Appeal number: EA/2016/ 0184

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

DR RAY COPE **Appellant**

- and -

THE INFORMATION COMMISSIONER **Respondent**

TRIBUNAL: JUDGE ALISON MCKENNA
ANDREW WHETNALL
DAVID SIVERS

Determined on the papers, the Tribunal sitting in Chambers on 9 November 2016

DECISION

1. The appeal is allowed. The public authority is required to answer the information request without reliance upon s. 14 of the Freedom of Information Act 2000.

REASONS

Background to Appeal

2. The Appellant made an information request to Haringey Council on 21 March 2016, asking for confirmation as to whether the standard form he had been sent by the Council had also been sent to all other motorists who had appealed a traffic penalty charge notice generated from a specific camera in December 2015 and January 2016.

3. The Council refused the information request in reliance upon section 14 of the Freedom of Information Act 2000. It explained to the Information Commissioner that the complainant had received a parking ticket for stopping his car at a bus stop in December 2015. He had paid the fine (at a reduced rate for early payment) and had not appealed, however he had subsequently submitted seven information requests and pursued two complaints within a period of two months. His complaint was eventually upheld because he had been sent the wrong appeal documents. However, the Council explained that this was an isolated incident and that it had apologised to the Appellant for its error. Having resolved the Appellant's own dispute, the Council considered that a disproportionate burden would be placed on it by the Appellant's request to investigate its records further in relation to other motorists.

4. The Respondent issued Decision Notice FS50625712 on 25 July 2016, upholding the Council's decision. The Respondent required the Council to take no steps. The Respondent concluded that the purpose and value of the Appellant's request did not outweigh the time and effort that would be required for Council officers to comply with the request.

Appeal to the Tribunal

5. The Appellant's Notice of Appeal dated 28 July 2016 submits that the Respondent's Decision Notice was wrong. He sets out the background to his request, explaining that he had stopped at the bus stop briefly to drop off an elderly passenger. The Council, which issues different forms to motorists in connection with moving and non-moving traffic offences, sent him the wrong type of form, which had led to a lot of confusion in his case. He is concerned that other motorists may also have been sent the wrong documents, especially as he says his wife was also the subject of incorrect parking enforcement by the Council. He comments that has taken his own complaint of maladministration to the Local Government Ombudsman (which complaint we understand to have been upheld).

6. The Respondent's Response dated 25 August 2016 maintained her analysis as set out in the Decision Notice and contended that there was nothing raised in the grounds of appeal that would justify a different conclusion being reached by the Tribunal. It is submitted that the Appellant's request was one without a reasonable foundation because he had not pursued the remedy provided to him by law, namely an appeal against the imposition of the penalty. He had continued to correspond with the Council in an effort to find fault and this course of action risked squandering the Council's resources.

7. The Appellant's cumulative Reply (dated 25 August and 7 October 2016) emphasised the Appellant's view that many other motorists had not been fairly treated and that he wished to see justice done for others in his position.

8. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising some 270 pages, including submissions made by both parties, for which we were grateful.

The Law

9. Section 14 (1) of FOIA provides that:

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

10. The term "vexatious" is not defined in FOIA itself, but it has been interpreted by the Courts. The Court of Appeal recently considered the question of identifying vexatious requests in *Dransfield v Information Commissioner* [2015] EWCA Civ 454, in which case Arden LJ observed at [68] that *"vexatiousness primarily involves making a request which has no reasonable foundation, that is no reasonable foundation for thinking that the information sought would be of value to the requester, to the public, or to any section of the public"*. We note that the Court of Appeal's approach was to regard the hurdle set by s. 14 (1) FOIA as a high one. The task for the public authority is to consider whether the request would be likely to cause disruption, irritation or distress to the public authority and, if so, to balance that disruption, irritation or distress against the purpose and public value of the request.

11. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

> *"If on an appeal under section 57 the Tribunal considers -*
>
> *(a) that the notice against which the appeal is brought is not in accordance with the law, or*
> *(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."

12. We note that the burden of proof in satisfying the Tribunal that the Commissioner's decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Evidence

13. The Appellant sent to the Tribunal and relied upon the draft decision of the Local Government Ombudsman in his case. We understand it to have been published in this form on 19 September 2016. We note that the Ombudsman found the Council to be at fault by sending him the wrong information. The Ombudsman concluded at paragraph 38 of her report that:

> *"I have found the Council was at fault when it provided [the Appellant] with conflicting information about his right to appeal a Penalty Charge Notice (PCN). This meant he paid the PCN rather than appealing to the Environment and Traffic Adjudicators. This meant [he] lost his right of appeal. It was only due to [his] efforts that he discovered the Council had sent him the wrong information. I do not know what the outcome of an appeal would have been. The Council has agreed to take the actions recommended to remedy the injustice caused and I have completed my investigation".*

Conclusion

14. We note that in the Decision Notice, the Information Commissioner accepted the Council's case that (a) the Appellant's case was an isolated incident and not indicative of a widespread problem (paragraph 25) and also that (b) the information requested is not readily available because the records held do not easily indicate which forms would have been sent (paragraph 20). It does not seem to us that these statements sit comfortably together. We can understand the Appellant's reluctance to accept the Council's reassurance that his case was an isolated incident in circumstances where there are apparently no records available to support that view. We conclude that the Information Commissioner's conclusions were erroneous in view of her failure to resolve an inherent conflict in the Council's case.

15. The Decision Notice also refers (at paragraph 26) to the Appellant having chosen not to pursue his right of appeal. This view clearly supports the Information Commissioner's conclusion that the information request was vexatious because the appropriate remedy had not been taken. However, we take into account the Local Government Ombudsman's subsequent finding (quoted above) that the Council's maladministration in sending out the wrong information served to prevent the

Appellant from exercising his right of appeal. We now review the finding of fact in the Decision Notice, taking into account this new evidence, and regard it as erroneous.

16. We consider that the Appellant's request did have a reasonable foundation in all the circumstances of this case. In particular, the information requested cannot be said to have been without value to a section of the public comprising local motorists, particularly if it serves either to prove or disprove that there is a wider problem with the Council's administration of PCNs.

17. We conclude that the information request was not vexatious and so this appeal succeeds. The Council is required to reply to the Appellant's original information request within the usual timeframe (commencing with the date below) and without reference to s. 14 FOIA. This does not, of course, prevent it from relying upon another section of FOIA in its reply.

(Signed on the original)

ALISON MCKENNA **DATE: 18 November 2016**

PRINCIPAL JUDGE