Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2008/0046
Information Commissioner's Ref: FER0169710

Heard at Field House, London, EC4
On 22 October 2008

Decision Promulgated
17 November 2008

BEFORE

CHAIRMAN

ROBIN CALLENDER SMITH

and

LAY MEMBERS

SUZANNE COSGRAVE

ANNE CHAFER

Between

STEPHEN CARPENTER

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

STEVENAGE BOROUGH COUNCIL

Additional Party

Subject matter:

Freedom of Information Act 2000

Vexatious or repeated requests s.14

Environmental Information Regulations 2004

Public interest test, Reg 12 (1) (b)
Exception, Regs 12 (4) and (5)

- Request manifestly unreasonable 4 (b)

Cases: *Coggins v ICO EA/2007/0013*; *Gowers v ICO and Camden LBC* EA/2007/0014; *Welsh v ICO EA/2007/0088* and *Betts v ICO EA/2007/0190.*

Representation:

For the Appellant:	Mr Stephen Carpenter (in person)
For the Respondent:	Ms Anya Proops (Counsel for Information Commissioner)
For the Additional Party:	Mr James Cornwell (Counsel for Stevenage Borough Council)

Decision

The Tribunal upholds the decision notice dated 7 April 2008 and dismisses the appeal.

Reasons for Decision

Introduction

1. This appeal concerns some 13 requests for information which Mr Carpenter submitted to Stevenage Borough Council (SBC) over the period 21 June to 25 July 2007. The requests were all refused by SBC on the grounds that they were "vexatious" for the purposes of section 14 of the Freedom of Information Act 2000 (FOIA) or "manifestly unreasonable requests" for the purposes of regulation 12 (4) (b) of the Environmental Information Regulations 2004 (EIR).

2. The Information Commissioner (IC) upheld SBC's decision not to respond to the requests. That was done on the basis that SBC had correctly concluded that it was exempted from responding to the requests under Regulations 12 (1) and 12 (4) (b) EIR.

3. This is the first appeal to come before the Information Tribunal on the question of the application of Regulation 12 (4) (b) as an exception. The Tribunal has had to consider the meaning of the words "manifestly unreasonable requests" in that context.

4. The information that Mr Carpenter was seeking to obtain related to an area of land that was part owned by a company called Van Hage and Company (Holdings Ltd). Van Hage leased the remainder of the site from SBC, who owned the Freehold. SBC decided to sell its freehold interest in the land to Van Hage.

5. Van Hage and SBC agreed the Company would buy the land from the Council. As part of the contract, that sale was conditional upon the Council's Planning and Development Committee making a resolution to grant planning permission for the site. The Council received the Company’s planning application on 21 March 2007. That application concerned a plan to build a number of dwellings on an area of land close to the Appellant's home. The completion of the sale of the Freehold, the completion of a "section 106 agreement" under section 106 of the Town and Country Planning Act 1990, and a resolution to grant planning permission also took

place on 20 June 2007. The section 106 agreement contained planning obligations in favour of the local authority issuing the planning consent.

6. Mr Carpenter's case has always been that he was seeking to find out why the land was sold to Van Hage for £900,000 and then, almost immediately, sold on to Charles Church Developments for £8,319,000.

Preliminary issue

7. Mr Carpenter, at the beginning of the appeal hearing, asked the Tribunal to prevent Counsel for the IC and SBC referring to cases or Tribunal Decisions in relation to section 14 FOIA and "vexatious" requests on the basis that they had no bearing on the meaning of the words "manifestly unreasonable requests" in regulation 12 (4) (b) EIR.

8. The Tribunal declined this request on the basis that those decisions might well have a bearing on the matter on which the Tribunal had to decide. To refuse to allow them to be mentioned and analogies drawn from them would deprive the Tribunal of assistance it was entitled to seek from cases which – while not binding on the Tribunal -- had come before the Tribunal generally and other courts on the issue of the reasonableness of repeated requests.

The requests for information

9. Request 1 on 21 June 2007

"Under the Freedom of Information Act could you please provide me with all the relevant details regarding the disposal of SBC's freehold interest, to include all meetings, who attended and all letters and relevant paperwork."

Request 2 on 21 June

"Under the Freedom of Information Act could you please provide me with all relevant details of the above-mentioned sale and valuation and details of any conversations and meetings regarding the SBC sale of their Freehold interest in the above."

Request 3 on 21 June 2007

"Under the Freedom of Information Act I am requesting all details of conversations from when you were first instructed regarding the above sale of SBC's freehold interest to Van Hage . I want to know the exact terms of the sale, how much deposit was paid, when it was paid and where it was banked.

"I also request under the Freedom of Information At a copy of Part II Confidential Report, 24th January 2007 with all details, as opposed to 3.1 and 5.3 being omitted from the copy I have."

Request 4 on 21 June 2007

As for "Request 3".

10. Request 5 on 24 June 2007

"Under the Freedom of Information Act could you please provide me with all details regarding the completion of the council's sale of their Freehold interest in the above to Van Hage. I would like to know exactly when the money was received and where it was paid into. Could you please advise me where the transfer was executed and at what time and on what date.

"Could you please confirm who was in attendance when the 106 Agreement was signed, whether signing took place and at what time ."

11. Request 6 on 25 June 2007

Description of request made contained in Complainant's letter on 28 June 2007 as follows:

"I asked you to produce your last 3 completed S106 Agreements to confirm the wording was consistent that you declined and left the reception."

Request 7 on 25 June 2007

"Under the Freedom of Information At could you please supply me with the copies of your last 10 106 agreements."

Request 8 25 June 2007

"Under the Freedom of Information Act I request all relevant details, letters, meetings and conversations regarding the above [planning application]."

Request 9 25 June 2007

"Under the Freedom of Information Act I request all relevant details, letters, meetings and conversations regarding the above [planning application]."

12. Request 10 1 July 2007

"Under the Freedom of Information Act I require details of all Stevenage Borough's assets sold through the disposal programme for the year 2006/2007. Also under the Freedom of Information Act could you please confirm where and when you (sic) S106 Agreement for the above [planning application]."

13. Request 11 4 July 2007

"I repeat once again under the Freedom of Information Act that I require ALL of the above-mentioned information [as listed in the Council's refusal notice] as opposed to the other doctor documents that you have provided me with so far."

14. Request 12 on 23 July 2007

"Could you please, under the Freedom of Information At, supply me with copies of part 2 agreements of planning meetings on 19th June 2007 and 10th July 2007".

15. Request 13 on 25 July 2007

"Could you please confirm if Stevenage Borough Counsel have a further financial interest or any other vested interest regarding the development of the Listed Farmhouse and the Barns on the Van Hage Site".

The complaint to the Information Commissioner

16. SBC sent a refusal notice to the Appellant on 2 July 2007 and stated it would not be responding because it considered that the requests were vexatious, manifestly unreasonable and, in part, repeated. It mentioned both FOIA and EIR because it was not sure which access regime was appropriate. The refusal notice expressly referred to the requests set out above with the exception of Requests 3, 4 and 6

and 11 to 13. SBC explained to the IC it had made a mistake by not referring to request 3 and 4 in the notice but that it had not responded for the reason given in the notice. SBC confirmed it had refused to supply information requested verbally by the complainant as request 6 for the same reason but had not included it in the notice. Requests 11 to 13 were submitted following the notice but were not responded to for the same reason. In the refusal SBC also explained that it did not have an internal review procedure and advised Mr Carpenter to complain directly to the IC if dissatisfied.

17. Mr Carpenter wrote to SBC on 5 July 2008 appealing against its decision. SBC did not respond to that correspondence.

18. On 5 July 2007 Mr Carpenter complained to the IC about the way his requests for information had been handled. He asked the IC to consider whether the requests had been correctly refused.

19. The IC (as explained in the Decision Notice) understood that Mr Carpenter wished the IC to consider how SBC had responded to all of the requests listed as 1 to 13. The IC concentrated on whether the requests were manifestly unreasonable at the time of the refusal notice.

20. The IC considered that the SBC should have issued a refusal notice for requests 3, 4 and 6 and should have considered Mr Carpenter's subsequent appeal. The IC considered SBC had failed in its obligations under the EIR regime by not so doing.

21. The IC decided that SBC was correct to rely on regulation 12 (4) (b) under the EIR and that, in all the circumstances, the public interest in maintaining the exception outweighed the public interest in disclosing the information.

22. The IC also decided that SBC breach the EIR in the following respects:

(a) It breached regulation 14 (1) because it did not issue a refusal notice relating to request 3, 4 and 6.

(b) It breached regulation 11 (3) because it did not consider the representations made by Mr Carpenter in his letter of 5 July 2007

(c) It breached regulation 14 (3) (b) because it did not specify in the refusal what its considerations were in respect of the public interest test under regulation 12 (1) (b).

23. The IC did not require SBC to take any steps in relation to that decision.

Vexatious Requests under FIOA

24. Section 14 FOIA provides as follows:

"(1) Section 1 (1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with the request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval as a lapsed between compliance with the original request in the making of the current request."

Manifestly Unreasonable Requests under EIR

25. Regulation 2 (1) EIR provides as follows:

"environmental information" has the same meaning as in Article 2 (1) of the Directive, namely any information in written, visual, oral, electronic or any other material form on–

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting all likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programs, environmental agreements, and activities affecting all likely to

affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;"

25. Regulation 12 (1) EIR provides that a public authority may refuse to disclose requested environmental information if:

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

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

26. Regulation 12 (2) provides that "public authority shall apply a presumption in favour of disclosure".

27. Regulation 12 (4) (b) provides that in authority may refuse to disclose information "to the extent that…. the request for information is manifestly unreasonable".

The appeal to the Tribunal

26. Mr Carpenter appealed on 1 May 2008 in two communications to the Information Tribunal and requested an oral hearing.

27. In those letters he said the information he had requested from SBC was under FOIA, rather than the EIR, and that it was his view that - because of SBC's maladministration and negligence - he had had to make more requests for information. He had never previously been in contact with SBC and it was only because SBC initially contacted him in regard to the planning application (and subsequently invited his views on further planning applications) that the chain of enquiry from his side had begun.

28. He felt that all these enquiries were in the public interest because SBC had failed to obtain "best interests" for the land which they sold to Van Hage Developments for £900,000. The site, of which over 70% represented SBC property, was immediately sold on for £8,319,000. On the face of it this was a substantial loss to SBC which eventually would have an effect on the Stevenage Borough residents, of whom he was one.

29. The reason why his FOIA request had been submitted so promptly was because of the "unfair and deceitful way" planning permission had been granted. He had been intending to apply for Judicial Review in relation to this and there was a 12 week deadline for the appropriate paperwork to be submitted. He also took issue with the way in which the IC's office had failed to reflect the complexity of the requests which he had been making.

The questions for the Tribunal

30. Whether the Appellant's requests had been "manifestly unreasonable" in terms of regulation 12 (4) (b) EIR?

31. FOIA and the EIR both constituted statutory access regimes which governed how public authorities were required to respond to information requests submitted by members of the public. In terms of their structure, FOIA and the EIR shared a number of common features. In particular:

(1) they both embraced a general obligation requiring public authorities to afford members of the public access to information which is held by the authorities (see respectively section 1 FOIA and regulation 5 (1) EIR)

(2) in both enactments, the general obligation to afford access to information is subject to a number of exemptions/exceptions (in particular the exemptions provided for in Part II and the exceptions provided for under regulations 12 and 13 EIR)

(3) of the two enactments it was EIR which was particularly designed to govern how public authorities should respond to requests for "environmental information". The EIR was enacted to give effect to EU Council Directive 2003/4/EC on public access to environmental information (" the Directive"). The IC accepted -- in the light of the particular importance which the Directive placed on affording members of the public access to environmental information – that any factors on the duty to make environmental information available under the EIR (including any exception) should not be construed narrowly.

32. In contrast with FOIA, the EIR embraced a positive presumption in favour of disclosure (regulation 12 (2)). If environmental information was exempt from disclosure under the relatively liberal access regime created by the EIR was it likely that it would still be disclosable under FOIA?

33. Whether the IC failed to take into account SBC's duty to provide advice and assistance under FOIA and ignored the fact that SBC did not clearly state whether the Appellant's requests fell under FOIA or EIR?

34. Whether the IC unfairly failed to take into account that the Appellant needed to act promptly as he only had 12 weeks within which to gather evidence in support of his judicial review in respect of SBC's alleged unlawful activities?

35. Whether the case law that had developed on section 14 FOIA and the nature of "vexatious" requests (together with guidance outlined at AG22) were useful in terms of illuminating the way in which the regulation 12 (4) (b) exemption to be applied in practice?

Evidence

36. The Tribunal was referred to a log compiled by SBC detailing the Appellant's contacts with the Council over the period 4 April 2007 to 26 July 2007. The log contains some 55 entries and demonstrated a significant level of contact.

37. Of the 13 requests in issue for the purposes of the appeal:

(a) the date range for the requests was 21 June to 25 July 2007;

(b) at least two of the relevant request documents incorporated intemperate and harassing language;

(i) in a letter dated 4 July 2007 to SBC's solicitor is the following quote from towards the end of the letter that was copied to 11 other individuals (including SBC chief executive): "As you are aware I am applying for a judicial review regarding the Van Hage site and if by illegally denying me access to all of the above that proves that SBC have acted

unlawfully I will be contacting the police and suing for substantial damages."

(ii) in a letter dated 23 July 2007 to the chairman of the SBC planning committee is the following: "Because you choose silence as your answer I do not believe you are fit for purpose and would now ask who would release you from your position as Chairman of the Planning Committee and Deputy Mayor? Could you please confirm to me which body or person I now have to approach to put my complaints in writing?"

(c) there was a marked degree of repetition in the requests; and

(d) the requests were directed at a number of different council officers, some of whom had previously be the subject of threatening or harassing correspondence from the Appellant. For instance:

(i) on 8 June 2007 Mr P Bandy - the Head of Planning and Regeneration -- received a letter from the Appellant the third paragraph of which states: "Yet again you are deliberately misleading myself and my neighbours as you are misrepresenting the true facts. Until you demonstrate to us that your statement is correct I am demanding that this application is suspended because you have acted negligently, irresponsibly and I believe illegally." On 25 June 2007 he received a letter from the Appellant stating: "Under the Freedom of Information Act I request all relevant details, letters, meetings and conversations…. Full disclosure please and if necessary I am quite happy to come and inspect your files at your office."

(ii) on 12 June 2007 Mr D Rusling - Planning Officer -- received a letter from the Appellant the third paragraph of which states: "Could you please confirm to me in writing before the Planning Committee meeting that you are satisfied that a criminal offence has not been committed with this planning application because if this proves to be the case I will be calling upon the powers that be for your immediate dismissal for negligence." On 25 June 2007 he received a letter from the Appellant stating: "Under the Freedom of Information Act I request all relevant details, letters, meetings and conversations…. Full

disclosure please and if necessary I am quite happy to come and inspect your files at your office."

38. It was clear that some of the information requested by the Appellant had been disclosed to him or was otherwise generally accessible to members of the public as part of the planning process. There was also significant evidence that the Appellant frequently copied a number of other individuals into letters of request -- including individuals working within the media and MPs -- deliberately broadening the effect of extremely serious and defamatory allegations he was making about corruption in public office, illegality and -- in certain instances -- criminal conduct.

39. There was evidence before the Tribunal that the Appellant had complained about the transactions to the District Auditor and Solicitors Regulation Authority, both of which rejected the complaints. His complaints fared no better at the Audit Commission or the Legal Services Ombudsman. He agreed he never in fact pursued his claim for Judicial Review.

40. The Tribunal heard oral evidence from SBC's solicitor, Mr Paul Froggatt, who was cross examined by the Appellant. He adopted his written witness statement and in particular Paragraph 21 of that statement.

41. There he states: "The Appellant attended the Council's offices on 22 June 2007 and was shown the original S106 agreement which had been completed on 20 June. On Monday 25 June 2007 he telephoned the Council requesting a copy of the Section 106 agreement for immediate collection. A copy was left for collection by him at 11 AM. At around 12:30 PM the Appellant returned to the Council offices demanding to see the original Section 106 agreement again. A clerical assistant produced the original document for him. He said that this was not the same document he had seen on 22nd. The clerical assistant confirmed that it was the same document and he accused her of lying. After further exchanges I also joined this meeting and confirmed to the Appellant that the document was unaltered. He made further accusations of corruption and I refused his demand from the disclosure of previous Section 106 agreement concluded with the Council.

42. Mr Froggatt said that he considered the most of the requests fell under EIR but at least one of the requests (the banking details) was made under the Freedom of

Information Act 2000. He considered that -- in line with the ICs guidance -- a vexatious request would also be manifestly unreasonable under the EIR and in this case also met the public interest test for refusal. In reaching that conclusion he had taken into account the number and nature of the Appellant's requests, the burden and distraction they were imposing on the council and the harassment of the Council's officers. He considered that the requests were excessive, a conclusion he felt had been reinforced by the Appellant's subsequent pursuit of his complaints against the Council. He did not believe that the requests had any purpose as the information relevant to the Appellant's complaints had already been provided to him.

43. Mr Carpenter told the Tribunal that -- because the proposed major development would create a loss of amenity and overshadow his property -- he had consulted an independent planning expert to present his objections to the development in a fair and balanced way. He felt SBC had been deliberately unhelpful and not forthcoming with answers. Having consulted lawyers about the prospect of a Judicial Review of SBC's actions he then faced a 12 week timetable to complete the process which, in itself, was complicated because he was due to be away on holiday for three weeks during that period.

44. His requests for information were polite and he had no intention of causing disruption or annoyance but simply wanted SBC to provide him with the necessary information to deal with the planning issues of the proposed planning application. He acknowledged in a further document to the Tribunal dated 7 September 2008 -- which he adopted as part of his evidence -- that: "With regard to other letters that I sent, they were not FOIA requests, my language may be regrettable but that sometimes happens to a frustrated requestor. I refer you to the minority Tribunal case of Betts EA/2008/0109. Inappropriate language is not enough to be vexatious. My case may be similar, but I did not have sufficient assistance from SBC who had an FOI Coordinator at their disposal who should have acted in a fair and balanced manner and followed the correct procedure."

45. In cross-examination it was suggested that he had made unwarranted personal attacks in the correspondence on junior members of staff. He replied: "The language was possibly inappropriate. On reflection I might have worded letters

more reasonably. I apologise if wrong advice (from SBC) has led me to incorrect language."

Legal submissions and analysis

46. The submissions by the IC and the SBC were similar. Both argued that the case law on section 14 FOIA set the context for the way in which regulation 12 (4) (b) should be applied generally and, in particular, to this case. Despite linguistic differences both provisions were aimed broadly at achieving the same purpose namely to ensure that applicants for information did not -- as a result of their unreasonable requests -- either jeopardise sound and effective administration within public institutions or otherwise unjustly harassed public officials.

47. In particular the following considerations (from AG22) were relevant to assist the Tribunal in deciding whether a particular request for "environmental information" was manifestly unreasonable:

(a) whether it imposed significant burdens on the authority in terms of expense or distraction;

(b) whether it had any serious purpose or value;

(c) whether it is designed to cause disruption or annoyance;

(d) whether it had the effect of harassing the public authority; and

(e) whether it could otherwise fairly be characterised as obsessive.

48. Mr Carpenter maintained that his requests had been neither vexatious nor manifestly unreasonable.

Conclusion and remedy

49. The Tribunal had the benefit of hearing directly from the Appellant. It was quite clear that he believed, honestly, that he had generally not overstepped the mark in terms of rigorous enquiry on an issue he believed to be of public interest. It was his clear view that public servants should be held to account and be able to face enquiries such as his -- involving robust and rigorous enquiry -- without suddenly pulling up

the proverbial drawbridge and refusing to respond to him further. While some of his language might have overstepped the mark he could not see why the generality of his requests had provoked the response from SBC in terms of deeming him "manifestly unreasonable" that had subsequently been endorsed by the IC.

50. While the Tribunal finds Mr Carpenter's appeal fails – and finds that his requests were "manifestly unreasonable" even in the light of the public interest test that is part and parcel of this area of EIR -- it notes that at no stage did SBC put the Appellant on warning about his intemperate language or point out that the threatening tone he was adopting could result in him being treated in the way that subsequently transpired.

51. The Tribunal reminds itself of the principles that have emerged in relation to Section 14 FOIA:

(1) It is important to ensure that the standard for establishing that a vexatious request is not too high (*Coggins v ICO EA/2007/0013* Paragraph 19 and *Hossack v ICO EA/2007/0024* and *Welsh v ICO EA/2007/0088*).

(2) The various considerations identified in AG22 (summarised at Paragraph 31 of the Decision Notice) are a useful interpretive guide to help public authorities to navigate the concept of a "vexatious request". There should not however be an overly-structured approach to the application of those considerations and every case should be viewed on its own particular facts.

(3) When deciding whether a request is vexatious a public authority is not obliged to look at the request in isolation. It could consider both the history of the matter and what lay behind the request. A request could appear, in isolation, to be entirely reasonable yet could assume quality of being vexatious when it is construed in context (*Hossack*, *Betts v ICO EA/2007/0190* and *Gowers v ICO and Camden LBC* EA/2007/0014).

(4) Every case turns on its own facts. Considerations which may be relevant to the overall analysis include:

(a) the request forming part of an extended campaign to expose alleged improper or illegal behaviour in the context of evidence tending to indicate that the campaign is not well founded;

(b) the request involving information which had already been provided to the applicant;

(c) the nature and extent of the applicant's correspondence with the authority whether this suggests an obsessive approach to disclosure;

(d) the tone adopted in the correspondence being tendentious and/or haranguing;

(e) whether the correspondence could reasonably be expected to have a negative effect on the health and well-being of officers; and

(f) whether responding to the request would be likely to entail substantial and disproportionate financial and administrative burdens.

52. The Tribunal finds that Mr Carpenter's requests were manifestly unreasonable for the following reasons:

(1) In terms of frequency, 10 requests were submitted to SBC in less than 12 days. On two days the Appellant submitted four requests (21 June 2007 and 25 June 2007). In a wider context there were 48 logged contacts from the Appellant from April 2007 until the refusal notice was issued on 2 July 2007.

(2) In terms of the nature of the requests many were similar in nature. Some were identical or virtually identical and imposed a burden of wholly unnecessary duplication on SBC.

(3) In terms of the tone of the communication, by 21 June 2007 Mr Carpenter was sending unnecessarily threatening and intemperate communications towards a range of officers within SBC. His targets ranged from relatively junior officers (such as the planning officer Mr David Rusling) up to the Chief Executive (Mr Peter Ollis). Allegations included "deliberately misleading", "blatant abuse of power" and an "illegal, fraudulent and by association criminal" transaction;

phrases such as "lying as to the true status of the land" "obtaining funds by deception" and allegations of negligence, maladministration and criminality scatter the communications fired off by the Appellant. These were linked with threats to instigate disciplinary action leading to suspension, dismissal and removal of pension entitlements against individual employees. The threatening effect of the communications was magnified as the letters were copied to others both within SBC and to external recipients such as the Mail on Sunday, BBC Three Counties Radio, a local MP and the Shadow Secretary of State for Communities and Local Government.

(4) The tone of the requests themselves, although sometimes couched in neutral language, could clearly be seen by recipients as threatening and harassing when set against other material they had received from him.

(5) Much of the documentation at issue had already been provided to him by SBC. As a result of these repeated requests for information related to material that had already been provided and serve no useful purpose. It was indicative of an obsessive and unreasonable attitude on the part of Mr Carpenter.

(6) Despite having made extremely serious allegations of illegality and even criminality against SBC and its officers, at no stage has Mr Carpenter actually bought any legal proceedings. The conduct of SBC had been referred by him to independent external bodies including the Audit Commission, the Solicitors Regular free Authority, the Standards Board for England and the Local Government Ombudsman. Those bodies found there was no case that warranted further investigation.

53. It should be clear from the findings set out above that the Tribunal considers that the public interest in protecting local authority staff from this kind of wholesale abuse -- in the circumstances of this particular case -- also outweighs the public interest in disclosure in a situation where the requests were manifestly unreasonable.

54. SBC had put Mr Carpenter on notice that it would be seeking its costs pursuant to rule 29 (1) (c) on the basis that his conduct had been vexatious, improper and

unreasonable and that in bringing the appeal he had continued his campaign against SBC.

55. The Tribunal asked SBC to quantify in broad terms how much it was seeking in costs. SBC responded that the global figure was in the region of £6,000. That issue was raised at the start of the Tribunal to give both Mr Carpenter and the Tribunal time to consider the application.

56. At the conclusion of the hearing the Tribunal announced that it was not going to award costs against the Appellant in that sum or any other. There would clearly be circumstances when such an award would be appropriate but this was not such a case. The Appellant was a litigant in person who held a strong belief in his course of conduct and had tested things to their limit. It did not follow, even in cases of vexatious or manifestly unreasonable requests, that the Requestor would be penalised for his or her persistence in a jurisdiction that related to information and the ability (or otherwise) to obtain it.

57. That said, the application itself by SBC was reasonable and appellants generally should reflect on the possibility that costs in quite significant sums could be awarded against them.

58. Our decision is unanimous.

Signed

Robin Callender Smith

Deputy Chairman

16 November 2008