First-tier Tribunal
General Regulatory Chamber
Information Rights

Appeal Reference: EA/2021/0122

Decided without a hearing
On 10 December 2021

Before

JUDGE HAZEL OLIVER
PAUL TAYLOR
ROGER CREEDON

Between

KEVIN MORRIS HAYNES

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION

The appeal is dismissed.

REASONS

Background to Appeal

1. This appeal is against a decision of the Information Commissioner (the "Commissioner") dated 13 April 2021 (IC-69237-H1Y1, the "Decision Notice). The appeal relates to the application of the Freedom of Information Act 2000 ("FOIA"). It concerns information requested from Wiltshire Council (the "Council") about why the Council has not sought to recover a sum of money from the appellant following a court judgment for costs.

2. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. There was a legal case between the appellant and the Council, which began in 2011. A judgment for costs was made against the appellant by the relevant court, and this resulted in a charge being put on his property. The Council's legal costs were insured, meaning the costs are due to its insurers. The Council and their insurers have informed the appellant that they will not be seeking recovery of these costs, and they have withdrawn the legal charge against his property.

4. On 25 December 2019, the appellant wrote to the Council and requested the following information (the "Request"):

> *"I want to know the official committee(s) and dates(s) minuted Council reason why it doesn't want £105,814 plus interest of public funds which it is due, and which is simply coincidentally due from me"*

5. The Council responded on 11 March 2020 and refused the request on the grounds that the appellant had sent previous similar requests which had been replied to under the Data Protection Act 2018 ("DPA"), and this request was vexatious (section 14 FOIA).

6. The appellant requested an internal review. The Council responded on 24 April 2020 and upheld its decision.

7. The appellant complained to the Commissioner about how the Request had been handled under FOIA. The Commissioner decided:

a. The Council was correct to apply section 14 to refuse to respond further to the request for information.
b. Although not all of the specific issues highlighted in her guidance on vexatious requests or in the Upper Tribunal ***Dransfield*** decision are present, she took into account the guidance that decisions should be made on a holistic basis taking account of all the circumstances.
c. The appellant's correspondence outlines his fear that the debt will be recovered from him in the future, but the Council does not hold any further information beyond that which has been disclosed previously. A continuation of the correspondence is not in the interests of the Council or the appellant.
d. This decision took into account the number of previous requests over this issue, independent oversight of the wider issue, the relative lack of wider value in allowing correspondence to continue, the minor value of any disclosure which could explain the Council's decision, and the appellant's obvious distress over the situation as a whole. There is no value in allowing the correspondence to continue and it would be of significant detriment to both parties.

The Appeal and Responses

8. The appellant appealed on 10 May 2021. His appeal is lengthy and the basis on which he is challenging the Commissioner's decision is not entirely clear. Following the analysis of the Commissioner in the response to the appeal, the grounds of appeal are:

a. Letters dated 5 and 8 November, and 5 and 25 December 2019 should be taken as one FOIA request.

b. The appellant says the Council has repeatedly lied to him and there should be officially recorded minutes stating why the judgment has not been enforced, and he believes some within the Council are avoiding producing the official minutes.

c. The Council has not provided adequate evidence to justify the application of section 14 FOIA.

9. The Commissioner's response maintains that the Decision Notice was correct. The request was vexatious adopting a holistic approach. In answer to the points of appeal:

a. She made it clear to the appellant that her investigation would focus on the information request dated 25 December 2019. The request of 5 November was for personal data, but the underlying issue of why the Council had not enforced the costs judgment was the same. The decision considered the previous dealings, correspondence and history between the appellant and the Council.

b. The Commissioner has seen letters and internal Council correspondence which provide answers as to why the Council decided not to enforce the judgment, the Council maintains that no further information is held, and there is no evidence to substantiate the appellant's allegations.

c. The Commissioner investigated properly and was satisfied with the Council's explanations. The burden of dealing with the request was assessed in light of the context and history of previous interactions. This is a longstanding issue and the appellant has asked the question about enforcement in over 200 letters. Written responses and face to face meetings have resulted in further correspondence from the appellant, complying with the request is likely to lead to further communications, and the appellant is demonstrating persistent behaviour.

Applicable law

10. The relevant provisions of FOIA are as follows.

1 ***General right of access to information held by public authorities.***
(1) Any person making a request for information to a public authority is entitled —
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.
……
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.

……

40 Personal information.

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

……

58 Determination of appeals

(1) 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.

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

11. There is no further guidance on the meaning of "vexatious" in the legislation. The leading guidance is contained in the Upper Tribunal ("UT") decision in ***Information Commissioner v Dransfield*** [2012] UKUT 440 (AAC), as upheld and clarified in the Court of Appeal ("CA") in ***Dransfield v Information Commissioner and another & Craven v Information Commissioner and another*** [2015] EWCA Civ 454 (CA).

12. As noted by Arden LJ in her judgment in the CA in ***Dransfield***, the hurdle of showing a request is vexatious is a high one: "…*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. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. 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).

13. Judge Wikeley's decision in the UT ***Dransfield*** sets out more detailed guidance that was not challenged in the CA. The ultimate question is, "*is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?*" (para 43). It is important to adopt a "*holistic and broad*" approach, emphasising "*manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests*." (para 45). Arden LJ in the CA also emphasised that a "*rounded approach*" is required (para 69), and all evidence which may shed light on whether a request is vexatious should be considered.

14. The UT set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious:

a. **The burden imposed on the public authority by the request.** This may be inextricably linked with the previous course of dealings between the parties. *"…the context and history of the previous request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious.*

In particular, the number, breadth, pattern and duration of previous requests may be a telling factor." (para 29).

b. **The motive of the requester.** Although FOIA is motive-blind, "*what may seem like an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority*." (para 34).

c. **The value or serious purpose.** Lack of objective value cannot provide a basis for refusal on its own, but is part of the balancing exercise – "*does the request have a value or serious purpose in terms of the objective public interest in the information sought?*" (para 38).

d. **Any harassment of, or distress caused to, the public authority's staff.** This is not necessary in order for a request to be vexatious, but "*vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive*." (para 39).

15. Overall, the purpose of section 14 is to "*protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA*" (UT para 10), subject always to the high standard of vexatiousness being met.

Issues and evidence

16. The issue in this case is whether the Council was entitled to rely on section 14 FOIA to refuse to reply to the appellant's Request.

17. By way of evidence and submissions we had the following, all of which we have taken into account in making our decision:

a. An agreed bundle of open documents.
b. Written submissions from the appellant.

Discussion and Conclusions

18. In accordance with section 58 FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision.

19. The appellant submitted written submissions which say the Commissioner has wrongly deemed his FOIA request to be one phrase in his letter of 25 December only, and repeats allegations that the Council has lied on four matters – that his FOIA request was answered by 2021 DPA documents, that he would be made homeless if the judgment is enforced, that the judgment will never be enforced by the Council or its insurer, and that he is trying to reopen the 2011 trial. He also says that it is impossible for there not to be responsibility for recorded, signed and dated minutes containing official public reasons for not enforcing a judgment for £150,000 of public funds, and it is a criminal offence to hide or destroy such official minutes.

The Commissioner provided a brief reply that this repeats the arguments in the grounds of appeal.

20. We have considered the factors set out by the UT in ***Dransfield***.

21. **The burden imposed on the public authority by the request.** The appellant himself has referred a number of times to having sent over 200 letters to the Council asking why it will not enforce the judgment for costs. He says this in the Request itself. The Council says that the appellant has been asking the same question since at least 2017 (letter to Commissioner, page 158 of the bundle). The Council says that the continued correspondence asking for the same information is merely putting a burden on the Council's resources which cannot be sustained (page 160 of the bundle). We agree that this continued correspondence on the same issue is placing a burden on the Council.

22. **The motive of the requester.** This is not a case where the appellant is deliberately acting disruptively. We accept from what we have seen in the bundle that the appellant remains genuinely concerned about the court judgment for costs and the decision not to enforce this judgment.

23. **The value or serious purpose.** We understand that the appellant believes this request to have a value or serious purpose. He says that it is of public interest because this is a large sum of money owed to the Council – they are failing to recover public funds. However, this is a misunderstanding of how the debt is owed. The Council's legal costs were insured by Zurich. This means that the debt is owed to Zurich, not the Council. The debt is not public funds. This was clearly explained in correspondence between the Council's solicitors and Zurich's solicitors in 2012, and the appellant has been provided with copies of this correspondence (pages 173 and 174 in the bundle). Zurich provided a letter to the claimant on 22 August 2018 confirming that the charge on the property had been removed, and there is no debt owed to Zurich insurance (page 181 of the bundle).

24. The appellant also says that there should be recorded, signed and dated minutes of official public reasons for not enforcing the judgment. He alleges that the Council is lying and he believes some within the Council are avoiding producing the official minutes. However, the Council has provided its reasons for not enforcing the judgment. The appellant has been sent internal correspondence which explains why the Council decided to deal with the matter as it did (pages 166 to 171 in the bundle). As noted by the Commissioner in her response to the appeal (paragraph 56), the Council maintains that no further information is held. It therefore appears that the minutes requested by the appellant do not exist. However, this does not mean that they ought to exist. The reasons for this are explained in a memo at page 176 in the bundle. Firstly, the ultimate decision was for Zurich not the Council, as the judgment debt was owed to them – this is not a situation where the Council has failed to enforce a judgment for a significant sum owed to public funds. Secondly, the executive model for decision making operated by the Council means that decisions on court actions are officer based rather than taken by committees.

25. **Any harassment of, or distress caused to, the public authority's staff.** This is not a case where the appellant has deliberately been causing harassment or distress to the Council's staff.

26. **The overall holistic view of the Request.** In particular, we have considered whether this shows the *"lack of proportionality that typically characterise vexatious requests*." We find that it does. We appreciate that the appellant may well be genuinely distressed by the large judgment for costs that he feels is hanging over him and has not been enforced (even though it is now clear that it will not be enforced). However, the Council has explained the reasons the judgment has not been enforced to the appellant a number of times, in correspondence and at a meeting. The appellant has been provided with letters from both Zurich (page 181 in the bundle) and the Council (page 180 in the bundle) which explain that Zurich will not be seeking recovery of the costs from him and the charge on the property has been removed. The Council has also confirmed that it does not hold any further information. The appellant says he had previously sent over 200 letters on the same topic, and the Request is asking again about the same issue. The Council is not able to provide the appellant with anything further to resolve his concerns, and has no power to overturn the decision of the Court. In all the circumstances of the case, this is a disproportionate use of FOIA.

14. The appellant also says in his appeal that his letters in November and December 2019 should have been treated as one request under FOIA, not as a request for personal data. We understand that the appellant was provided with various documents containing his personal data in response to these earlier requests, and he returned these documents to the Council. Section 40 FOIA provides that information is exempt from disclosure under FOIA if it constitutes personal data of which the applicant is the data subject. The DPA gives the appellant the right to see this personal data. We agree with the Commissioner that the earlier requests were dealt with correctly as requests for personal data. The requested information clearly is personal data because it is information about a decision concerning the appellant from which he could be identified. This would be the case even if the appellant's name did not appear in the requested information as he could be identified from other information that it did contain, such as his address, given that he is the registered owner of the property.

27. We accept that the appellant holds genuine concerns, and did not intend to harass or disrupt the Council. Nevertheless, having considered all the circumstances, the Request is a disproportionate use of FOIA which has no real value or serious purpose. Put simply – the judgment for costs was owed to Zurich insurers not the Council, and Zurich have confirmed that they will not be enforcing it and have removed the charge on the appellant's house. The Council have explained the reasons for this in writing and at a meeting, and this was a decision that could be dealt with by Council officers rather than needing a formal minuted Council meeting. We agree with the Commissioner that there is no value in responding further to this Request, either for the Council or the appellant.

28. We therefore uphold the Commissioner's decision that the Council was entitled to rely on section 14(1) FOIA to refuse to reply to the Request, because in all the circumstances the Request is vexatious. We dismiss the appeal.

Signed: Hazel Oliver
Judge of the First-tier Tribunal

Date: 19 December 2021
Promulgated: 22 December 2021