



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case Number EA/2015/0214 Date Promulgated 19th January 2016

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice FS50567582**

Appellant: MR IAN WHITE

First Respondent: INFORMATION COMMISSIONER

Heard on 12 January 2016 by way of telephone conference

Before
John Angel
(Judge)
and
Pieter de Waal and Suzanne Cosgrave

Subject matter: Section 14(1) FOIA vexatious request

Cases cited: *IC v Devon County Council & Dransfield* [2012] UKUT 440 (AAC);
Dransfield v IC & Devon County Council [2015] EWCA Civ 454.

DECISION

The Tribunal dismisses the appeal.

REASONS FOR DECISION

Background

1. On the 12 December 2014 Mr White wrote to the Darlington Borough Council (“DBC”) requesting certain information in relation to the single rooms subsidy referred to by Mr White as, “the bedroom tax” and the application of that tax to his residence (“the Request”). The detailed request is set out in the Commissioner’s Decision Notice dated 9 September 2015 (“DN”) at [4] and contains 16 sub-requests or questions. DBC refused to provide the information on the basis it was a “vexatious” request under section 14(1) Freedom of Information Act 2000 (“FOIA”) by letter dated 13 January 2015 (“the Refusal Notice”). Mr White complained to the Commissioner who found that DBC had correctly refused the Request.
2. Mr White appealed to the First-tier Tribunal (“FTT”) on 16 September 2015. The FTT issued case management notes in order to prepare the parties for the hearing. In the course of this process Mr White indicated he wanted an oral hearing but because of his personal circumstances asked for the hearing to be held at his home residence. This application was considered by the Registrar and Chamber President and it was eventually directed that a hearing would take place by way of telephone conference at 10 am on Tuesday 12 January 2016 and the parties were informed accordingly and provided with the appropriate telephone numbers to access the conference. The Commissioner indicated he would not be attending and Mr White informed the FTT that although he wished the hearing to take place he would not be attending. Despite this the Tribunal commenced a telephone conference hearing with the intention of giving Mr White every opportunity to put his case orally to the Tribunal. The Tribunal waited for 20 minutes to give Mr White the opportunity to join the hearing. As he did not do so the Tribunal decided that it would determine the case on the papers before it.

The Legal Framework

3. The law as relevant to this case is set out in the Commissioner's response to the notice of appeal at [6] to [14]. For the sake of clarity we set it out again in this decision.
4. Section 14(1) FOIA provides that a public authority may refuse a request for information where that request is vexatious.
5. The Upper Tribunal has provided guidance on section 14(1) FOIA in the linked cases of *Information Commission v Devon Country Council & Dransfield* [2012] UKUT 440 (AAC); *Craven v Information Commission & Department for Energy and Climate Change* [2012] UKUT 442 (AAC) and *Ainslie v Information Commissioner & Dorset County Council* [2012] UKUT 441 (AAC).
6. The leading case on the application of section 14 FOIA is *Dransfield*. In *Dransfield*, the Upper Tribunal defined a vexatious request as one which is a "*manifestly unjustified, inappropriate or improper use of FOIA*" (at [43]).
7. The judgment of the Upper Tribunal has been upheld by the Court of Appeal: *Dransfield v The Information Commissioner, Devon County Council* [2015] EWCA Civ 454.
8. The Upper Tribunal analysed the definition of "*vexatious*" by reference to four broad issues: (a) the present or future burden on the public authority; (b) the motive of the requester; (c) the value and serious purpose of the request; and (d) whether the request causes harassment of, or distress to, staff.
9. The Upper Tribunal emphasised the importance of viewing a request in its context. Thus, in relation to issue (a), the Upper Tribunal noted (at [29]):

"... the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular request, in terms of previous dealings between the individual requester and the public authority, must be considered in assessing whether it is properly to be characterised as vexatious."

10. In relation to (b), the Upper Tribunal explained that a request which may seem reasonable and benign “*may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority*” (at [34]).

11. The Court of Appeal held the starting point for an assessment of vexatiousness is whether there is any “*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*” (at [68]). The Court of Appeal agreed that the previous course of dealings between the requester and the Authority could affect this assessment. Arden LJ, giving the judgment of the Court, said at [68]:

“... If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation.”

12. The Upper Tribunal in *Dransfield* said, at [11] that section 14 FOIA:

“...allows the public authority to say in terms that ‘Enough is enough – the nature of this request is vexatious so that section 1 does not apply.’”

Is the Request vexatious?

13. The Commissioner dismissed Mr White’s complaint on the basis that:
- a. it was highly likely that the purpose of the Request was to purposely disrupt DBC’s services – DN [23];
 - b. the Request combined with a history of previous requests amounted to a burden on DBC – DN [24];
 - c. the Request related to a personal matter which limited the value of the Request – DN [25];

- d. the motive behind the Request and other requests was an abuse of the statutory rights under FOIA and starting to affect DBC's ability to provide a public service - DN [26].

The Commissioner concluded that the Request was vexatious.

14. Mr White in his notice of appeal does not challenge any of these findings.

He states that the information he seeks he *"will need later in the Supreme Court, only the Local Authority...can give me this information..."*

15. He continues:

"I do not want to have to ask the court for this information when/if I get there I should be entitled to this as part of evidentiary [sic] disclosure.

My problem with Darlington Borough Council previously does not have any bearing on the need for this information which is of a legal nature not as such a "normal" FOIA request, I do not believe the ICO has taken this into account".

16. The Commissioner in his response considered that an FOI request was not an appropriate avenue for Mr White to obtain information from an opposing party in litigation because the mechanism for disclosure in the context of those proceedings (an avenue which Mr White expressly said he wished to avoid) is the appropriate way, not FOIA. Also Mr White has provided no evidence whatsoever that he has actually commenced proceedings in the lower courts, much less that such proceedings are now approaching the Supreme Court.

17. On the evidence before us we must agree with the Commissioner.

18. The other ground put forward by Mr White is that his previous, and very extensive, dealings with the Council do not have any bearing on how this Request should be viewed for the purposes of section 14 FOIA. The

Commissioner does not accept this for the reasons set out in the DN at [23].

19. Under section 58 FOIA the FTT is required to consider whether the notice against which an appeal is brought is not in accordance with the law. We have a discretion as to whether to review the findings of fact upon which the DN was based (section 58(2)). We intend to exercise this discretion to review in this case because Mr White is a litigant in person and he may not appreciate how to set out his grounds of appeal, although we note that he has made a number of complaints to the Commissioner in relation to other requests. This means we have decided to review the papers before us to determine the facts for ourselves and not rely on the Commissioner's findings.

20. The Upper Tribunal analysed the definition of "vexatious" by reference to four broad themes. We consider them below.

The burden on DBC

21. DBC's response dated 1 April 2015 to the Commissioner's Office enquiry in relation to Mr White's complaint stated that they had received 142 previous requests from Mr White containing some 914 separate questions since August 2006. Between 1 April 2014 and 15 December 2014 there had been 21 FOI requests with some 200 separate questions from Mr White. This is a very large number of detailed requests even though over 8 years, particularly the 9 month period prior to the Request.

22. The previous requests had been on different subject matters to the Request. DBC say they have provided detailed responses to many of Mr White's previous requests. In 2014 an independent investigating officer who met with Mr White and his partner as part of a complaint investigation stated in her report that Mr White advised "*..it is their ambition to make as many complaints as they possibly can to waste as much Council monies and time as possible and to cause as much hassle to the Council as possible..*"

23. Mr White does not deny any of this. In fact there is further evidence before us that seems to confirm his desire to cause a burden on DBC when a different officer visited Mr White and his partner as evidenced in an email dated 8 January 2015.

24. In addition to what was said to Council officials the DBC provided the Commissioner with a blog that they say was posted by Mr White boasting that the way to upset DBC was to bombard the Council with FOI requests. However no collaborative evidence has been provided to link the blog to Mr White, despite DBC's suspicions.

25. We have been provided with email chains in relation to Mr White's dealings with DBC over a number of his requests. It would appear whenever DBC had taken more than 20 days (even by a few days) to respond to the request, although often providing the information Mr White repeatedly asked for an internal review on the basis that the response was late. The Council seems to have apologised for the lateness. However, the persistent engagement of DBC's internal review process on such a point suggests to us that Mr White's course of conduct tends towards deliberately and unnecessarily increasing its burden. These are multi-question requests which are likely to take longer to deal with than simpler requests. The Request itself contains 16 separate questions.

Mr White's motive

26. FOIA claims are generally regarded as motive-blind. There are exceptions and one of them is in relation to section 14(1) cases as recognised by the Upper Tribunal and Court of Appeal. We can therefore take this into account when considering whether the Request is vexatious.

27. The Request, although having 16 parts, seems entirely reasonable in itself, albeit some parts relate to personal interests. However the history of previous large numbers of requests as set out above suggests a possible ulterior motive, namely to place an unreasonable burden on DBC. The fact

that one of Mr White's grounds of appeal is that he requires the information in relation to a Supreme Court case suggests this might be the case. As the Commissioner states in his response, this ground is "misconceived" and FOI is not the correct process to obtain information in other litigation. There is other evidence before us that Mr White has in the past pursued the FOI route rather than the correct appeal process in a housing benefit matter as set out in the letter of 1 April 2015, despite this being pointed out to him.

Other broad issues

28. Other issues we can consider are the value and serious purpose of the request; and whether the request causes harassment of, or distress to, staff.
29. On the basis of the Request in itself there is clearly a serious purpose in understanding how the "bedroom tax" works and is applied by DBC. There is not only value to Mr White but to the wider community who will be affected by the tax.
30. The Request is in temperate language and nothing relating to it suggests that, in itself, it would have caused harassment or distress to staff.
31. However, considered in the context of multiple requests made over a number of years and Mr White's apparent intention to disrupt DBC as expressed to others, the Request seems to us to be part of a course of conduct amounting to manifestly unjustified, inappropriate or improper use of FOIA.

Conclusion

32. On the basis of the evidence before us we find that the Request is vexatious. The number of requests, particularly in the year prior to the Request, has clearly been a heavy burden on DBC and there is no indication that this will stop or reduce in the future. Mr White seems to be

bent on a course of action designed to disrupt the Council's business.
DBC is entitled to say "enough is enough".

33. We dismiss the appeal and uphold the DN.

Signed:

Judge Angel

Date: 19th January 2016