



Neutral Citation Number: [2024] UKFTT 00292 (GRC)

Case Reference: EA/2022/0254

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard on the papers

**Heard on: 15 February 2024
Decision given on: 11 April 2024**

Before

TRIBUNAL JUDGE CARTER
TRIBUNAL MEMBER ANNE CHAFER
TRIBUNAL MEMBER PAUL TAYLOR

Between

MONKTON COMBE PARISH COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

And

PATRICK BUNTON

Second Respondent

-
DECISION

1. The appeal is dismissed.
2. The Appellant has 35 days in which to disclose the information sought or to respond on a basis that does not include reliance on regulation 12 (4)(b) of the Environmental Information Regulations 2004.

REASONS

3. This is appeal brought by Monkton Combe Parish Council (“the Appellant”) under section 57 of the Freedom of Information Act 2000 (“FOIA”), as modified by regulation 18 of the Environmental Information Regulations 2004 (“EIR”) against the Commissioner’s decision notice of 19 August 2022 Ref. IC-160435-H5M4 (“the DN”).

4. On 4 February 2022, the Second Respondent made the following request for information:
“I’m writing to you formally to request full disclosure under the Freedom of Information Act of any correspondence between the PC, or individual councillors (via official or personal routes) to anyone, PC internal, or any other party regarding Oldfield Old Boys RFC from 10 December 2021 until now

We are particularly concerned that there have been communications, including email between the PC/individual councillors and other 3rd parties, whether that be residents, PC councillors, or other parties.”

5. The background to this request was that on 17 January 2022 the Appellant held a Parish Council meeting. At some point in this meeting a discussion took place about a specific planning application – ‘21/05484/FUL - Clubhouse Oldfield Rugby Football Club, Shaft Road, Monkton Combe, Bath BA2 7HP Erection and siting of fibre exchange telecommunications infrastructure to provide a full fibre (gigabit) to the premises service’.

6. During the discussion of this planning application, the Second Respondent, who is the Chairman of Oldfield Old Boys RFC made representations on the financial benefits that Oldfield Old Boys RFC would get the development and asked the Appellant to support the planning application.

7. The Appellant subsequently objected to the planning application. The Second Respondent then went on to make the information request set out above on 4 February 2022. We note at this stage that, although the Appellant claims to have verbally addressed the Second Respondent's concerns at the Council meeting, this does not equate to providing recorded information in response to a request. The Appellant has stated in their notice of appeal that the planning application has since been withdrawn on 29 March 2022.

8. On 14 February 2022 the Appellant responded and refused to provide the requested information, relying on section 14 of the FOIA (vexatious requests) to do so.
9. The Second Respondent complained to the First Respondent.
10. The First Respondent considered the information requested to be environmental in nature under regulation 2 EIR and as such should have been considered under the EIR rather than the FOIA. The First Respondent therefore proceeded to investigate whether the request was manifestly unreasonable under regulation 12(4)(b) EIR, rather than section 14 FOIA, and whether the Appellant was correct to refuse to comply with the request on that basis.
11. On 19 August 2022 the First Respondent issued the Decision Notice. The First Respondent found that the Appellant was not entitled to rely on regulation 12(4)(b) EIR and required the Appellant to issue a fresh response to the request which does not rely on regulation 12(4)(b) EIR.

Relevant Law

12. The Tribunal accepted and adopted the First Respondent's explanation of the relevant law, per below:

“A public authority that holds environmental information is required to make it available on request (reg. 5(1) EIR). “Environmental Information” is defined in Reg 2(1) EIR as any information in written, visual, aural, 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 or likely to affect the elements of the environment referred to in (a); measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and*

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

- c) reports on the implementation of environmental legislation;*
- d) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- e) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);”*

However, a public authority may refuse to disclose information to the extent that “the request for information is manifestly unreasonable” (reg. 12(4)(b) EIR). Furthermore, even if the exception is found to apply a public authority can only refuse to disclose the requested environmental information if “in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information” (Regulation 12(1)(b) EIR).

*Whilst this appeal concerns whether the request was manifestly unreasonable under regulation 12(4) (b) EIR, in practice, there is no material difference between a request that is vexatious under section 14(1) FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. This proposition is supported by the decision of the Court of Appeal in *Craven v Information Commissioner & DECC* [2015] EWCA Civ 454 in which the Court found that: -*

“...the principal question is whether the tests under section 14 FOIA and regulation 12(4)(b) have the same meaning...I conclude that to all intents and purposes they do” [7] and that “...the UT was right to proceed on the basis that there was no distinction between the two tests in her case” [78].

*The law on vexatious requests was clarified by the Upper Tribunal (‘UT’) in *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC) (‘Dransfield’).*

The UT concluded that “vexatious” means more than simply irritating, annoying or disappointing. It signifies “a manifestly unjustified, inappropriate or improper use of FOIA” (para 43).

The UT further had regard to four core issues (1) the burden on the public authority; (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment of, or distress caused to, the public authority's staff [28]. The UT did, however, also caution that these considerations were not meant to be exhaustive, rather stressing the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious" [45].

The factors considered by the UT may be more or less relevant or important depending on the particular circumstances of the case.

The consideration therefore is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The Commissioner believes that such a consideration will mean weighing the purpose and value of the request and balancing this against the evidence about the impact on the authority.

The UT were further of the view that the context and history in which the request is made and a consideration of the wider circumstances surrounding the request will often be a major factor in determining whether the request is vexatious.

The UT decision in Dransfield was appealed to the Court of Appeal. The issue before the Court of Appeal in Dransfield v IC & Devon CC [2015] EWCA Civ 454 was the degree to which a prior course of conduct of the requestor could infect a request which in and of itself was inoffensive. Arden LJ clearly endorsed the approach of the UT that previous requests and past history of dealings could be taken into account [6].

In Dransfield v IC & Devon CC [2015] EWCA Civ 454 Arden LJ commented on the high bar that needs to be satisfied for a public authority classify a request as vexatious:

"...I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no 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. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in

order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. 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. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available.” [68] (emphasis added).”

Grounds of Appeal

13. The Appellant’s grounds of appeal can be summarised as:

- i) There was no contact from the First Respondent between the complaint being accepted and the Decision Notice being issued.
- ii) They had been correct to handle the request under section 14 of the FOIA and not Regulation 12(4)(b) EIR.
- iii) The request was indeed vexatious and in particular with regard to its intent.

Ground One

14. The Tribunal was of the view that this was not a valid ground of appeal as it relates to the conduct of the First Respondent’s investigation, oversight of which is not within the jurisdiction of the Tribunal. Under its powers under section 57 and 58 of FOIA, the Tribunal can only consider whether the decision and the steps the Appellant was ordered to take were or were not correct.

Ground Two

15. The Appellant considers that the request is not for environmental information and that it should be handled under section 14 FOIA. As set out above, there is no material difference between a request that is vexatious under section 14(1) FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR.

16. The correct regime is the EIR as the request stems from discussions of the planning application ‘*21/05484/FUL Clubhouse Oldfield Rugby Football Club, Shaft Road, Monkton Combe, Bath BA2 7HP Erection and siting of fibre exchange telecommunications infrastructure to provide a full fibre (gigabit) to the premises.*’
17. The planning application affects the state of elements of the environment (Regulation 2(1) (a) EIR), namely land at Oldfield Rugby Football Club.
18. An environmental factor that would be affected is noise (Regulation 2(1)(b) EIR). This is set out by the council in their objection to the planning application: “... *it is Inappropriate Development in this GreenBelt Location, and we consider there is a risk of an adverse impact on the Health and Well Being of local residents from pervasive Low Level Noise...*”.
19. Regulation 2(1)(c) states that ‘...*plans...likely to affect the elements and factors referred to in (a) and (b)...*’ fall within the scope of EIR.
20. Regulation 2(1) states environmental information is ‘...*any information...on...*’ the matters listed later in regulation 2(1).
21. The original discussion about the planning application at the meeting on 17 January 2022 is information that falls under EIR. Therefore, any information on the way the Appellant has discussed the planning application before making the decision to object to it, including internal correspondence and correspondence with any other party, is in the Tribunal’s view, environmental information within the scope of EIR.

Ground Three

22. The Tribunal, whilst considering the Appellants points made in its grounds of appeal looked more widely to the reasons given in its refusal letter and submissions made, and tested this against the threshold test for a request being “manifestly unreasonable” under the EIR.
23. It noted first the assertion from the Appellant was that the Second Respondent’s actions in requesting the information was “*primarily financial*” and that “*the request is entirely vexatious in its intent.*”

24. The Tribunal acknowledged that unlike most of the FOIA and EIR legislation, motive is a relevant factor when a public authority is determining whether an information request is vexatious. The fact that the Second Respondent had a financial motivation was not however in and of itself relevant to whether the request was vexatious. The Second Respondent was genuinely concerned as to the finances of the Rugby Club and that was a legitimate interest for him to have pursued through seeking the disclosure of the requested information.
25. The Tribunal accepted the First Respondent's analysis of the legislation that public authorities are not obliged to look at requests in isolation to determine whether they were vexatious but can consider the history of the matter and what lay behind the request. A request can appear, in isolation, to be entirely reasonable yet could assume the quality of being vexatious when it is construed in context. It is necessary to adopt a holistic and broad approach to the determination of whether a request is vexatious or not and, where there is a previous course of dealings, to look for a lack of proportionality that typically characterises vexatious requests: see *Dransfield*.
26. The Appellant states that the Second Respondent frequently corresponded on a matter that the Appellant considers to have been comprehensively addressed orally at the Parish Council meeting of 17 January 2022. The Tribunal noted however that the obligation under EIR is provide information in documentary form such that the earlier oral provision would not have sufficed.
27. The Appellant also states that "*A number of these e-mails could also be considered as vexatious, causing some measure of distress to the individuals to whom they are targeted.*" The Tribunal had sight of the chronology of correspondence and the communications themselves.
28. The Tribunal notes that the correspondence sent by the Second Respondent prior to receiving the Appellant's refusal letter were sent within a relatively short timeframe. All correspondence relates to the same issue. Its tone was throughout reasonably polite, albeit the Appellant was clearly exasperated at the adverse outcome he faced. The Tribunal considered that this is to be expected, provided responses remain within the reasonable bounds of polite discourse and even then public authorities should allow a margin of

tolerance towards disappointed individuals. None of the correspondence viewed by the Tribunal had wording in it that could be deemed vexatious in nature. Whilst there was in one email, the mention of going to law, but again this was to be expected in circumstances in which a public body has taken a decision contrary to the interests of an individual or organisation.

29. In *Dransfield* the Upper Tribunal considered how the burden of a request can be deemed vexatious, “...*the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor...*” (at 29) and “...*vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive...*” (at 39).
30. As noted above, Arden LJ stated that “*The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.*” and that “*Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one...*”
31. In the Tribunal’s view the Appellant has touched on some of the core issues set out in *Dransfield* when justifying its refusal notice dated 14 February 2022. However, it has not provided enough evidence to satisfy the high bar to show that the Request is disproportionate and therefore manifestly unreasonable under regulation 12(4)(b) EIR.
32. When looking at the burden of the Request on the Appellant, the First Respondent referred the Tribunal to *Cabinet Office v Information Commissioner and Ashton* [2018] UKUT 208 (AAC), emphasising the high burden required to justify the application of s.14 / regulation 12(4)(b).
33. In this regard, the Tribunal accepted the First Respondent’s submission that the requested information is likely to be easily obtainable, and would not apply a heavy burden on the Appellant. The wording of the request means the Appellant is only looking within an 8-week timeframe.

34. The Appellant states in its grounds of appeal that “*there is no Public Interest whatsoever in the requested information*”. The Tribunal took the view however that the planning permission would have had a monetary benefit for Oldfield Rugby Club; therefore, it is not just the Requestor, but those involved with the Club who would benefit from the transparency behind the decision of the Appellant objecting to the planning permission.
35. The Tribunal found that the First Respondent’s decision was correct and that the request is not manifestly unreasonable, and the Appellant is therefore not entitled to rely on regulation 12(4) (b) EIR to refuse to provide the requested information. The Appellant has 35 days in which to disclose the information sought or to respond on a basis that does not include reliance on regulation 12 (4)(b) of the Environmental Information Regulations 2004.

Signed Tribunal Judge Melanie Carter

Date: 10 April 2024