up with anti-social behaviour, littering, fly-tipping, noise from parties and fights continuing well into the early hours of the morning.”*

2. He has explained to the tribunal (bundle page 206-211 at page 207):-

*“I am not a lawyer or solicitor, just an ordinary person trying to improve the lot of my community by holding Ashford Borough Council to account over many years regarding many legitimate issues, not just regarding HMO’s, although I admit they bear the brunt of my correspondence with the Council....You will not see anywhere, either in the documents presented to the Tribunal by the council or in any of those that I have submitted where the council has actually addressed the issue and resolved it. It talks a good talk but is short on action.”*

3. On 2 May 2015 he wrote to Ashford Borough Council (“the Council”) and requested information in the following terms:

*“Borough wide, can you tell me the total cost to Ashford Borough Council for supplying domestic wheeled bins, not including brown bins, to residential properties.”*

On 4 May he asked for more information;-

*“Regarding the properties listed in the attachment to FOI request 3689 [properties identified as HMOs], can you tell me how much the council received, collectively, for the provision of extra sets of wheeled bins.”*

4. The Council responded on 27 May stating that it considered the requests to be vexatious and refused the requests. Mr Etherington complained to the Information Commissioner (“the ICO”) who investigated whether the Council was entitled to treat the requests as vexatious.

#### The decision notice of the Information Commissioner

5. In his decision notice the ICO considered the complaint in the light of the Upper Tribunal decision in *Dransfield* and his published guidance. He reviewed information from the Council indicating that from October 2014 to May 2015 (including the two requests) there were 27 requests for information (decision notice paragraph 20). The Council had held face to face meetings with Mr Etherington and a considerable amount of time by officers and members had been devoted to Mr Etherington, however no matter what the response, further requests for information were made (dn paragraph 22). The Council had concluded that the effort of dealing with the requests was disproportionate and impacting on its duties and the requests were being used by Mr Etherington “to achieve his objective” (dn paragraph 15).
6. The ICO concluded there was no evidence (such as a complaint to the Local Government Ombudsman “LGO”) to demonstrate that the Council had handled the issue incorrectly and in turn this pointed towards a lack of serious purpose in the request, answering the requests would generate further requests and, the

context of the requests showed a disproportionate burden on the Council. He upheld the stance of the Council.

### The appeal to the Tribunal

7. In his appeal Mr Etherington confirmed that his complaints had been about lack of regulation of HMOs and he linked the issue of large numbers of wheelie bins to the number of HMOs. He explained that he wished to know whether the landlords of HMOs or the general council tax payers were paying for the bins.
8. In his lengthy response the ICO detailed a long history of contact between the Council and Mr Etherington about HMOs, his many requests including (on 20 March 2015, bundle page 183) for the amounts the landlords of specific houses had paid for additional bins and the dates they had been paid and the responses and explanations given by the Council. He noted that the Council had provided significant information about bins at specified properties and that the Council was considered that bins had been provided appropriately. He noted Mr Etherington's comment:- "*if their response invited more questions, which again is often the case, do I ignore those too? Am I to blindly and dumbly accept, at face value, what they tell me..?*" The ICO concluded there was an excessive burden.
9. The ICO noted the significance of HMOs meant there was some public interest in knowing that the Council was addressing the concerns raised and that Mr Etherington wanted the information in order to "*get the Council to exercise more regulation, control and monitoring of these properties..*" The ICO concluded that the information sought by the requests was neither likely nor necessary to meet this aim. The ICO therefore concluded that the purpose or value of the requests did not justify the burden and upheld the Council's reliance on section 14.
10. In his final submission (bundle pages 51-54 and attachments pages 55-156) Mr Etherington argued that he had made four requests for information on this issue prior to these two and he had had to remind the Council of its obligations to reply. He was not obsessive, rather the Council was unable or unwilling to deal with the issues. He had only made seven formal complaints to the Council, none of them relating to these two requests. His emails to the Council had concerned many issues and he had successfully complained to the Local Government Ombudsman ("the LGO") about the Council (and Kent County Council) on several occasions.

Since the failure to answer his requests for information would be unlikely to be considered by the LGO the only recourse he had was to the ICO.

### The question for the Tribunal

11. The task for the tribunal is discerning whether if viewed in the round, in the light of all the circumstances and dealings between the Council and Mr Etherington, the requests are vexatious, as Wikely J stated in *Dransfield*:- "*The question ultimately is this - is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?*". He explained the purpose of section 14 FOIA as:- "*to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA.* "

### Consideration

12. HMOs are regulated because, in certain circumstances, they may be inappropriate, poorly managed, overcrowded or unsafe. Mr Etherington has, for many years, been campaigning about HMOs on the estate where he lives. The Council has, over a period of time, devoted substantial time and energy to responding to Mr Etherington including meetings with him to explain the situation, what it is doing and to respond to his concerns. There has been a considerable correspondence, complaints to the Council and to the LGO. Mr Etherington has remained dissatisfied. Having been given significant information about the provision of wheelie bins to HMOs he has sought further information about the bins. His explicit intent is to put pressure on the Council to be more active in its regulation of HMOs (paragraph 9 above) and he has clearly stated his lack of trust of the Council's response and his preparedness to follow up an answer with a further question (paragraph 8 above).

13. The information sought is tangential to Mr Etherington's concern and providing him with the information is most unlikely to assist him in understanding the issue. Through his repeated questioning (and reluctance to accept the answers and explanations he has received) he has drifted into pursuing information which is of no public interest where he asks questions as a means of putting pressure on the Council rather than as a source of illumination. His requests are numerous, repetitious and there is no realistic prospect of them ceasing. The requests are an

unnecessary burden and diversion of scarce resources. They are vexatious. The tribunal upholds the ICO's decision notice and dismisses this appeal.

14. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 9 April 2016