



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2017/0261**

**Before**  
Judge Stephen Cragg Q.C.

**Tribunal Members**

Mr Henry Fitzhugh  
Ms Suzanne Cosgrave

**Between**

**Jim Bass**

Appellant

-and-

**The Information Commissioner**

**Borough Council of Wellingborough**

Respondents

Date of Hearing: 30 May 2018

**Attendances:**

For the Appellant: In person

For the 1<sup>st</sup> Respondent: Did not appear

For the 2<sup>nd</sup> Respondent: Mr Hopkins

## DECISION AND REASONS

### BACKGROUND

#### **Context**

1. The requests in this case relate to the Sywell Aerodrome which is on the outskirts of the village of Sywell in the area of the Borough Council of Wellingborough (the Council). In 2007, following a lengthy appeal, planning permission was granted by the Secretary of State for the owners of the aerodrome, Sywell Aviation Limited (SAL) to build an all-weather runway at the aerodrome, and this was eventually built in 2009.
2. One of the planning conditions attached to the grant of permission was that SAL must set up a liaison committee and hold an inaugural meeting. This occurred but no further meetings of the committee took place. The Council set up a working party to address residents' concerns about the aerodrome.
3. From November 2007 until May 2015 the Appellant was a councillor for the ward in which the aerodrome is situated, and in the year to May 2015 he was the Council's mayor.
4. The Appellant, both in his role as councillor, and since he left that role has expressed consistent concerns about the aerodrome, making FOIA requests and sending emails, some lengthy, to councillors and officers.
5. It should be noted that by way of a Decision Notice dated 12 January 2016, the Commissioner decided that a previous request by the Applicant for correspondence between the Council and various other bodies, including SAL was vexatious.

#### **The requests**

6. The immediate background to this case is four requests for information made by the Appellant to the Council between 27 July 2016 and 17 August 2016. All four requests related to the aerodrome and SAL. On 14 September 2016 the Council decided to refuse to respond to the requests on the basis that they were vexatious.
7. The **first request** was made on 27 July 2016. The Appellant wanted 'evidence' (a) of the legal action against SAL; (b) of the legal action against the Council; (c) of FOI requests; (d) that Appellant had campaigned against the all-weather covering to the existing 03/21 runway; (e) that the Appellant was associated with the campaign against the runway. These requests were made with reference to a letter from the Council's solicitor to the Commissioner in relation to a previous FOIA request.
8. The Council responded with a bundle of information and answers to the questions. When the Appellant responded expressing dissatisfaction with this response, the Council carried out an internal review and stated on 14 September 2016 that it was not obliged to respond further as the request was vexatious.
9. The **second request** was dated 28 July 2016, and referred to council minutes from July 2012 and requested copies of 'all correspondence and notes of meetings, consultation etc up to May 1<sup>st</sup> 2015' in relation to two of the items resolved in the minutes. The Council responded on 16 August 2016 referring to the relevant meetings and confirming that no additional relevant information was held. Again, when the Appellant expressed dissatisfaction, the Council decided that the request was, in fact, vexatious.
10. The **third request** was dated 17 August 2016 and requested copies of documents presented to the local government ombudsman (LGO) by the Council in response to a complaint to the LGO by an individual from

Sywell about the Council's failure to enforce planning conditions at the aerodrome.

11. Also on 17 August 2016, in the **fourth request**, the Appellant requested copies of all correspondence sent to an investigator appointed to investigate a complaint by the Appellant into the conduct of the Council's chief executive.
  
12. The Council's response to both of these requests was that it was not obliged to respond further as it had decided that the requests were vexatious. The Council also noted that there had been a previous decision by the Commissioner in relation to earlier requests by the Appellant for information related to SAL, where the Commissioner had decided that the requests were vexatious. There is no record of the Appellant having appealed this decision, and the Commissioner confirms, rightly, that the outcome of this case can have no impact on the previous decision.

### **The Decision Notice - 11 September 2017**

13. The Council explained to the Commissioner that it had FOI requests from the Appellant concerning SAL going back to 2010, and that the Appellant had engaged in correspondence with the Council for some time, both when he was a councillor and otherwise, and the Council is of the view that the Appellant has been 'campaigning' against the aerodrome for some years (the Appellant denies this). The Commissioner thought that it was clear that there had at least been extensive contact between the Council and the Appellant over the issue. The Council's case is that there has been persistent pursuit of the issue including pursuing council officers, and at times using a threatening tone.

14. When information or advice has been provided by the Council the Appellant has frequently challenged or disputed it. The Commissioner refers to email correspondence (that we have also seen) which refers to possible legal action, and has some forthright comments in particular about the chief executive's weakness and ineffectiveness. The Commissioner is of the view that the comments go beyond what a chief executive should reasonably expect to receive.
15. In general, the Commissioner says that the Council has demonstrated the efforts it has made to provide information on the issues relating to SAL, that the dispute has been long-running, that the Appellant is rarely satisfied with responses, and the disproportionate amount of time and effort that the Council spent dealing with requests when there is little inherent purpose in the requests.
16. The Council has explained the background to the dispute as one where the Appellant feels that the Council should be enforcing planning conditions which require ongoing consultation between SAL, the Council and the local community. There has been an acrimonious relationship between the Appellant and the managing director of SAL, since 2010. The Appellant was not re-elected as a councillor in 2015 and since then the Council has worked to re-establish a working relationship with SAL. The Council took legal advice in 2012 and was advised by counsel that there is in fact no ongoing breach of conditions which should be enforced.
17. The Commissioner reports in the Decision Notice on the number of complaints the Appellant has made about the aerodrome and its use, and notes that the Appellant has used a number of avenues to pursue his grievances about the Council, its officers, and SAL. The Council instigated an independent investigation into complaints by the Appellant against the chief executive and leaders of the Council, which led to a recommendation, accepted by the Council, that no further action would

be taken. One of the requests from the Appellant relates to copies of the information sent to the investigator for the purposes of this investigation. Another relates to information provided to the LGO by the Council in response to a complaint by another individual about the Council's dealing with SAL which was not upheld by the LGO.

18. The Commissioner records the Appellant's submissions to her in the Decision Notice. The two main points appear to relate to dissatisfaction with the Decision Notice on 12 January 2016 which upheld a finding of vexatiousness in relation to the Appellant's previous requests for FOI information, and the Appellant's case that the 2012 minutes referred to in the present case, placed an obligation on the Council to consult with him and maintain a dialogue with SAL, and therefore his requests cannot be considered vexatious.

19. Considering the question of vexatiousness (and finding that the requests were vexatious) the Commissioner noted the following background and context to the requests:-

(a) The first request appeared to be an attempt to obtain information that the Appellant hoped would undermine the previous decision on vexatiousness (even though this had not been appealed).

(b) In relation to the third request about information sent to the LGO, it appears that the Appellant knows the outcome of the investigation and so it is unclear what purpose his request would serve.

(c) There have been times when the Appellant's language and tone in his dealings with the Council and its officers have 'crossed a line' and could be construed as harassing and distressing.

- (d) Although the Appellant had been a councillor, had ward responsibility for SAL, and had legitimate interest in safety concerns about the aerodrome, he has refused to accept the Council's chosen way forward with SAL issues. His expressions of concern have gone beyond councillor responsibility, have continued since he ceased to be a councillor, and have extended to include complaints about the Council's officers. On that basis the requests represent unreasonable persistence on behalf of the Appellant.
- (e) His motive appears to have moved beyond his concerns for adherence to planning conditions, to a desire to investigate the information supplied by the council to various independent bodies concerning either him or SAL.
- (f) The Appellant's requests indicate that he is unlikely to be satisfied with the information and answers that the Council could provide in response to the requests.

### **The appeal**

20. The Appellant's appeal is dated 11 September 2017. It can be described as a passionate advocacy against the actions of the Council and its officers, the findings of the Commissioner, the continued frustrations of the Appellant at the failings of the Council and SAL to enforce planning conditions and ensure the safety of the aerodrome, and a defence of the Appellant's role in seeking to bring compliance about. The appeal document ends with the following in bold and underlined:-

**But the ICO has no concept nor interest in the safety and well-being of the local communities.**

She is more interested in placating an incompetent and proven dishonest CE and Solicitor with platitudes and valueless comments.

21. Although we respect the Appellant's zeal and commitment to the issue of the safety of the aerodrome, we also think there is much force in the Council's written submissions in this case that some of the points made in the appeal document 'reinforce the conclusions of the Council and the IC as to [the Appellant's] unreasonable persistence and unreasonable allegations in respect of the same issues'.
22. At the oral hearing of the case the Appellant represented himself, but also gave evidence and answered questions from the Tribunal and Mr Hopkins for the Council.
23. In evidence, the Appellant emphasised that his concerns were about safety. He was of the view that the Council should enforce all planning conditions as a matter of law. His main aim in seeking information was to bring about compliance with all planning conditions and obtain an apology from the Council, and he believed that disclosure of the information sought would bring those aims closer.
24. Ms Denton is an assistant director with the Council and has made a statement in this case. She gave oral evidence at the hearing and was cross-examined by the Appellant at the hearing. She provided a background to the Council's interactions with the Appellant over SAL since 2007, and explained the burden that these were placing on the Council. She expressed the view that the Appellant's allegations 'gradually became more personally focussed, particularly against elected officials and the then Chief Executive...'. She highlights some of the documentation we



have in the bundle where the Appellant's correspondence has become more aggressive and threatening over time.

## DISCUSSION

25. Section 14(1) FOIA states that "(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious". Vexatiousness is not defined in section 14, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.
26. The Commissioner's guidance on section 14 FOIA states that it is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
27. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) when it defined the purpose of section 14 as follows:
- 'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...' (paragraph 10).
28. Also in *Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal placed

particular emphasis on the issue of whether the request has adequate or proper justification. As the Upper Tribunal observed:

‘There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA’.

29. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed that:-

“...the emphasis should be on an objective standard and that the starting point is 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 or to the public or any section of the public... The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.’. (Para 68)’

30. The Commissioner’s guidance also contains a list of indicators which we think are helpful in considering ‘all the relevant circumstances’ in this case. The indicators we have considered are as follows:-

**Abusive or aggressive language**

The tone or language of the requester’s correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

**Burden on the authority**

The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester.

**Personal grudges**

For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity.

**Unreasonable persistence**

The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

**Unfounded accusations**

The request makes completely unsubstantiated accusations against the public authority or specific employees.

**Intransigence**

The requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.

**Futile requests**

The issue at hand individually affects the requester and has already been conclusively resolved by the authority or subjected to some form of independent investigation.

31. We accept that the role of a local councillor is to ensure that important issues are raised on behalf of residents, and that sometimes this requires a degree of persistence on behalf of a councillor, even to the extent that a Council may see the interventions as a nuisance or an inconvenience.
  
32. But it also seems to us that these requests are now part of a pattern that has gone beyond what would be expected of a local representative (and of course the Appellant had left office some time before these requests were made). We accept that the Appellant had a genuine motivation in relation to safety at the aerodrome, and in bringing about his belief that all planning conditions should be enforced by the Council (although that does not seem to us to reflect the legal position where the Council has a degree of discretion on these matters).

33. However, the fact is that the Council has decided how it will deal with these issues, taken legal advice, and has an ongoing plan in place. It has also investigated the Appellant's concerns about actions of its officers, and provided the LGO with information when a complaint was made by another individual.
34. The Appellant, as he is entitled to, does not agree with the Council's actions in relation to SAL and thinks a different approach should be taken. He also does not agree with the outcomes of the various investigations which have been carried out. But unfortunately this lack of agreement has led to a pattern of aggressive and sometimes threatening emails containing insults about various officers, and the present requests for information which appear to be aimed at undermining the steps taken by the Council as described above, and indeed undermining decisions taken by the Commissioner and the LGO.
35. Applying the legal framework set out above, and the factors suggested by the Commissioner's guidance it seems to us that these requests are a continuation of the activities of the Appellant over the past few years, driven by the fact he believes the Council should be acting differently, and that he believes the reason why it is not doing so is due to the misconduct of councillors and officers.
36. Accordingly we find that the requests are rightly described as vexatious because:-
- (a) The requests continue and exacerbate the strain on the time and resources of the Council already caused by the Appellant as described by Ms Denton in her evidence.
  - (b) The interactions between the Appellant and the Council have on some occasions contained threatening and aggressive language, and

suggests the Appellant has developed personal grudges against some individuals in the Council.

(c) The underlying issues about which the Appellant is concerned have largely been dealt with. The Council has decided on its approach to SAL, the internal investigation has reported, the previous Decision Notice was not appealed and the LGO has concluded investigations.

(d) Despite this the Appellant has been unreasonably persistent in continuing to pursue these issues, and intransigent in his rejection of attempts to assist and advise out of hand.

## CONCLUSION

37. For the reasons set out above we are satisfied that that the Appellant's requests were vexatious. The Tribunal upholds the Decision Notice dated 11 September 2017 (FS50659806 & FS50665479) and dismisses the appeal.

**Stephen Cragg QC**

Judge of the First-tier Tribunal.

Date: 9 July 2018.

Date Promulgated: 9 July 2018.

Amended under Sect 40, Slip Rule Corrections on 13 July 2018.