



Appeal number: EA/2016/ 0213

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

SOLOMON JACQUES GREEN

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Mr NIGEL WATSON
Mr STEPHEN SHAW**

**Sitting in public at Field House on 18 May 2017
The Appellant appeared in person.
The Respondent did not appear.**

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DECISION

1. The appeal is dismissed.

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REASONS

Background to Appeal

2. The Appellant made an information request to The London Borough of Richmond Upon Thames (“the Council”) on 5 February 2016.
3. The Council refused the information request in reliance upon s. 14 (1) of the Freedom of Information Act 2000 (“FOIA”).
4. The Respondent issued Decision Notice FS50626312 on 18 August 2016, upholding the Council’s decision. The Decision Notice concluded at paragraph 36 that “...the Council is entitled to say ‘enough is enough’.”
5. The background to the Appellant’s request may be summarised as follows. A number of local residents were opposed to a grant of planning permission by the Council which was made over 20 years ago. Thereafter, the matter has been the subject of protracted correspondence and complaints and has been considered by the Council’s Scrutiny Task Group, the Audit Commission, the Local Government Ombudsman, the Information Tribunal, the District Auditor and an Examiner.
6. The Appellant has been personally involved in the dispute for eighteen years. A person known to the Appellant, to whom we shall refer as X, was informed in 2010 and again in 2015 that under the Council’s complaints procedure, it had been decided that no Council officer would correspond further with X in relation to the issue. The Appellant’s information request which is the subject of this appeal concerned the Council’s treatment of X and was made in the following terms:

“I should, therefore, be most grateful if you would now provide me with answers to the questions that I originally posed to [...] namely:

1. *Who originated the instruction banning LBR officers from corresponding with or replying to X in regard to any matters relating to Fulwell/Squires in 2010?*
2. *Why was such a ban issued when it was known that X was seeking specific information to place before the Examiner into the Draft District Management Plan which was about to take place?*
3. *Who, again in 2015, originated the instructions banning LBR officers from corresponding with or replying to X in regard to any matters relating to Fulwell/Squires. Since officers had corresponded with X in respect of this matter in the years following the Examiner’s Report (in which, incidentally, he found that LBR’s position was and always had been “false”) it is clear that the original ban must have been lifted and that there has been a second banning.*

5 4. Why was such a ban issued when it was known that X was seeking specific information as to whether the new breaches of the covenants in their lease from LBR by D J Squires and Co Ltd (as admitted by LBR) were also breaches of the statutory covenants under the 1942 Deed made in accordance with the Green belt (London and Home Counties) Act 1938?"

7. The Council had originally refused to answer the request on the basis that it infringed X's rights under the Data Protection Act 1998. The Appellant re-opened the issue after X purported to instruct the Council to put all his private correspondence into the public domain.

10 *Appeal to the Tribunal*

8. The Appellant's Notice of Appeal dated 13 September 2016 relied on the following Grounds: (i) that the Decision Notice's summary of the complaint is partial because it did not set out in full the reasons for making the complaint; (ii) the Decision Notice failed to address the complaint as it ignored the underlying reason for making it; (iii) "it is for the Tribunal to decide whether it is reasonable for the Council to hide behind section 14 in order to ward off assertions that it is condoning activity that breaches the statutory covenants that it is obliged to police and uphold under an Act of Parliament".

9. The Respondent's Response dated 14 October 2016 resisted the appeal, maintaining the analysis as set out in the Decision Notice which was summarised as follows at paragraph 26 of the Response:

"The Commissioner concluded in his decision notice that on the facts of the case and taking into account the wider history and context of the request:-

25 i) *When considering the value of the request, there is very little public interest in the requested information.*

ii) *The purpose and value of the request are not enough to justify the distress, disruption and irritation that would be incurred by the Council by complying with the request.*

30 iii) *The tone and content of the internal review request supports the view that the request is vexatious and that any response is unlikely to satisfy the Appellant which would lead to further correspondence".*

10. In an addendum to the Grounds of Appeal (pages 18 to 34 of the bundle), the Appellant set out the history of the dispute. At page 8 of this document he explained that "The main purpose of my request is...an attempt to ensure that the Council complies with its duties under the law. In particular, that it ceases to permit the unlawful 'creeping development' (as one Council Officer has conceded) in which it has acquiesced over the last thirty years". In his request for an internal review of the Council's decision to apply s. 14 FOIA, the Appellant had described the Council's officers as "prepared to prevaricate, to dissimulate, to deceive, to destroy evidence, to interfere with mail and even to lie, in order to cover up possible fraud and

corruption". On pages 12 to 17 of this document, the Appellant cited the matters that he relied upon to found these serious allegations. These are not matters on which the Tribunal can make a determination.

5 11. The Respondent informed the Tribunal that she did not wish to attend or be represented at the hearing of the appeal. The Appellant made oral submissions in addition to providing the Tribunal with a written skeleton argument. Having read his opening statement (66 pages) in advance, the Tribunal invited the Appellant to address us on part IV of this document only. This part related to the indicia of "vexatiousness" whereas the remainder of the document was concerned with the history of the dispute.

15 12. The Tribunal considered an agreed open bundle of evidence comprising over 500 pages. These included five witness statements filed in support of the Appellant's appeal. The Respondent did not wish to cross examine any of the witnesses and the Tribunal had no questions for them, so the Tribunal accepted their evidence in written form and did not hear any oral evidence.

20 13. In his submissions, the Appellant told the Tribunal that even if his request did meet the indicia of vexatiousness, an exception should be made for the wider public interest in exposing the "unlawful activity" of the Council. Turning to the questions to be asked in relation to any potentially vexatious request, the Appellant submitted that the request was not obsessive and that there is a difference between "obsessive" and "persistent." He suggested that the Hillsborough families were persistent in seeking a second inquest but could not have been accused of being obsessive.

25 14. The Appellant did not accept that his request had the effect of harassing the Council or distressing its staff. He submitted that the "only possible" distress would be caused by their difficulty in explaining to the Secretary of State why they had failed in their duties. He also did not accept that the request placed any administrative burden on the Council as he said the information could have been obtained by a competent clerk in an hour. He submitted that the request had a serious purpose or value in assisting to prevent further encroachment onto the Green Belt, ensuring that the Council fulfils its duties, maintaining public access to open space, and in opening an investigation into fraud and/or maladministration by the Council.

35 15. The Tribunal asked the Appellant why he had intervened in X's correspondence rather than seeking to engage directly with the Council over his concerns about a breach of covenant. He said that X was his friend and the request had been made for his benefit. He said he suspected that the Council would not have answered his questions in any event. He told the Tribunal that the purpose of the request was to lead to further correspondence about the main issue but that there was also a serious purpose in knowing why X had been banned from corresponding with the Council. He said that if you did not know the reason for this, you couldn't challenge it.

40 *The Law*

16. S. 14 FOIA provides as follows:

14. *Vexatious or repeated requests*

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

17. In *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440
5 AAC, the Upper Tribunal interpreted “vexatious requests” as being manifestly
unjustified, or involving inappropriate or improper use of a formal procedure. The
Upper Tribunal considered four broad criteria for assessing whether a request was
vexatious, namely (i) the burden imposed by the request on the public authority and
its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the
10 request and (iv) whether there is harassment of or distress to the public authority’s
staff. The Upper Tribunal stressed the importance of taking a holistic approach. The
Upper Tribunal’s approach was broadly endorsed by the Court of Appeal in its
decision (reported at [2015] EWCA Civ 454), emphasising the need for a decision
maker to consider “*all the relevant circumstances*”.

15 18. 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 -

20 *(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,*
25 *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.*

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

19. 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.

35 *Conclusion*

20. We have no hesitation in rejecting the Appellant’s argument that the
requirement to look at all the circumstances of the case in a holistic way means that
the Tribunal must examine the merits of the background dispute in which he and X
were engaged. We find that the context of the case flows from the terms of the
40 information request, which was here clearly framed as a request to know who in the
Council gave the instruction not to correspond with X and why. We concur with the
Information Commissioner that there is very little public interest in the specific
information requested by the Appellant. We acknowledge the Appellant’s strength of

feeling about the background issues, and his wish to help X who is his friend, but we conclude that the request made was for the collateral purpose of trying to circumvent the Council's decision not to correspond further with X about the background dispute and that this was an inappropriate use of the FOIA regime.

5 21. Weighing the negligible value of the request against the impact on the Council,
we are satisfied that the burden on the Council in complying with the request would
be disproportionate. The Council advised the Information Commissioner of the
inordinate amount of time it has spent dealing with this dispute through the
complaints made and the third-party interventions. We concur with the Information
10 Commissioner that, even if there were a serious purpose to the Appellant's expressed
wish to ensure that the Council complied with its legal obligations, it is difficult to
make a link between the request he actually made and any serious attempt to achieve
that purpose. We agree with the Information Commissioner that the request was made
in terms that suggested that no response would be satisfactory and that there would be
15 further correspondence on the issue. The Appellant acknowledged that the request
was a "hook" on which to engage the Council in further correspondence.

22. We conclude that it was predictable - if not inevitable - that the Appellant's
intervention in the correspondence between X and the Council, in circumstances
where X had been found to be behaving unreasonably, would result in the Council
20 applying s. 14 FOIA to the Appellant's request. If the Appellant had a serious
purpose, he could have made an appropriate submission to the Council on his own
behalf rather than aligning himself with a person with whom the Council had already
declined to correspond further. We find that the Appellant's request was vexatious.

23. For all these reasons, we now dismiss the appeal and uphold the Decision
25 Notice.

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(Signed)

ALISON MCKENNA

DATE: 12 July 2017

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PRINCIPAL JUDGE