



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

Case No. EA/2011/0289

ON APPEAL FROM:

Information Commissioner's Decision Notice No: FS50382601

Dated: 14th November 2011

Appellant: Mr Michael Makepeace
Respondent: Information Commissioner
Second Respondent: The Chief Constable of Thames Valley Police

**Determined at an oral hearing at Central London Criminal Justice Centre on
26th March 2012**

Date of decision: 2ND April 2012

BEFORE:

Fiona Henderson (Judge)
Henry Fitzhugh
And
Marion Saunders

Subject matter:
S14 FOIA – Vexatious Requests

Cases: *Rigby v IC and Blackpool, Fylde and Wyre Hospitals NHS Trust*
EA/2009/0103

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal and amends Decision Notice FS50382601 as set out below for the reasons set out in main body of the Decision.

SUBSTITUTED DECISION NOTICE

Dated: 2nd April 2012
Public authority: Chief Constable of Thames Valley Police
Address of Public Authority: Headquarters, Oxford Road, Kidlington,
Oxfordshire, OX5 2NX.
Name of Complainant: Mr Michael Makepeace

The Substituted Decision:

The Chief Constable of Thames Valley Police breached s1(1) FOIA in that she wrongly treated the Appellant's request as vexatious.

Action Required:

Within 35 days, the Chief Constable of Thames Valley Police is required to make a substantive response to the Appellant confirming whether she holds the information and either releasing the information or serving a refusal notice under s 17 FOIA.

Signed

Fiona Henderson (Judge)

REASONS FOR DECISION

Introduction

1. Mr Makepeace has a driveway located on a service road adjacent to the Thames Valley Police (TVP) Headquarters South. It is his contention that Thames Valley Police staff and visitors park on the roads adjacent to the HQ South site and that this causes problems for local residents. His objections are that the road is narrow and parked cars cause it to become in effect one way. He considers that parking too close to the driveway exits obstructs these exits as they are difficult to turn in and out of and visibility is restricted.
2. Mr Makepeace has been in contact with TVP since approximately 1986 in relation to the use of the service road by staff and visitors and since the Freedom Of Information Act came into effect in 2005 he has made approximately 15 FOIA requests 12 of which were categorized by the Commissioner as relating to “parking”. There are no parking restrictions upon this service road.
3. On 7th February 2011 Mr Makepeace contacted a civilian worker at TVP South with whom he had had contact in the past in relation to parking issues. He reported that a vehicle was obstructing his driveway, he believed this vehicle to belong to a member of staff or a visitor to TVP. Mr Makepeace asked the civilian worker to attend his premises to verify details and identify the driver. The civilian worker did not himself attend but logged the matter with the local neighbourhood team who responded later the same day but only after the vehicle had moved off.
4. Mr Makepeace made a formal complaint relating to the way that his call was dealt with, in particular alleging that the civilian member of staff failed to put him through to his supervisor when he requested this.

The request for information in this appeal

5. On 10th February 2011 Mr Makepeace requested the following information:
 - 1) *The name/rank/position of [named individual's] supervisor,*
 - 2) *The name/rank/position/employer of the driver of the [identified vehicle] who caused the driveway obstruction,*
 - 3) *A certified copy of the TVP (South) reception log book for 7 February 2011 showing the time logged in and the time logged out of the driver in 2) above”.*

6. Thames Valley Police responded on 2nd March 2011 indicating that they considered the request to be vexatious under s14(1) of FOIA and that they were not obliged to respond further. It is TVP's case that in relation to the first element of the request Mr Makepeace has been provided with this information orally. Mr Makepeace does not accept that he has ever been given this information orally.

The complaint to the Information Commissioner

7. Mr Makepeace requested an internal review, this was not carried out. He complained to the Commissioner on 20th March 2011. The Commissioner investigated the matter and upheld the refusal pursuant to s14 FOIA. The Commissioner considered the context and history of the case in relation to 5 factors which he encompassed as being within the meaning of vexatious. He held that:
 - i. Complying with the request would impose a significant burden on TVP in terms of expense and distraction as it was likely to lead to further correspondence.
 - ii. The nature and extent of the correspondence from the Appellant meant that the request could fairly be seen as obsessive,¹
 - iii. Although the request had some serious purpose or value this was limited because a FOIA request was not the most appropriate venue to pursue the matter.

¹ The Tribunal notes that categorizing a request as “obsessive” is often distressing for an Appellant who may consider that it is a judgment upon them rather than the terms of the request. This Tribunal considers that the same assessment can be made asking the question “whether in the opinion of a reasonable person the request, would be considered to be manifestly unreasonable?”

- iv. He did not find that the request was harassing to the Chief Constable or caused distress to the staff,
- v. He did not find that the request was sent with the direct purpose to disrupt or annoy the Police.

The appeal to the Tribunal

- 8. Mr Makepeace appealed to the Tribunal on 5th December 2011. He appeals on the grounds that the Commissioner was wrong to hold that the request was vexatious. In particular:
 - a) he disputes that he was obsessive, arguing that the concerns he has relating to parking are proportionate considering the timescale involved.
 - b) he challenges the categorization of 12 of the FOIA requests as relating to “parking” and distinguishes the February 2011 request as relating to specific information relating to a complaint against an individual.
- 9. TVP were joined by the Tribunal as the second respondent on 20th January 2012. The case was determined by way of an oral hearing at the request of Mr Makepeace. Both the Commissioner and TVP chose not to be represented, relying upon the reasoning in the Decision Notice and pleadings. TVP also made brief written submissions.

Legal submissions and analysis

- 10. Section 14 FOIA provides:
 - (1)Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*
 - 11. There is no definition of vexatious within FOIA. The First Tier Tribunal has considered this issue on numerous occasions. Whilst none of these decisions are binding upon us, we do consider that *Rigby v IC and Blackpool, Fylde and Wyre Hospitals NHS Trust EA/2009/0103* sets out the key principles to be taken into consideration by this Tribunal namely:
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- Vexatious should be given its ordinary meaning of an activity “likely to cause distress or irritation, literally to vex a person to whom it is directed”,
 - It is the effect of the request which must be vexatious, rather than the applicant.
 - Context and history must be examined when determining whether a request is vexatious. The context may include other FOIA requests and the history of any other dealings between the parties.
 - The standard for establishing that a request is vexatious should not be set too high or too low.
12. The Tribunal accepts that the factors set out by the Commissioner in reaching his decision² are material when considering whether the request is vexatious, and the Tribunal has adopted the same framework. The Tribunal has considered all the material before it which includes over 200 pages of correspondence between Mr Makepeace and the TVP.

Obsessive/Manifestly unreasonable

13. In concluding that Mr Makepeace does not have an obsession³ with the subject matter the Tribunal takes the following matters into consideration: whilst there is an underlying issue as to congestion and capacity in relation to the use of the service road to park vehicles belonging to staff and visitors of the TVP South HQ, the earlier FOIA requests have covered inter alia:
- The demolition and redevelopment of Block B of HQ South,
 - Planning permission,
 - The provision of additional parking spaces,
 - The suspension of parking spaces for safety reasons
 - The re-deployment of staff between sites,
 - The drafting of a Green Travel plan.

² See paragraph 7 above

³ See footnote to paragraph 7 above

14. It is apparent that the matter has been subject to the involvement of the local Parish Council, the planning authorities and now the local MP. It is clearly a source of concern to local residents. The matter is not yet resolved or concluded being currently subject to a planning application. The Tribunal is satisfied that the FOIA requests reflect the change of position as the proposals for the site or circumstances of its use have varied over time.
15. Mr Makepeace has told us that in 1986 when TVP wanted to develop this site there was a presentation to the Parish Council and he agreed to collect comments and feedback on behalf of the residents near Oxford Road. The Tribunal accepts his evidence that he has continued to act in this way in an unofficial capacity and considers that the earlier FOIA requests can be considered to have had a community focus in that they concerned matters of importance to all local residents.
16. The Tribunal accepts Mr Makepeace's contention that the February 2011 request was in effect a personal request and that in this sense it had a different focus to the rest of his requests.
17. The Tribunal has considered the other correspondence and contact that Mr Makepeace has had with TVP outside FOIA requests. Since 2008 Mr Makepeace has sent a monthly "feedback" report to the Chief Constable. This includes photographs of parked vehicles in the service road with the date and the time. Mr Makepeace has also generally included a handwritten A4 sheet with this in which inter alia he criticizes the management of the Chief Constable, and questions what he perceives to be a lack of consultation.
18. Mr Makepeace has explained that he believes that he has a continuing duty to gather evidence of the obstruction, and use of the service road. Attempts are being made to have parking restrictions imposed and the local MP has been approached in this regard. This remains a live planning issue with redevelopment of the site still in view.

19. Mr Makepeace told the Tribunal that the feedback reports are sent to the Chief Constable as she is responsible for providing onsite parking and is in a position to encourage staff and visitors to use the onsite parking or alternative transport. Since there has been no direct consultation with residents by way of a community meeting since 2009 these feedback reports also serve the purpose of seeking to re-ignite a dialogue.

20. Mr Makepeace had also sent handmade parking themed Christmas Card to the Chief Constable and others on 2 occasions. He further sent a visual aid in the form of a circle as an exhortation to “get round to it” relating to the preparation of a travel plan etc.

21. Mr Makepeace told the Tribunal that TVP have used innovative methods of communication in the past such as:

- Christmas cards to known offenders to remind them that they are “being watched”,
- An advent calendar in the local press with pictures of those who were “wanted” by the Police.

The Tribunal accepts his explanation that the Christmas cards and management tool were his attempt to adopt similar methods in order to re-invigorate the debate between TVP and local residents and were not a disproportionate response in this particular context.

22. Mr Makepeace has written letters relating to the use of the service road to local newspapers. The Tribunal is satisfied that since the underlying issue remains live it is a legitimate method of provoking debate and seeking to gather public support upon this issue and does not indicate an obsessive or manifestly unreasonable approach to the issue.

23. The Tribunal considers that the wording of the feedback reports is unhelpful and alienating to TVP, however, in light of the Commissioner’s finding that this was not harassing the Chief Constable or her staff we are not satisfied that

this is indicative of obsession rather it is the inexpert use of legitimate methods of lobbying.

Significant Burden

24. The Tribunal is not satisfied that responding to this information request would constitute a significant burden or that it would lead to further correspondence (beyond that which would arise in any event as a result of there being an outstanding complaint). The Tribunal repeats its assessment of the earlier FOIA requests and considers this request to be of a different nature to the earlier requests. Mr Makepeace made a specific complaint relating to a particular vehicle in 2009 but there is no evidence that he developed the matter or has continued to correspond in relation to that vehicle or used that as the basis for repetitive requests. Whilst TVP have argued that the feedback reports require consideration for FOIA and DPA requests or complaints, the Tribunal has viewed these and is satisfied that:

- There is no evidence that they have ever been responded to,
- None of them have ever contained a request for information or a complaint or required any administrative response.
- Although they may contain several pages of photographs the written element is brief and uncomplicated, generally amounting to a scant side of A4 writing in a legible hand.

The Tribunal is satisfied that responding to this request in the context of the existing correspondence is not sufficiently onerous to constitute a “significant” burden.

Serious purpose or value

25. The Commissioner accepted that at the time of the request it retained a degree of serious purpose. Mr Makepeace has explained that he believed it was necessary to substantiate his complaint and to enable him if appropriate to make a joint complaint about the driver of the vehicle if they were a TVP employee. The purpose of asking for item iii) was to show the extent of the problem ie proof of the length of time that the obstruction occurred.

26. The Commissioner criticizes Mr Makepeace for making the FOIA request before the complaint was resolved along with any subsequent appeal to the IPCC. It is not the role of this Tribunal to determine the merits of his original complaint, however, having decided to make a complaint it was appropriate and in sequence to make the FOIA request then as the information was intended to substantiate his complaint.
27. Additionally TVP draw the Tribunal's attention to the IPCC's conclusion that adequate information had been provided to the complainant following the investigation of their complaint. The Tribunal considers that this relates to whether adequate reasons for the decision have been provided rather than information sought to substantiate the request and is therefore not material to the purpose or value of the request.
28. The Tribunal also observes that ordinarily FOIA is motive blind, the only circumstances where the reasonable purpose of the request would be evaluated would be in relation to a vexatious request. This Tribunal considers that it would be wrong to hold that a request was vexatious solely in relation to its perceived limited purpose. If, as in this case, the Tribunal is not satisfied that any other factors are present which support the determination that a request is vexatious, it would not be appropriate to consider the purpose or value of the request in isolation.

Conclusion

29. For the reasons set out above, the Tribunal is not satisfied that the request was vexatious.
30. The Tribunal's decision is unanimous.

Dated this 2nd day of April 2012

Fiona Henderson
Judge