



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FS50752442**

**Appeal Reference: EA/2019/0152**

**Heard at Field House, Breams Buildings London  
On 5 September 2019**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**HENRY FITZHUGH & NIGEL WATSON**

**Between**

**MARK GUY ROSTRON**

Appellant

**and**

**INFORMATION COMMISSIONER**

Respondent

**Appearances: -**

**Appellant: In person**

**Respondent: did not appear**

**Cases**

**Information commissioner v Devon County Council & Dransfield [012] UKUT 440  
(AC) 28 January 2013**

### **DECISION AND REASONS**

1. The Appellant is aggrieved by a decision made by Guildford Borough Council (the Council) in December 2015 to require licensed taxis to have a livery. He

was at the time Secretary of the Guildford Hackney Association (GHA) and objected to the decision.

2. On 27 April 2018 he wrote to the Council seeking information in the following terms: -

*"Could I have any information exchanged between the following people [six names redacted] that contains the word Livery, and that was dated between 1<sup>st</sup> March and 31<sup>st</sup> December 2015"*

3. The Council replied on 21 June refusing the request: -

*"We are of the view that this FOI is essentially a repetitive request for minutes of a meeting between councillors to consider the council's livery policy options, held at some point in 2015. We have already advised you that there are no minutes for this meeting. We have evidence from your previous correspondence and collectively these requests appear obsessive and unjustified. Having followed the Information Commissioner's guidance around applying this position we have concluded that your request is vexatious under section 14(1) of the Freedom of Information Act. Your request is therefore refused."*

4. On internal review the Council relied on both limbs of s14 to refuse; s14(1) (vexatious) and s14(2) (repeated requests). The Appellant complained to the Respondent (the IC) who investigated.

5. In her decision notice she considered request in its context in the light of the guidance set out in *Dransfield* for determining whether a request was vexatious. She noted the position as a representative of his association and his belief that the refusal was unlawful and against the policy of transparency and accountability. The Council's position was that from 1 January to 27 April 2018 the Appellant had contacted the Council relating to its Taxi and Private Hire Policy. The use of FOIA was an abuse and a means to vent his anger and to harass and annoy the Council. He had attempted to resolve his concerns through Magistrates, Crown and High Court unsuccessfully and the Courts had advised him that the only way to challenge the policy was through judicial review. The Council viewed the requests as unreasonable and placing excessive demands on staff time and resources. The Council had written to the Appellant on 21 February 2018 applying its "Unreasonable Complainant Policy" stating to the Appellant: -

*"- The frequency of complaints and correspondence, repetitious of themes and/or issues which have been the subject of exhaustive resolution under the Policy or which disagree with a decision of the Council or which are the subject of a legal process and right of challenge and recourse;*

*- The aggressive and personalised tone of the language used, and the attempts to use the complaints policy to develop or present lines of attack or challenge which (if*

*merited and not vexatious) are subject to a defined external legal process, and to make unsubstantiated allegations about the Council and its Officers."*

6. The IC concluded that the appellant was *"using FOIA as a means to re-open, re-visit and re-litigate matters which have already been closed"*, the level of contact, the breakdown of trust and the likelihood that complying with the request would simply result in further correspondence. She therefore concluded that the request was vexatious and did not further consider whether it was a repeat request.
7. In his appeal the Appellant relied on his general right under s1 FOIA to information. The purpose of his request was to find the reason why the Council had chosen teal as the livery colour (matching the Council's own colour scheme). The cost to individual drivers was £1000-£1500 and to drivers as a whole and therefore their customers about £200,000, the meeting where the colour was decided was not minuted and *"the FOIA request is to gain information to better understand the real basis for the livery decision so that the public can exercise any democratic right on an informed basis."* He emphasised that it was a small request and that he was acting in a representative capacity in taking legal action and complaining to the Local Government Ombudsman. The request had a public interest and a value to the requester so did not meet the IC's own guidance on vexatious requests. He supplied copies of a complaint he had made to the Council and to the Local Government Ombudsman. He denied making unsubstantiated allegations against staff and the use of aggressive and personalised language.
8. In resisting the appeal, the IC remained of the view that the request was vexatious in the light of the history and context. She noted that the Appellant acknowledged that he had been told that there were no minutes of a meeting where the colour had been decided and was now seeking any emails which could illuminate the issue. The IC noted that the information related to information related to the same issue and that the issue of the livery had been repeatedly challenged in the Courts and could only be challenged by judicial review. The Appellant was attempting to re-open an issue which had already been addressed and subject to independent scrutiny. The IC noted the level of correspondence from the Appellant and a letter from the Council to him of 4 May 2016 point out the costs of his correspondence and that these were re-charged to the taxi trade through fees and charges. Compliance with the request would be disproportionate. She further drew attention to repeated letters to the Council accusing it and its officers of fraud to rebut his claim that there had been no unsubstantiated and aggressive allegations.
9. In replying to this the Appellant asserted that the Council had acted in bad faith and supplied copies of summons he was attempting to issue alleging fraud and which he was prepared to swear were true. He reaffirmed his view that the requests had a reasonable foundation.

10. In the hearing the Appellant set out the background to the request. He explained that his complaint to the Ombudsman had been unsuccessful because he was "too late". He believed that the emails if revealed to him would show why the colour green had been chosen. He explained his understanding of the statutory basis of the licensing system for taxis however while the relevant Act gave a right of appeal to the Magistrates' Court, that Court and on Appeal the Crown Court and the Court of Appeal had declined to hear the appeal, and he had been out of time to apply for judicial review. He had defied the requirement to adopt a livery and as a result he had been "off the road" from January to March 2018 in breach of the licence condition that his vehicle be liveried. He had resumed work as a private hire driver. He hoped that as a result of the disclosure of the emails that the reasons for the decision would be revealed as not being for a proper reason but for corporate branding and it would mean that the expenditure was unjustified.
11. The Appellant has repeatedly attempted to persuade the Guildford Magistrates Court to issue proceedings against the four named council officers alleging that they have committed fraud in connection with to require taxis to be in livery (bundle pages 72-77): It appears from the bundle that he applied in January and March (and possibly April) 2018 and again on 10 June of this year. He told the tribunal that he had tried for the third time in June 2019 and when he had contacted the Court in August he had been told that "the legal team had some questions." The offences alleged against all four were: -
- S2 Fraud by false representations
  - S3 Fraud by failing to disclose information
  - S4 Fraud by abuse of position
12. On 4 January 2018 he attempted to issue summons against 2 Council officers for 29 offences of fraud (bundle page 250).

### Consideration

13. While the Appellant feels very strongly about the livery requirement for taxis and has striven by many means to overturn the requirement he has thus far been unable to do so. He has tried to do this by a number of means including through repeated applications to Courts and through a complaint to the LGO. All have been unsuccessful. The LGO's letter of 16 April 2018 stated "*The Ombudsman will not investigate [the Appellant's] complaint about the failure of the Council to take minutes at a meeting in 2015. This is because it is made too late and it is unlikely we will find fault in the Council's actions.*" Prior to this information request he had made repeated allegations of fraud against the Council, culminating in repeated applications to the Magistrates' Court to have Council officers charged with fraud. Those attempts are continuing. In asking for emails between named officers he is seeking to re-open the whole question of

the livery decision. The tribunal is satisfied that the analysis adopted by the IC is robust. There is no reasonable basis for the request, in its context it is an unwarranted burden on the Council and associated with a highly personalised harassment of a number of Council officers.

14. The decision of the Information commissioner is correct in law. The appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: