



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

Appeal No: EA/2015/0050

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50548810
Dated: 15 December 2014**

Appellant: Gregory Burke

Respondent: The Information Commissioner

Heard on the papers: 25 August 2015

Date of Hearing: Fox Court, Grays Inn Road, London

Before

Chris Hughes

Judge

and

Dave Sivers and David Wilkinson

Tribunal Members

Date of Decision: 19 September 2015

Subject matter:

Freedom of Information Act 2000

Cases:

Information Commissioner v Devon CC & Dransfield GIA/3037/2011

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 15 December 2014 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. These requests for information arise out of concerns about the administration of a charity in Northern Ireland, Lough Neagh Rescue Limited. As a result of these concerns the Charity Commission for Northern Ireland (“CCNI”) as regulator of the charity conducted an investigation and exercised its powers with respect to the charity. There have been various proceedings challenging the CCNI in the Charity Tribunal (a part of the Northern Ireland Courts and Tribunals Service). The Appellant in these proceedings, Mr Burke, was involved in the charity.
2. In 2011 there was conflict within the charity and during 2012 CCNI worked with the charity to resolve issues and reconcile the different parties. These efforts were unsuccessful and proposals from the Interim Board of the charity to the group of individuals with which Mr Burke was associated were rejected in January 2013. In May 2013 CCNI launched a statutory inquiry and directed one of Mr Burke’s associates (Mr McKee) to provide financial information. Following an unsuccessful application to the Charity Tribunal by Mr McKee to stop the inquiry, CCNI directed his removal as a trustee on 15 August 2013. He appealed and Mr Burke intervened in Mr McKee’s appeal on 28 August. On 25 October 2013 CCNI ordered the removal of others from being officers, agents or members of the charity, including Mr Burke. Mr Burke appealed against this decision on 5 December 2013.
3. On 3 July 2014 the Charity Tribunal, following extensive hearings, concluded that while there was no dishonesty or misconduct on Mr McKee’s part there had been mismanagement and dismissed his appeal against removal. The tribunal in its

decision noted that near the end of the oral hearing it had raised issues as to whether Mr Burke was an officer or agent of the charity (and so liable to removal) and whether sufficient notice had been given to him. The CCNI, while maintaining it had a response to these issues at that stage decided not to further oppose Mr Burke's appeal and he and four others had been reinstated at the end of March 2014.

The request for information

4. On successive days in May 2014 Mr Burke made requests for information from CCNI:-

3 May

Please supply information to explain the safeguards that are in place to help ensure CCNI handles personal data properly. Detail the processes and safeguards to handle information requests, the dates when they were implemented and any records of meetings were [sic] they were discussed and agreed. Please detail the training provided to staff and please supply your process manual, the date it was brought into use, any updates and their dates of implementation.

4 May 2014

Please send me a full breakdown of costs and expenses relating to the statutory enquiry by CCNI into Lough Neagh Rescue and the subsequent attempt to have five innocent charity volunteers removed from serving their community. This should include legal expenses incurred throughout the duration of the charity tribunal process in its entirety including direction meetings and any preparatory time spent with their barrister. Also any expenses claimed for travel, eating out etc whilst at tribunal or any other meeting relating to this case by CCNI staff.

5. CCNI responded on 29 May stating it considered the requests vexatious and on internal review maintained the position on 7 July. Mr Burke complained to the Respondent in this appeal, the Information Commissioner ("ICO").
6. The ICO investigated and issued his decision notice on 15 December. He found that both requests were related to the dispute about the CCNI's statutory inquiry into the charity (DN paragraph 12). He reviewed the evidence submitted by CCNI, in particular that (DN paragraphs 15 and 16):-

The Charity Commission has informed the Commissioner that the complainant has been in frequent correspondence, normally on a weekly, but at times daily, basis about matters relating to the running of the charity that was the subject of the statutory inquiry. The Charity Commission considers that the task of dealing with the correspondence has been oppressive, and has necessitated the diversion of limited resources away from its core statutory functions. Not only this, the Charity Commission considers that the pattern of the requests is indicative of obsessive behaviour and an attempt to reopen issues that had been considered.

To support this position, the Charity Commission has stated that between 23 April 2013 and 1 September 2013 there were in the region of 60 contacts with the complainant. The nature of the contacts varied, ranging from requests for updates to the making of complaints against the Charity Commission. The Charity Commission also considers that the combined effect of the communications are indicative of an unreasonable persistence on behalf of the complainant, with the sometimes hostile and tendentious tone and language of the complainant serving increasingly to harass the authority and cause distress to staff. In the Charity Commission's view the wider pattern of behaviour, of which the making of the requests in question form part, may reasonably be construed as promoting a particular agenda with the aim of gaining an advantage in the dispute and, or disrupting the work of the Charity Commission.

7. He noted the importance of the dispute itself and the argument that sustained correspondence could be a reflection of the gravity of the issues rather than vexatious behaviour. He noted that the evidence of CCNI pointed towards 60 communications in 2013 rather than subsequently (DN paragraph 21), however he also noted increasingly fractious behaviour of Mr Burke including a reference to “lies and cover ups” and aspersions on competence (DN paragraph 20). He acknowledged the serious concerns Mr Burke had about CCNI, but concluded (paragraphs 28,29):-

Whatever the eventual outcome of the statutory inquiry, the Commissioner considers that there is no evidence to indicate that the Charity Commission was doing anything other than attempting to discharge its functions as an independent regulator, namely to make sure a charity was meeting its legal requirements. Importantly, however, the Charity Tribunal exists to ensure that a person has a right of appeal where he or she considers that a decision made by the Charity Commission is not compliant with the relevant legislation from which its powers derive The Commissioner understands that

the exercise of an appeal had already been made prior to the making of the requests in question.

The effect of this is that the issues forming the basis of the dispute were already the subject of formal proceedings. In this regard the Commissioner disagrees with the complainant's statement that the information would assist him and others affected by the statutory inquiry to challenge "further poor decisions" of the Charity Commission. This is because there is nothing in the requested information itself that goes to the heart of the Charity Commission's decision-making. Instead, the Commissioner accepts the Charity Commission's argument that the direction of the requests suggests they were designed to keep alive the complainant's grievances against the Charity Commission.

8. The ICO therefore concluded that the line between justified and unjustified persistence had been crossed and upheld the position of CCNI.

The appeal to the Tribunal

9. In his appeal Mr Burke challenged the good faith of the CCNI in relying on section 14(1), he accepted that there had been considerable correspondence but argued that it was necessary to achieve justice. He argued that there was a personal grudge against him, that CCNI did not deal with FOI requests correctly and had processed data about volunteers unfairly in the context of an inquiry into a charity.
10. In responding to the appeal the ICO relied on his decision and in particular argued that the purpose and value of the requests was diminished when seen in the context of the history of Mr Burke's relations with the CCNI, the requests were an attempt to revisit issues which had been already reviewed and were an attempt to keep alive his grievances, which was an improper use of FOIA. He explained that issues of bad faith did not affect his impartial review of the documented history and adopted the analysis of the Upper Tribunal in *Information Commissioner v Devon CC & Dransfield GIA/3037/2011*. He concluded that the grounds of appeal provided no basis for overturning the decision.
11. In several subsequent submissions Mr Burke's representative raised detailed issues with respect to the conduct of CCNI, with respect to the inquiry into the Lough Neagh Rescue Limited and repeated claims of impropriety with respect to persons related to this inquiry. He denied that the requests created a burden, asserted a proper motive

(of obtaining information), claimed that there was a serious purpose in understanding how data was processed by CCNI and this was significant for the public to know and denying causing distress to anyone. He disputed the accuracy of the report into the charity claiming that it was fundamentally biased and unfair.

The question for the Tribunal

12. The question for the tribunal is whether the ICO was correct in law in finding that section 14(1) applied to the requests, whether, in all the circumstances, it was proportionate and justified for CCNI to comply with the request.

Consideration

13. The tribunal is satisfied that it is impossible to separate the requests for information from their overall context and each other. The first request, while apparently relating to general issues around data handling arose from a step taken by CCNI in their investigation of the affairs of the charity. Mr Burke had objected to that step and complained to the ICO in his capacity of regulator of data protection issues; the ICO had not upheld Mr Burke's position. The second request, prefaced with a comment about five innocent volunteers (Mr Burke and four other individuals against whom CCNI dropped its opposition to their appeals) is clearly about the charity dispute and in its level of specificity – *“Also any expenses claimed for travel, eating out etc whilst at tribunal or any other meeting relating to this case by CCNI staff”* is clearly intended to annoy and waste time rather than publish valuable information.
14. The material submitted to the ICO from CCNI indicated that Mr Burke's communications and requests were diverting scarce CCNI resources away from its investigating work into responding to Mr Burke and so undermining its ability to carry out its statutory functions. Although he denies it, it is clear that the tone of his communications was sometimes abrasive and after his position was resolved in continued in like tone with these requests. From their context it is clear that the requests are pursuing a dispute which had already been resolved effectively in another forum. They were likely to irritate, waste time and resources and had no real purpose. It was not proportionate or justified for CCNI to respond to these requests which amounted to an abuse of a statutory right. The tribunal is satisfied that the ICO has correctly applied the law as set out in *Dransfield* and dismisses the appeal.

15. In his decision notice, at paragraph 22 the ICO, in commenting on submissions made by CCNI noted:- “that some of the supporting evidence provided by the Charity Commission post-dates the requests and must therefore be immediately disregarded.” This is a clear error. In deciding whether or not section 14(1) is applicable to a request for information a public body needs to consider all the relevant circumstances. If it reasonably apprehends (for example) that the request is part of a pattern of repeated requests of little value which is likely to continue, then in responding to a subsequent investigation by ICO the existence of subsequent requests may provide a degree of confirmation of the reasonableness of its apprehension. Subsequent events should not therefore be “immediately disregarded” by the ICO in his investigation.
16. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 19 September 2015