



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

Case No. EA/2015/0100

ON APPEAL FROM:

**Information Commissioner's
Decision Notice No: FS50562489
Dated: 21 April 2015**

Appellant: Clifford Terrey and Julie Terrey

Respondent: The Information Commissioner

On the papers

Date of decision: 16 November 2015

**Before
CHRIS RYAN
(Judge)
and
ALISON LOWTON
STEVE SHAW**

**Subject matter: Exceptions, Regs 12(4) and (5)
- Request manifestly unreasonable 4(b)**

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

Introduction

1. We have decided that the Information Commissioner's Decision Notice FS50562489 contained no error. In our view the Information Commissioner was entitled to conclude, as he did, that Milton Keynes Council ("the Council") had been entitled to refuse a request for information submitted to it by the Appellant on the grounds that the request was manifestly unreasonable, for the purpose of Regulation 12(4)(b) of the Environmental Information Regulations ("EIR").

Background

2. The Appellants own their home, having purchased it from the Council in the 1980s at a time when they already occupied it as tenants.
3. Prior to the date of purchase the individuals occupying the neighbouring property had built a garage. It is suggested, and seems likely, that the building works for this extended slightly on to the land which the Appellants were renting. It is also suggested that, when the Appellants subsequently purchased their property, the plan attached to the Deed of Transfer showed the boundary between the two properties as it appeared on the ground at the time and not as it had previously appeared on official plans.
4. The jurisdiction of this Tribunal does not extend to examining whether the Appellants consented to the original incursion, whether the neighbours at some stage acquired a right of ownership over the small area covered by the incursion under the law on adverse possession, or whether the Council bears any responsibility for allowing that to have happened. It is limited to considering whether the Information Commissioner made an error (section 58 of the Freedom of Information Act 2000 ("FOIA")), as it applies to Decision Notices issued under EIR by virtue of regulation 18).

The Decision Notice under appeal

5. The Decision Notice recorded that on 17 November 2014 the Appellants submitted to the Council a request that it tell them whether any application for adverse possession in respect of the disputed strip of land. The Council initially rejected the request as “vexatious” under FOIA section 14. The Information Commissioner subsequently decided (and it is not challenged on this Appeal) that the Council ought to have relied on the equivalent provision of the EIR, being regulation 12(4)(b), which provides that a public authority may refuse to disclose information to the extent that “*the request for information is manifestly unreasonable*”. Even in those circumstances the information may still have to be disclosed unless, pursuant to regulation 12(1)(b) “...*the public interest in maintaining the exception outweighs the public interest in disclosing the information*”.
6. The findings of fact which formed the basis for the Information Commissioner’s decision that the request was manifestly unreasonable, were recorded in paragraphs 15 – 24 of the Decision Notice. It is not necessary to repeat them here. In summary, the Information Commission found that there had been a long history of correspondence between the Appellants and the Council going back to 1998 and of information requests since FOIA came into force on 1 January 2005. The Information Commissioner found that, during the course of those exchanges, the Council had previously explained to the Appellants that there had been no application for adverse possession in respect of the land in question and had responded to all the related enquiries made and provided all relevant information.
7. On the basis of his factual findings the Information Commissioner concluded, relying on his own guidance on vexatious or manifestly unreasonable requests, that the information request under consideration was manifestly unreasonable. He went on to conclude that, although it was clearly a matter of public interest that public authorities should be accountable for, and transparent in relation to, their actions, it was not possible to discern any inherent value in the information request in this case, particularly as the Appellants had not demonstrated that the situation regarding adverse possession had changed since the Council’s had previously answered the same question. In those circumstances the Information Commissioner reached the conclusion that the public interest favoured withholding the information, adding:

“...the legislation gives individuals unprecedented rights to access information held by public authorities. It is important that those rights are exercised responsibly. It is not the intention of the legislation that individuals should be allowed to pursue grievances to an unreasonable extent or that valuable and limited resources should be spent on continuous, unproductive exchanges. In this case, the public interest is best served by protecting the council’s resources and upholding the refusal to respond...”

The Appeal to this Tribunal

8. The Notice of Appeal submitted to this Tribunal on 22 April 2015 alleged that the Council had withheld information but provided no particulars to support the allegation. It also made reference to other alleged wrongdoing by the Council in relation to a data protection issue and the alleged removal of information from its website, which have no bearing on the Appeal. It concluded by arguing that it should be extremely easy for the Council to obtain the information and that disclosure would be in the public interest, although it included no particulars as to what the public interest would be.
9. The Appellants chose to have the Appeal determined on the papers, without a hearing, which we consider to be an appropriate means of dealing with it. Accordingly our decision is based on the Notice of Appeal, a written Response submitted by the Information Commissioner, a written Reply filed by the Appellants and a bundle of relevant papers.

Our decision

10. We start by reminding ourselves of the extent of our jurisdiction under FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.
11. We are able to discern in the written submissions filed by the Appellants no coherent challenge to the facts as found by the Information Commissioner and recorded in the Decision Notice. They appear, moreover, to be entirely consistent with the contemporaneous documents included in the bundle of documents provided to us.
12. In applying the relevant law to those facts the Information Commissioner relied upon his own published guidance, rather than the case law authority on the point, in particular the Upper Tribunal decisions of *Information Commissioner v Devon County Council and Dransfield* [2012] UKUT 440 (AAC) and *Craven v Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT 442 (AAC) (both subsequently upheld on appeal to the Court of Appeal). However, we are satisfied that the effect of his approach was to apply a test which followed the Upper Tribunal's guidance. In particular he took into account the whole course of dealings between the Appellants and the Council, involving a large number of requests and challenges over a lengthy period of time, the fact that the requests had long since lost any value and the history

demonstrating that, despite the apparent simplicity of the particular request under consideration, any response provided by the Council would almost certainly have done no more than to generate further requests or related correspondence. We are satisfied, also, that the Information Commissioner correctly applied the public benefit test set out in regulation 12(1)(b), having regard to the limited value in disclosure and the imposition which an order in favour of the Appellant would impose on it.

13. We have therefore decided that the Information Commissioner was correct in concluding that the Council had been entitled to refuse the Appellants' information request and that the public interest in maintaining the exception under regulation 12(4)(b) outweighed the public interest in disclosure.

14. Our decision is unanimous

Judge Chris Ryan
16 November 2015