



Neutral Citation Number:

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

Appeal No: 2EA/2016/0114



ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50593659

Dated: 31 March 2016

Appellant: Krystyna Sullivan

Respondent: The Information Commissioner

Heard at: Edinburgh

Date of Hearing: 17 August 2016

Before

Chris Hughes

Judge

and

Marion Saunders and Suzanne Cosgrave

Tribunal Members

Date of Decision: 30 August 2016

Attendances:

For the Appellant: in person

For the Respondent: did not attend

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

Cases:

Information Commissioner v Devon County Council & Dransfield UKUT 440 (AAC), 28 January 2013

Dransfield v Information Commissioner and another Craven v Information Commissioner and another

[2015] EWCA Civ 454; [2015] WLR (D) 215

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 31 March 2016 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings (Mrs Sullivan) believes that she is entitled to inherit property from her late father. Over time she has come to believe that that this is a considerable estate. She states that at present she is unable to apply for probate until she is able to construct a paper trail. She told the tribunal *“my quest in trying to get the documentation together to proceed to a grant of probate is what it is all about to me.”*
2. Following correspondence with Land and Property Services (“LPS” a section of the Department of Finance and Personnel “DFP”, a part of the Northern Ireland Executive responsible, among other things for rating valuations and land registration) she was asked to formally make an information request for what she was seeking. On 19 June 2015 at 9.27 am she wrote:-

“Freedom of Information Act 2000/Data Protection Act 1998

Thank you for your letter dated 15th June in connection with In House Document No. 2000/25224. I hereby request that all Documents and Information protected by the above Act and relating to the said “In House Document No.2000/25224” be released to me as a matter of urgency.”

3. At 12.04 that day she chased for an acknowledgement by email and spoke by telephone at 2.25 pm, sending a further email at 3.52pm. She received a letter by email at 4.40pm and further information was sent to her at 4.49pm. The substantive response was made on 23 July and stated:-

“The information you have requested is withheld under Section 40(2) (data protection) of the Freedom of Information Act 2000, as it concerns a third party.”
4. On review the position adopted was upheld and information as to the nature of the information requested was provided (letter dated 12 August 2015 bundle pages 48 - 50):-

“My investigations reveal that the “in-house document number 2000/25224 is not in fact a document. The reference is a number generated by the LPS systems when customers request data from those systems. This number therefore refers to an individual who has in the past made a legitimate request for information from Land and Property Services. In making that transaction, the individual would not expect his/her details to be made public by LPS, which is the effect of any release under the FOIA. To publish that person’s details would be unfair and so would breach the first Data Protection principle.”

5. Mrs Sullivan complained to the Respondent , the Information Commissioner (“ICO”). He investigated and wrote to LPS on 9 December (bundle pages 73-75) and 29 January querying reliance on the Data Protection Act on the basis that the applicant for information was a firm of solicitors and that the name of a firm was not personal data. In response LPS (letter dated 10 February, bundle pages 93-95) relied on the S14 of FOIA on the basis that the request was repetitious and vexatious. The reply noted that:-

“Our records show that Mrs Sullivan emailed the business area 138 times concerning this issue alone....

The recorded email traffic does not, however, bear witness to the prolific number of phone calls which accompanied these communications. In Registration, one member of staff agreed to be a single point of contact to deal with Mrs Sullivan exclusively, as other members of staff felt harassed by her frequent telephoning, emailing and impatience (her complaint case was about perceived “tardiness”). Although Mrs Sullivan has always been polite, nonetheless officials have found the level of persistence distressing. From this amount of contact, especially the number of requests to Registration for folios on parcels of land that Mrs Sullivan is not legal owner of, it could be argued that the request is evidence of a pattern of behaviour.

...

The disclosure of the information would, or would be likely to, place the third party at risk of unwarranted attention – the requestor’s history of action in this case has been one whereby she has repeatedly contacted DFP and NI Assembly Committee staff and members. Both Complaints Unit and IMU staff, as well as Land Registration staff in LPS, have received numerous calls and e-mails from Mrs Sullivan in the course of

processing her request for information. For example, when the request was sent by email, within minutes she phoned for an acknowledgement of receipt and e-mailing repeatedly for an acknowledgement e-mail in a way in which no one else has acted. If we were to disclose the third party's name and address they might face similar excessive contact from the requestor.

...

There is no public interest in releasing into the public domain the name and address of a solicitor who obtained a copy of the folio for a client. The requestor is able to obtain the name and address of any parties who own or have owned the land in the folio by herself purchasing a copy of the folio, without needing to know who represented them as a solicitor in a conveyance.

There is no public interest in releasing into the public domain the name and address of the solicitor who obtained a copy of the folio for a client, for to do so would create a precedent that the names and addresses of any or all solicitors doing so might be made public and that would create an unwelcome lack of trust between LPS and solicitors representing clients in a confidential legal capacity for clients.

There is no public interest in releasing into the public domain the name and address of a solicitor who obtained a copy of the folio for a client, as the issue is clearly purely a personal matter on the part of the requestor and the public would not benefit in any way from the release of this information.

It is unlikely to requestor's case would benefit from the release of the information.

Conclusion

This request represents a burden on the Department, in that LPS considers that dealing with this request has resulted in, and is likely to continue to result in, a disproportionate level of disruption, irritation and, to some staff members, distress. The requestor's contact with the Department, both evidenced by the e-mails on Trim and the undocumented telephone calls, amounts to unreasonable persistence and obsessive behaviour.

Much of the information Mrs Sullivan has sought she has been able to obtain through Land Registration as it is available in the public domain. Despite this, the way Mrs Sullivan has dealt with officials has been unusually repetitious and vexatious. The

pattern of the requester's behaviour in dealing with LPS staff in general gives cause for concern and suggests that it is unlikely the Department will be able to resolve her [re]quest to her satisfaction."

6. In his decision notice the ICO considered the matter under the Environmental Information Regulations rather than FOIA, however he noted that there was no material difference between the two statutory access regimes where the issue was whether a request was manifestly unreasonable (dn paragraphs 17-18).
7. He reviewed the position of the Department (dn paragraphs 22-26). He noted (dn paragraphs 27 & 29) the breadth of the material which Mrs Sullivan had sent him:-
"This includes correspondence with the Department in respect of other requests for information, correspondence with a bank and correspondence with the Financial Ombudsman Service.

....

The complainant has not specifically addressed the Department's assessment of her request as vexatious. Nor has she provided any arguments as to why the requested information would be of value to the wider public. However the complainant maintains that the requested information is necessary for her own legal case."

8. The ICO, relying on the decision in *Dransfield* considered the issue to be:-
"Does the request have a value or serious purpose in terms of the objective public interest in the information sought?"
9. He noted the good faith of Mrs Sullivan in seeking information and her belief that it would help her probate case, however (dn 31):-
..., The Commissioner is unable to identify an objective public interest in the public being informed as to the name of a solicitors' firm that requested a copy of a particular folio. In any event it is not clear to the Commissioner how the requested information itself would assist the complainant's case in practical terms"
10. He accepted the submissions of the department and concluded (dn paragraph 42):-

"The Commissioner recognises that the Department has already sought to address the complainant's issues, and has tried to explain to the complainant that the information she has requested would not in fact assist her personal interest. The Commissioner is satisfied that the public interest in maintaining the exception at regulation 12(4)(b) clearly outweighs the public interest in complying with the request."

11. In her appeal Mrs Sullivan described the information she required as:- *"the two documents, namely 2000/25224 and 2000/25524 (the subject of my FOIA request) are the missing links in the paper trail surrounding folio 1380"*. She identified no errors of law and advanced no arguments why the ICO was incorrect in his decision merely restating that she believed that she required the information in connection with her late father's estate.
12. In his response the ICO maintained the position set out in the decision notice, noted the considerable burden upon the department and that a similar burden would also fall upon the solicitors' firms who had applied for copies of the land folios *"since it is likely that the Appellant would begin excessive correspondence with them."* He concluded that there was *"a strong public interest in the protection of the Department's resources, and little public interest in disclosure"*.
13. In support of her appeal Mrs Sullivan submitted what she claimed was a witness statement by a Gregory McCambridge whom she stated was a member of the Bar of Northern Ireland and who was acting as a legal adviser in all these matters. The tribunal noted that the document was in a somewhat unusual form, in the same unusual typeface that Mrs Sullivan uses, and contained a number of strange assertions including claiming that NAMA (the National Asset Management Agency which was set up by the government of the Irish Republic as part of its response to the financial crisis) lacked the legal capacity to receive money from the sale of property in Northern Ireland and the Republic of Ireland. It may be noted that there is no such individual at the Bar of Northern Ireland. Mrs Sullivan is either being misled and may be being provided with highly unreliable guidance by this individual or is confused.
14. Mrs Sullivan also relied on a certificate dated 24 June 1983 from the Probate Division of the High Court of Northern Ireland. This she claimed was a receipt of payment of £15,000 paid by the Government of Northern Ireland to the Irish Republic. A simple

inspection of the documents (bundle page 47) shows that is not correct. It is a certificate by the Examiner of the Capital Taxes Office in Belfast showing that the estate of the late Bernard McDonagh who died on the 3 February 1937 was valued at £15,000 and no estate duty was payable on the estate. Again Mrs Sullivan was confused.

15. In the oral proceedings Mrs Sullivan was unable to advance any argument relating to public interest and was simply focused on her own beliefs as to the existence of a substantial estate to which she would be entitled if she could obtain a grant of probate. She was unable to explain why she was unable to apply for probate now on the basis of listing and valuing the properties.
16. She saw no difficulty in the repeated contact with the Department saying "*in the real world you have to be prepared to act instantly*". She did not see her frequent contact as being repetitive and vexatious. She confirmed that she had "*almost 60 folios which I got from Land Registration all connected to my father*". She confirmed that she had obtained a copy of folio 1380. She stated that her interest was not "*in the name and address of the solicitor but in the document 2000/25524.*" (She acknowledged that the similarity in the numbering of the documents requested had been a source of confusion but there was no issue arising from that). She did not accept the explanation that this was a reference number rather than a document. She stated that "*my legal adviser was of the opinion that this document holds evidence which connects to my late father's estate*". She also asserted that the requested information not only were documents and not as LPS had advised a number generated by the LPS system but they "*have been used as collateral to obtain money from Banks in Northern Ireland*".(letter 1 August 2016)
17. In the weeks preceding the tribunal she had submitted a number of documents to the tribunal and stated that "*the paper trail accompanying all areas listed here was new information*". She had submitted a transcript of a television documentary about the work of NAMA which she felt was highly relevant to her request. She stated that she had been in touch with NAMA and that they had denied any liability to her.

Legal analysis and conclusion

18. The tribunal reminded itself that the issue it had to consider was whether or not the department had been entitled to rely on EIR regulation 12 (4)(b) which allowed it to

refuse a request for information if it was manifestly unreasonable. In considering this question the tribunal reviewed to the arguments advanced by the Department and the analysis of the situation set out in the ICO's decision notice. The tribunal noted that the department had expended considerable effort in responding to Mrs Sullivan's requests, this had caused some distress to "*members of staff who felt harassed by her frequent telephoning, emailing and impatience*" so that they had had to put in place a single point of contact to try and control the flow of communications from Mrs Sullivan, Mrs Sullivan has pursued multiple routes of contact and was pursuing similar activities with a range of agencies. The tribunal noted that at no stage had Mrs Sullivan advanced any argument as to the public interest and had always simply reiterated her belief that this information was necessary to advance what can only be seen as a private interest, obtaining a grant of probate. It is clear from her interpretation and use of documents that Mrs Sullivan is confused as to certain issues and there is, as the Department and ICO noted, no real explanation as to how the information could conceivably advance her private interest.

19. The tribunal was satisfied that the ICO's decision notice was for all practical purposes correct in law and dismissed the appeal.
20. The tribunal noted the ICO's reliance on EIR and considered that this was flawed and that the information held could not remotely be considered a measure "likely to affect the state of the environment". As the Court of Appeal in *Dransfield CA* and *Arden LJ* concluded that the difference between "vexatiousness" FOIA s14 and "manifestly unreasonable" EIR reg 12(4)(b) was "vanishingly small" and the Upper Tier Tribunal's conclusion that there was no difference between the tests was not overturned. so the tribunal is satisfied that the analysis of the situation under the EIR undertaken by the ICO in paras 30 -39 would also justify the decision that s14 is engaged under FOIA and the request is vexatious.
21. The tribunal notes that EIR reg 12(4)(b) (in contrast to FOIA s14) requires a public interest test which is carefully described by the ICO in dn paras 40 – 42 which it supports.
22. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 30 August 2016