



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM INFORMATION ACT 2000

Appeal no. EA/2011/0157

B E T W E E N:

MR GLEN HERBERT

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

WEST DORSET DISTRICT COUNCIL

Second Respondent

Before

Brian Kennedy QC

David Wilkinson

Richard Enderby

Decision

For the reasons given below, the Tribunal upholds the Decision Notice of the Information Commissioner dated the 2nd of June 2011, and dismisses the appeal.

Signed:

Brian Kennedy QC

Tribunal Judge

Dated: 3rd January 2012

Reasons for Decision

Introduction

1. This is an Appeal by Mr Glen Herbert (“the appellant”) against a Decision Notice (“DN”) issued by the Information Commissioner (“the first named respondent”) dated 2 June 2011, pursuant to section 57 of the Freedom of Information Act 2000 (“the FOIA”).

The Request for Information

2. This appeal refers to an information request of the 23 July 2010 addressed to the second named respondent. The appellant has a long history of correspondence and information requests submitted to West Dorset District Council (“the second named respondent”). The correspondence in question, (“the disputed information”) concerned the transfer to the second named respondent of property previously owned by Lyme Regis Borough Council.
3. It appears that correspondence and requests regarding the above topic date back to at least January 2009, and perhaps further.
4. It also appears that the history of this case relates to incidents and disputes regarding a different matter, between the appellant and the second named respondent, dating back to 1992, which culminated in 1996 when the second named defendant revoked a license held by the complainant.

The Complaint to the Commissioner / the first named respondent

5. On the 16 November 2010, the appellant contacted the first named respondent to complain about the way his request for information had been handled.
6. The first named respondent found that the second named respondent had correctly applied section 14(1) when it determined that the request was vexatious.
7. Although the first named respondent dismissed the appellant's complaint, he found the second named respondent to be in breach of section 17(5) of the FOIA by failing to inform the complainant that it was applying section 14(1) of the Act. However, the first named respondent did not require the second named respondent to take any steps in respect of this breach.
8. The first named respondent did address the issue of some delay between the appellant's initial request for an internal review, and the second named respondent's delay by some months in replying, and only after the first named respondent intervened. However, this did not form part of the DN of the first named defendant and therefore is not of concern in relation to the appeal.

The Appeal to the Tribunal

9. By a notice of Appeal dated 28 June 2011, the appellant appealed to the Tribunal. As submitted by both the first and second named respondents, the appellant has not set out specific grounds of appeal, but has set out a number of elements over several paragraphs, which he intends to support his case. The appellant does not clearly identify any particular sense in which the DN is not in accordance with the law, or any way in which the first named respondent has wrongly exercised his discretion.

10. In his reply, the first named respondent summarises the appellant's grounds of appeal on six grounds. The second named respondent adopts, where appropriate, the comments made in relation to those six grounds. For convenience, we have set out these six grounds below, as summarised by the first named respondent:

“Ground 1

The Appellant expected the Commissioner to have contacted him so that he could clarify his position and put forward further arguments for the Commissioner's consideration during his investigation;

Ground 2

The appellant states that he has not used his information requests for anything other than to obtain information relating to missing historical documents in the Dorset History Centre. He says that he has done this because he has a genuine interest in the history of Lyme Regis. He states that he believes many historical documents appear to be missing from the National Archives and he believes those documents should have been placed with the National Archive during the local government reorganisation in 1974;

The Appellant goes on to state he believes that the second named respondent have retained those 'missing' documents because they relate to illegally acquired property;

Ground 3

Despite reporting the wrongdoing he alleges he has identified to the Dorset Police, the appellant states that the police *'are unable to do anything unless copies of the original deeds to [the] properties can be provided'*.

The appellant states his belief that *the second named respondent have these deeds in storage or at least evidence of government ownership in retained copies of the former Borough Council Minutes.;*

Ground 4

The appellant states that, having previously complained to the Local Government Ombudsman (“the LGO”) that the first named respondent would be *‘the correct Government body to investigate’* this matter.

Ground 5

The appellant states that he is surprised that (in so far as he is aware) the second named respondent did not inform the first named respondent that they had already allowed the appellant and another individual to research its archives for information in order to resolve issues related to his *‘first category of information requests’*. That access has, according to the appellant, made it possible to pursue matters in the Courts.

Ground 6

The appellant concludes by asking whether it would not *‘...be a good idea for him to research the second named respondent’s archives again this time to resolve this second issue by using section 224 of the Local Government Act 1972’...*”

Legislative Framework

Relevant legislation

11. There was initially some confusion as to the relevant legislation under which the request of 23 July 2010 should have been considered. There was some consideration that this request might have been appropriately dealt with under

section 12(4)(b) of the Environmental Information Regulations 2004 (“the EIR”). However, as the request of 23 July was in relation to ownership of property, both the first and second named respondent came to the agreement that the FOIA was the relevant legislation under which the request at hand should be considered. This Tribunal accepts this interpretation and notes the subject matter in the request relates to the transfer of “assets” and, we agree, should therefore come within the scope of the FOIA. The second named respondent has relied on section 14 of the FOIA.

General

12. Under section 1 of the FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.

13. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of the FOIA, or if certain other provisions apply. In the present case, the second named respondent relies on section 14. This does not provide an exemption as such. Its effect is simply to render inapplicable the general right of access to information contained in section 1(1).

14. In so far as is relevant for the purposes of this appeal, section 14 of the FOIA states:

“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.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

Section 14(1) - Principles

15. The issue for the Tribunal in this appeal is whether the appellant's request of 23 July 2010 was vexatious. The FOIA does not define “vexatious”. However there are various decided principles which assist in considering a request, as being vexatious or not, in terms of section 14 of the FOIA.

16. Although previous decisions of the Tribunal are not binding on us, we have found the following cases, in particular, to be helpful: *Carpenter* (EA/2008/0046); *Betts* (EA/2007/0130); *Welsh* (EA/2007/0088); *Gowers* (EA/20070114); *Rigby* (EA/2009/0103).

17. Below are some of the key principles that emerge from these cases, and some factors which have been considered relevant to our finding that this request is vexatious:

- ⌘ It is important that the standard for establishing that a vexatious request is not too high;
- ⌘ Every case should be viewed on its own particular facts;
- ⌘ To decide whether a request is vexatious, a public authority should consider both the history of the matter and what lay behind the request. A request could

appear, in isolation, to be entirely reasonable yet could assume quality of being vexatious when it is construed in context and history;

- ⌘ Of relevant consideration is where the request forms part of an extended campaign to expose alleged improper or illegal behaviour in the context of evidence tending to indicate that the campaign is not well founded;
- ⌘ Where the request involves information which has already been provided to the applicant, this may contribute to a vexatious request in the context;
- ⌘ The public authority may consider the nature and extent of the applicant's correspondence with the authority, and whether this suggest an obsessive approach to disclosure;
- ⌘ Consideration may be given to the tone adopted in the correspondence, whether the correspondence could reasonably be expected to have a negative effect on the health and well-being of officers, and whether responding to the request would be likely to entail substantial and disproportionate financial and administrative burdens.

18. Also, in relation to the DN in question, the first named respondent, in considering the request of 23 July 2011, accorded weight to the factors set out in the guidance, and in particular, in relation to the matter at hand, relied on the following factors:

- i. Whether the request can otherwise fairly be characterised as obsessive;
- ii. Whether the request was harassing the authority or causing distress to staff;
- iii. Whether compliance would create a significant burden in terms of expense and distraction; and
- iv. Whether the request lacked any serious purpose or value.

Background to the Request: The Parties' Positions

19. The first named respondent has found that the appellant's request was obsessive. He considered the background to the relationship between the appellant and the second named respondent. In particular, he found that the appellant's behaviour "*demonstrated that he was seeking in an obsessive fashion to re-open issues which had already been dealt with on previous occasions*". The particular factors indicating such behaviour have been set out in detail in paragraphs 24–35 of the DN, and are not repeated herein but this Tribunal accepts the reasoning of the first named respondent in his consideration of these factors.
20. In considering whether the request amounted to harassment and distress, the first named respondent set out the relevant concerns at paragraphs 38-39 of the DN, which are not repeated herein. The first named respondent did note that "*whilst...there was no evidence of hostile or abusive language on the part of the appellant...it is the effect of the request (and not the requesters intention) which must be considered when determining whether an information request is vexatious*". Again this Tribunal accepts the reasoning of the first named respondent in his consideration of these concerns.
21. The first named respondent made reference to the need to consider the background history as a whole, and particularly in light of an intention simply to reopen issues which had been disputed several times before, as being indicative of a vexatious nature. This Tribunal accepts interpretation of the background history in the circumstances of this case.
22. The first named respondent concludes that "*the cumulative effect of the appellant's allegations of illegality and impropriety, being made at the same time as his information requests, and when considered in the context of the high volume of the appellant's correspondence could be regarded as harassing*". This Tribunal accepts the reasoning of the first named respondent in his conclusion in this regard and in

fact we find in this instance that the conduct of the appellant is harassing in the circumstances.

23. The first named respondent considered in detail, whether the whole relationship between the appellant and the first named respondent posed a significant burden. In relation to the history of that relationship, and a significant burden, the commissioner stated that:

- ⤴ A very considerable amount of time had been spent by officers of the second named respondent , dealing with the appellant's correspondence;
- ⤴ That officers of the second named respondent had in the past been diverted away from their core functions by the appellant's correspondence and that, accordingly, it was appropriate to view the request made on 23 July as constituting a significant burden of the second named respondent in terms of expense and distraction.

It is the view of this Tribunal that the second named respondent has made extraordinary efforts to accommodate the Appellants requests over a considerable period of time and valuable resources of time and effort have been used which could otherwise have been used more productively. In our view to accommodate the request relating to the disputed information herein would constitute a further and significant burden on the second named respondent

24. The first named respondent deals with each of above six grounds of appeal (see paragraph 10) and dismisses each, as set out at pages 6-9 of the response of the first named respondent, which are not repeated here. This Tribunal accepts the reasoning of the first named respondent in his consideration of each of these grounds.

25. The second named respondent is not of the view that there appear to be any valid grounds of appeal. The second named respondent follows the same format as the response of the first named respondent and adopts and supports his arguments in relation to same.

26. In the DN, some of the correspondence, highlighted in the relationship between the appellant and the second named respondent is as follows:

- ⤴ The second named respondent is of the view that, since an incident in 1996 where the appellant was in dispute with the second named respondent, he has, together with another individual, “pursued a campaign against the second named respondent, looking for information”.
- ⤴ The second named respondent states that the request of 23 July 2010 relates to property transfer which occurred over 30 years ago, and that they have informed the appellant that they had no reason to keep title documents of properties that have been sold or where leases have come to an end. The appellant continues to submit requests asking for information relating to the transfer of ownership, and to examine the relevant archives (the deed store) of the second named respondent to examine and take copies of documents.
- ⤴ The second named respondent has stated that, in addition to raising this matter with the first named respondent, the appellant has referred his concerns to solicitors, the Local Government Ombudsman and the police. The second named respondent is of the view that taking into account the context and history, the request can be seen as obsessive.

27. The appellant has not put forward any specific arguments to dispute the decision of the second named respondent to refuse to comply with his request, but, requested that the first named respondent would consider the refusal of the request.

Was the request vexatious?

28. Having given careful consideration to the history of prior dealings between the appellant and the second named defendant, the submissions made by the parties, and to the considerations set out above, this Tribunal finds, the request on the facts in this case and in all the circumstances, was vexatious.

Signed:

Brian Kennedy QC
Tribunal Judge

Date: 3rd January 2012