



**Appeal number: EA/2019/0367**

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

**DAVID BURROWS**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL: JUDGE CLARE GOODMAN  
Mr PIETER DE WAAL  
Mr MIKE JONES**

**Determined on the papers, the Tribunal sitting in Chambers on 21 January 2020**

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## DECISION

1. The appeal is dismissed.

## REASONS

### *Background to Appeal*

2. The Appellant made an information request to North Somerset Council (“the Council”) on 22 January 2019.
3. The Council refused the request in reliance upon s. 14 (1) of the Freedom of Information Act 2000 (“FOIA”).
4. The Council subsequently identified that the request was for “environmental information” as defined in the Environment Information Regulations 2004 (“EIR”), and therefore should have been dealt with under the EIR. The Council considered that the request would have been refused in reliance on section 12(4)(b) of the EIR.
5. The Information Commissioner issued Decision Notice FS50829722 on 12 September 2019, upholding the Council’s decision. The Decision Notice concluded that the wide parameters of the request would require the Council to expend considerable public resources and that the value of the request was reduced by the availability of other routes of appeal. There was no evidence that the Council had acted incorrectly and the public interest favoured maintaining the exception under section 12(4)(b).
6. The background to the request can be summarised as follows. A number of local residents were concerned about the development of land next to a crematorium in Worle, Weston-super-Mare. The crematorium is operated by Dignity under contract with the Council. Planning permission for the development was granted on 11 December 2015 subject to a number of conditions.
7. From January to June 2016, the Appellant made four requests for information about the Council’s communications and meetings with Dignity. In response, the Council disclosed every piece of information it held about the crematorium. The Appellant complained to the Commissioner on the basis that not all information had been disclosed, and ultimately, appealed to the First-tier Tribunal. He also made a number of formal complaints to the Council and to the Local Government Ombudsman (“LGO”).
8. The Tribunal dismissed the Appellant’s appeal on 28 September 2017 (reference EA/2017/0112) finding that:

*“the Council has throughout this behaved with transparency and provided all the information that it could. Indeed it could be argued that in striving to satisfy the Appellant’s voracious appetite for information of dubious value it has gone too far and should have considered the various exemptions with respect to information provision (notably the Data Protection Act in relation to the personal data of a member of the public and provisions intended to protect public authorities from*



*devoting disproportionate efforts in order to satisfy manifestly unreasonable requests of little value)*".

9. Work started on the development in November 2018. The Appellant and other residents became concerned about breaches of certain conditions of the planning permission. On 3 December 2018, the Appellant complained to the Council about the erection of a fence to protect trees on Lyefield Road (page 41). The Appellant accused Council officers of "*incompetence, maladministration or even the possibility of collusion*" in their approach to approving compliance with the conditions.

10. The Council dealt with the Appellant's complaint at Stage One of its complaint procedure, responding on 14 December 2018 (page 39). As the Appellant was not satisfied with the response, the Council escalated his complaint to Stage Two, saying that the Chief Executive aimed to respond by 14 January 2019. On 22 January 2019, having received no response and learning that a new Chief Executive had been appointed, the Appellant made a request for information in the following terms:

*"I hereby make a formal request for the release of the following information under the Freedom of Information Act, since it is in the public interest that there be full disclosure the facts regarding Planning Application 14/P/2274/F and the relationship between the Council and [Dignity]:*

- 1. All communications and documentation not entered onto the Council's Planning Portal in respect of the said planning application before 6<sup>th</sup> January 2018 between [Dignity] and his Agents.*
- 2. All communications and accompanying documents from June 2017 to date in respect of communications both internally between Council Officers including Press Office, Councillors including members of the Executive and externally with Dignity, its Agents and Contractor. This is to include all diary notes, records of meetings including liaison meetings and any other meetings between the Council's Team responsible for the Crematorium Contract Management with Dignity, their Agents and Contractors.*
- 3. Records of all applications in respect of Statutory Notices and Orders made by the Applicant, his Agents and Contractors in respect of work associated with Planning Application 14/P/2274/F since June 2017.*

11. In the meantime, the Council had made efforts to engage with the Appellant and other residents. At the Council's suggestion, the residents formed the Lyefield Road Residents Group ("the Residents Group") appointing the Appellant as spokesperson. Meetings were held with Council representatives in January, February and March 2019. Site visits were carried out in response to the concerns raised and remedial works took place.

12. The Council's Chief Executive responded to the Stage Two complaint on 23 January 2019 (page 235 of the second bundle). She assured the Appellant that the Council were working with Dignity and their contractors to ensure that all work was compliant with conditions. She asked him to report any further breaches through the Council's planning



enforcement service website and referred him to the Local Government Ombudsman if he was not satisfied with the outcome of his complaint.

13. On 25 January 2019, the Council refused to provide information in response to the Appellant's request on the basis that it was vexatious under 14 (1) of FOIA. An internal review upheld the Council's decision on 6 March 2019. The Appellant complained to the Commissioner, highlighting concerns about further breaches of planning conditions in relation to temporary construction signs, installation of a wheelwash for lorry wheels, and vehicles using the wrong entrance to the crematorium. This complaint resulted in the Decision Notice of 12 September 2019.

#### *Appeal to the Tribunal*

14. The Appellant's Notice of Appeal dated 5 October 2019 relied on the following grounds: (i) that the complaint to the Commissioner had been made on behalf of the Residents Group and not by the Appellant personally; (ii) the Residents Group had no history of making information requests to the Council; and (iii) the Council had failed to ensure compliance with the conditions of the planning permission.

15. The Commissioner's Response dated 5 November 2019 resisted the appeal, maintaining the analysis set out in the Decision Notice. The Commissioner submitted that the course of dealing between the Appellant and the Council was relevant in determining whether the request was manifestly unreasonable as it was clear that the Appellant had been acting on behalf of or in concert with other residents for some time. The request was an attempt to re-open matters dealt with in the Stage 2 complaint and "*given the burden imposed on the Council in the context of the previous course of dealings... the point has been reached that the request can be considered manifestly unreasonable*" (paragraph 28). The Commissioner considered that there was little public value or interest in the information sought.

16. The Residents Group made a "Final Submission" on 17 November 2019 attaching a further 322 pages of evidence. The Submission described the establishment of the Residents Group. It argued that the request for information was made by the Appellant on behalf of the Residents Group and that evidence relating to the 2016 information requests was "inadmissible" because it pre-dated the establishment of the Residents Group. The Submission provided further detailed commentary about the Council's failure to enforce planning conditions and its engagement with the Residents Group.

17. Both parties asked the Tribunal to determine the appeal without a hearing. The Tribunal was satisfied that it could properly determine the issues without a hearing and that it was fair and in the interests of justice to do so.

18. The Tribunal considered two open bundles of evidence comprising over 650 pages in total. References to page numbers are to pages of the first bundle unless otherwise stated.

#### *The Law*



19. The Tribunal is satisfied that the information sought by the Appellant is “environmental information” as defined in the EIR. It relates to land and to measures and activities affecting and designed to protect land. The provisions of the EIR therefore apply.

20. Regulation 12(1) EIR provides as follows:

*“Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*

*(a) an exception to disclosure applies under paragraphs (4) or (5); and*

*(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.”*

21. Regulation 12(2) provides that: “A public authority shall apply a presumption in favour of disclosure.”

22. Regulation 12(4) provides that:

*“For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*

*...(b) the request for information is manifestly unreasonable;”*

23. Grounds for refusing to disclose environmental information under the EIR should be interpreted in a restrictive way. In *Vesco v Information Commissioner and GLD* [2019] UKUT 247 (AAC), the Upper Tribunal proposed a three stage test: (1) is the request manifestly unreasonable; (2) if so, does the public interest in maintaining the exception outweigh the public interest in disclosing the information in all the circumstances of the case; and (3) does the presumption in favour of disclosure mean that the information should be disclosed? (at paragraph 16).

24. In *Craven v Information Commissioner and DECC* [2012] UKUT 442 (AAC), the Upper Tribunal stated that “*in deciding whether a request is “manifestly unreasonable” under the EIR, a tribunal should have regard to the same types of considerations as apply to the determination of whether a request is “vexatious” within FOIA*” (at paragraph 30).

25. In *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 AAC, the Upper Tribunal interpreted “vexatious requests” as being manifestly unjustified, or involving inappropriate or improper use of a formal procedure. The Upper Tribunal considered four broad criteria for assessing whether a request was vexatious, namely (i) the burden imposed by the request on the public authority and its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the request and (iv) whether there is harassment of or distress to the public authority’s staff. The Upper Tribunal stressed the importance of taking a holistic approach. The Upper Tribunal’s approach was broadly endorsed by the Court of Appeal in its decision (reported at [2015] EWCA Civ 454), emphasising the need for a decision maker to consider “*all the relevant circumstances*”.



26. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

*“If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

27. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

### *Conclusion*

28. The Tribunal rejects the argument that the Residents Group are to be treated separately from the Appellant and that the history of the Appellant’s previous requests for information from the Council is irrelevant or “inadmissible”.

29. We find that the Appellant and other residents have been acting in concert, both in relation to the application for planning permission and later the works. The requests for information in 2016 were made by the Appellant on behalf of other residents, even if no formal group had been established at that stage. At paragraph 15 of its Decision Notice, the previous Tribunal quoted from the Appellant’s submission that *“the request made because residents were looking for information as to what the Council knew”*. An email from another member of the Residents Group dated 29 September 2019 at page 294 says that the Appellant *“has not been working on his own through the planning or works period. All correspondence has been circulated and vetted by the Forum members and indeed any other interested residents or parties...”*.

30. We find that the Commissioner’s Decision Notice is inaccurate in stating at paragraph 20 that the request for information was submitted shortly after the Stage 2 complaint response. In fact, it was submitted the day before that response. It is not correct, therefore, that when the request was first made, it was *“an effort to reopen and extend the complaint”* as stated in the Decision Notice.

31. Nonetheless, the Appellant maintained the request for information after receiving the Stage 2 response and linked it to the complaint. In responding to the Stage 2 response, he attached a draft complaint to the LGO and said that when the Chief Executive read the



draft complaint, “*you will understand why the [information] request was made, it is in the public interest to know why the Council has failed in this matter with regard to due diligence and duty of care*”. The Final Submission from the Residents Group to the Tribunal repeated that “*All the Residents Group has wanted was for compliance with the Conditions of Planning approval and Notice of Decision...*” (page 10 of second bundle).

32. The Tribunal concludes that the request for information is an attempt to use EIR to enforce the conditions of the planning permission and pursue complaints against the Council, instead of the legitimate routes of the Council’s planning enforcement service and/or the LGO. This is an inappropriate use of the EIR regime. We find insufficient evidence to justify the allegation (see paragraph 9 above) that the Council was colluding with Dignity and would not robustly enforce the conditions because it had also approved the development and contracted with Dignity.

33. We agree with the Commissioner that the first part of the request - for information relating to the planning application prior to 6 January 2018 - may include information already disclosed by the Council in 2016. We note however, that the second and third parts of the request are limited to documents “from June 2017” and therefore cannot include information previously released.

34. Even so, the request is very broad and wide-ranging and likely to place a considerable burden on the Council. We accept that the history of the Council’s engagement with the Appellant, as described by the Tribunal in 2017, strongly suggests that he and the Residents Group are unlikely to be satisfied with information provided by the Council in response to the request and that this will generate further requests and correspondence. We have ample evidence in the bundle of the length and complexity of the correspondence generated by these issues.

35. The Tribunal acknowledges the strength of feeling in the Appellant and the Residents Group. We recognise that their concerns are genuine and honestly held and that there is a public interest in ensuring compliance with planning conditions and good administration in local authorities. We note that a local district councillor has also expressed concerns. Neither the Decision Notice nor the Commissioner’s Response suggest harassment of or distress to Council staff. On the other hand, the specific concerns raised by the Residents Group relate to relatively minor breaches of planning conditions which although frustrating for residents, can be remedied. It appears to us that the Council took considerable steps to engage with residents and address their concerns.

36. We concur with the conclusion of the Council’s internal review at page 46 that “*the requested information will have no bearing on the planning decision or your complaint, and therefore will be of little or no value to you, and will only serve to take up officer time*”. Weighing the value of the request against the impact on the Council and taking into account the other legitimate routes available to address residents’ concerns, we are satisfied that the burden on the Council in complying with the request would be disproportionate.



37. Applying the guidance referred to in paragraph 25 and taking into account that grounds for refusal under the EIR are to be interpreted restrictively, the Tribunal concludes that the request is manifestly unreasonable under Regulation 12(4)(b) of the EIR.

38. Turning to the second stage of the test proposed in *Vesco* (see paragraph 23), we find that for the reasons set out above the public interest in ensuring compliance with planning conditions and good administration in local authorities is outweighed in the circumstances of this case by the public interest in maintaining the exception under Regulation 12(4). In particular, we note the considerable burden placed on the Council if it were to respond to the request (as described in paragraph 34) and the alternative, specific routes available to address these legitimate areas of public concern.

39. Finally, we consider that the exception in Regulation 12(4)(b) applies, notwithstanding the presumption in favour of disclosure under the EIR. The presumption is overcome in this case by the disproportionate burden placed on the Council, the existence of alternative routes to address the relevant concerns, and the limited value of the requested information.

40. For all these reasons, we now dismiss the appeal and uphold the Decision Notice.

**C. L. GOODMAN**

**Date: 5th February 2020**

**(FIRST TIER TRIBUNAL JUDGE)**

**Date Promulgated: 14<sup>th</sup> February 2020**