Neutral citation number: [2025] UKFTT 00083 (GRC)

Case Reference: FT/EA/2024/0263

First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Heard by Cloud Video Platform
Heard on: 6 January 2025
Decision given on: 3 February 2025

Before

TRIBUNAL JUDGE MORNINGTON
TRIBUNAL MEMBER DR GASSTON
TRIBUNAL MEMBER DR MANN

Between

KENNETH REAVELEY

Appellant

and

INFORMATION COMMISSIONER

Respondent

Representation:
For the Appellant: in person
For the Respondent: did not appear

Decision: The appeal is Dismissed.

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The Council is entitled to refuse to provide the information requested by the Appellant on 24 May 2022 on the basis that the request is manifestly unreasonable pursuant to Regulation 12(4)(b) of the Environmental Information Regulations.

REASONS

Context

1. The history of the relationship between the parties is important in this case in that it forms the backdrop of this appeal and adds context to the Tribunal's decision.

2. In December 2020, Kent County Council removed a tree from the verge at the front of the Appellant's property.

3. The removal of the tree formed part of a larger project to trim and remove other vegetation along the verge which was obstructing the sight line of the adjacent road.

4. Initially, the tree was not due to be removed, despite the Appellant requesting the Council to include the tree within the vegetation removal. However, despite the initial refusal at the request of the Appellant, the Council did decide to also remove the tree and works to do so took place on 20 December 2020.

5. Unfortunately, the removal of the tree caused damage to the Appellant's property by way of damaged roof tiles after the tree landed upon the Appellant's property.

6. The Appellant exhausted the complaints procedures with Kent County Council in relation to this damage and the matter was escalated to the Local Government Ombudsman ('LGO'). The LGO found that there were no grounds for further investigation and that the Appellant's complaint would not be investigated as it was unlikely the LGO could achieve anything for the Appellant by doing so. The LGO recommended that any claim for compensation be resolved via the civil courts.

7. The Appellant commenced legal proceedings against the Council and the matter was ultimately resolved by way of a monetary settlement paid by the Council.

Background to Appeal

8. This Appeal dated 8 July 2024 and made by Mr Kenneth Reaveley (the "Appellant") arises following a request for information (the "Request") made by the Appellant to Kent County Council ("the Council") on 6 September 2023 in the following terms:

   "I would like copies of all KCC Highways Internal & External emails, letters, Meetings & Telephone calls over Verge / Tree on Staplestreet Road fronting Lavender Cottage leading up to and covering the following dates:-

   13-07-2020, 23-09-2020, 01-10-2020, 17-11-2020, 27-11-2020, 30-11-2020, 02-12-2020, 03-12-2030, 08-12- 2020, 10- 12-2020 11-12-2020, 14-12-2020, 18-12-2020, 11-01-2021 & 18-01-2021."

9. The Council responded to the request on 4 October 2023 and refused to provide the requested information on the basis that the request was 'manifestly unreasonable pursuant to Regulation 12(4)(b) of the Environmental Information Regulations 2004. The council' response stated that:

   "Kent County Council (KCC/the Council) has determined that this request is fully exempt from disclosure. This is because we have determined that the Regulation 12(4)(b) exception applies. Please see Appendix below for further details of this exception. While KCC does hold information relevant to your request, we have determined that it is exempt from disclosure in full. This is because responding to your request would be manifestly unreasonable.

   In coming to this conclusion, the Council considered the history of interactions associated with this issue since July 2020, the burden associated with managing these communications, and the resolutions that have been affected to date.

   The Council recognises that the matter in question has already been fully and conclusively settled through both a referral to the Local Government Ombudsman and a claims process.

   The Regulation 12(4)(b) exception is subject to a Public Interest Test. The Council has weighed the above factors against the general presumption in favour of disclosure for environmental information. We have concluded that while you may have some significant private interest disclosure, there is relatively little wider public interest.

Due to this, we have concluded that the overall Public Interest favours withholding the data and have gone on to apply the exception to your case."

10. Dissatisfied with the response of the Council, the Appellant requested an internal review of the decision and submitted to the Council a 126-page document in support of his arguments as to why the Council should provide the requested information.

11. The Council responded to Appellant's request for an internal review of the decision on 28 February 2024. The Council apologised to the Appellant for the delay in his receiving the outcome of the internal review, which was the result of an administrative error within the Council.

12. The Council confirmed to the Appellant that the internal review had been undertaken, and that the Council was correct to refuse the request as it was manifestly unreasonable. The outcome response included the following:

"In this case the Council has taken account of the wider context associated with your
request in coming to the conclusion that it is manifestly unreasonable. This is because
January 2020.
The Council has already corresponded extensively with you regarding this matter since
This includes dozens of emails across multiple teams and officers, Freedom of Information / Environmental Information requests, a Stage 1 and 2 corporate complaint, a referral to the Local Government Ombudsman and legal proceedings which were settled out of court.

...

Continuing to engage with you on this issue would represent a disproportionate diversion of the Council's resources. There is no further reasonable resolution that can
be achieved by revisiting the issue, and no indication that responding to this request
would resolve the matter to your satisfaction. Conversely, it is likely to generate further correspondence and requests that would further compound the associated burden on resources.

The manner of extensive correspondence is further demonstrated by your internal review submission, which is 126 pages long. Reviewing this document has taken an

extensive amount of officer time, with very little of the submitted content appearing to
be directly materially relevant to the Environmental Information request the review relates to.

On this basis, the Council considers that the matter has been thoroughly and conclusively resolved. The information request appears to be an attempt to reopen a
closed matter and relitigate issues that have already been exhaustively explored over a
protracted period of time.

...

Continuing to engage with you on this issue would represent a disproportionate diversion of the Council's resources. There is no further reasonable resolution that can be achieved by revisiting the issue, and no indication that responding to this request would resolve the matter to your satisfaction. Conversely, it is likely to generate further correspondence and requests that would further compound the associated burden on resources.

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closed matter and relitigate issues that have already been exhaustively explored over a
protracted period of time."

Reasons for Commissioner's Decision

13. The matter was referred to the Information Commissioner's Office by the Appellant on 25 January 2024 and following some further information, in a decision notice (the "Decision Notice") dated 13 June 2024, the Information Commissioner ("IC") held that:

"The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) to refuse to comply with the request.

However, he also finds that the Council breached regulation 11 (reconsideration) of the EIR by failing to provide the complainant with the outcome of its internal review within 40 working days"

14. In summary, The Commissioner's reasons for the Decision were that there had been a large volume of correspondence sent to the Council by the Appellant which has taken the Council several hundred hours to respond to and accordingly has placed a significant burden on the Council limiting its time spent on performing other duties. The Commissioner noted that the vast majority of the content of the correspondence sent to the Council concerned the damage to the Appellant's property and not the request for information, and the Commissioner accepted that the Appellant was using the request for information as a way to reopen the complaint. The Commissioner considered that the request lacked serious purpose and value and that compliance with the request would not resolve the Appellant's concerns and would result in further correspondence being sent to the council and thus increasing the burden.

15. The Commissioner recognised that the requested information is of interest to the Appellant, however, he did not consider that there was any interest to the wider public and in any event, it is not in the public interest for the Council to divert further resources in dealing with the Appellant's request.

16. Whilst the IC Decision acknowledges that the Council were in breach of regulation 11 (reconsideration) of the EIR by failing to provide the complainant with the outcome of its internal review within 40 working days, the Commissioner did not require any further steps to be taken by the Council.

Appeal and Responses

17. This appeal relates to the application of the Environmental Information Regulations 2004.

18. The Appellant appealed the Decision Notice on the following grounds:

    a. The Council is burying information surrounding the incident as the incident was engineered to look like an accident;

b. It is not the Appellant who is manifestly unreasonable, but the Council and IC are manifestly unreasonable in their dealings with the Appellant;
c. The Appellant has a right to know whether the tree being dropped on his house was a genuine accident or a deliberate act engineered to look like an accident;

19. The Commissioner's response to the appeal maintains that the Decision Notices are correct and that in all the circumstances, the request was manifestly unreasonable further to the case law set out by the Court of Appeal in ***Dransfield v Information Commissioner & Devon County Council [2015] EWCA Civ 454*** (which did not depart from the UT findings in ***Information Commissioner v Dransfield [2012] UKUT 440 (AAC)) and Craven v Information Commissioner and DECC [2015] EWCA Civ 454***. It is the Commissioner's view that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced and that the exception provided by regulation 12(4)(b) was applied correctly. Therefore, the Council is not required to disclose the requested information.

Documents

20. The Tribunal was provided with and took account of a 438-page bundle.

Applicable Law

21. Regulation 2(1) of the Environmental Information Regulations ("EIR") defines "**environmental information**" 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... and interaction among these elements;

....

(c) 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;

...

(f) 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);

22. It was not disputed by the parties that the **information** requested in the Request was "**environmental information**" as defined in Regulation 2(1) and that the Request is therefore subject to the EIR and not the **Freedom of Information** Act 2000 (although the Appellant often referred to "FOIA" his submissions).

23. Regulation 5 EIR provides:

(1)
Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these **Regulations**, a public authority that holds **environmental information** shall make it available on request."

24. Regulation 12(1) EIR provides:

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**."

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

26. 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;"

27. 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" under FOIA" [paragraph 30]

28. The relevant provisions of FOIA are as follows:

14 Vexatious or repeated requests.

(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 a 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 has elapsed between compliance with the previous request and the making of the current request.

58 Determination of appeals.

(1) 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.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based

29. There is no further guidance on the meaning of “vexatious” in the legislation. The leading guidance is contained in the Upper Tribunal (“UT”) decision in ***Information Commissioner v Dransfield [2012] UKUT 440 (AAC)***, as upheld and clarified in the Court of Appeal ***(“CA”) in Dransfield v Information Commissioner and another & Craven v Information Commissioner and another [2015] EWCA Civ 454 (CA)***.

30. As noted by Arden LJ in her judgment in the CA in Dransfield, the hurdle of showing a request is vexatious is a high one: *“...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.” (para 68).*

31. Judge Wikeley’s decision in the UT Dransfield sets out more detailed guidance that was not challenged in the Court of Appeal. The ultimate question is, “is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?” (para 43). It is important to adopt a “holistic and broad” approach, emphasising “manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.” (para 45). Arden LJ in the CA also emphasised that a “rounded approach” is required (para 69), and all evidence which may shed light on whether a request is vexatious should be considered.

32. The UT set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious:

    a. **The burden imposed on the public authority by the request.** This may be inextricably linked with the previous course of dealings between the parties. “...the context and history of the previous 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." (para 29).

b. **The motive of the requester.** Although FOIA is motive-blind, "what may seem like an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority." (para 34).

c. **The value or serious purpose**. Lack of objective value cannot provide a basis for refusal on its own, but is part of the balancing exercise – "does the request have a value or serious purpose in terms of the objective public interest in the information sought?" (para 38).

d. **Any harassment of, or distress caused to, the public authority's staff**. This is not necessary in order for a request to be vexatious, but "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." (para 39). 23. Overall, the purpose of section 14 is to "protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA" (UT para 10), subject always to the high standard of vexatiousness being met.

Discussion and Conclusions

33. In accordance with section 58 FOIA, the issue for the Tribunal to decide upon is whether the IC's Decision Notice was in accordance with the law and whether the IC was correct in finding that the Council was entitled to rely on Regulation 12(4)(b) of the EIR in refusing to provide the requested information.

34. Under section 58(2) FOIA, the Tribunal can review any finding of fact upon which the Decision Notice was based, consider all of the evidence before it and reach its own decision.

35. The Tribunal has considered the suggested list of factors set out in the ***Dransfield*** case and the overall circumstances of the case, including the history of the relationship between the parties.

36. **The burden imposed on the public authority by the request.** This is a key factor relied upon by the Council. Whilst the Tribunal accepts that just because a request is burdensome, this does not absolve the Council from their legal obligations under the EIR, there has been an extremely large volume of documentation sent by the Appellant to the Council, emails, letters of complaint and a large number of responses from the Council to the Appellant already made.

37. The Council says that to deal with the request would take more than 18 hours but that the Council has already spent several hundred hours in dealing with the Appellant's previous correspondences. The Tribunal has considered the aggregated burden of dealing with the volume of the correspondences accepts that this would have placed a significant burden upon the Council and detracted from the available time to be spent on other matters. The Tribunal considered that responding to the request would likely be a gateway to further requests from the Appellant in future which would only add to the burden placed upon the Council.

38. **The motive of the requestor.** It is generally the case that the application of the EIR or FOIA and any request made under them is not dependent on the motive behind the request. However, Regulation 12 (and section 14) is an exception to this principle. The motive of the requestor can be an important factor as to whether a request is manifestly unreasonable/vexatious in the wider context of the dealings between an individual and a public authority. In this case, the Appellant says that his motive for making the request is to 'get to the truth' and uncover the information behind, what he says, is a deliberate act by the Council of having a tree land upon his property. However, the history of the dispute between the Appellant and the Council suggests that the request for information and the motivation for making the request are being used as part of a campaign to question and undermine the Council. The Appellant has received large amounts of information surrounding the incident involving the tree removal and indeed has exhausted the Council's complaints process, the complaints process with the Local Government Ombudsman and has received compensatory damages in relation to the dispute following action taken in the civil courts. The Tribunal finds that the motive of the Appellant in making the request for information and the subsequent complaint to the IC and this appeal is to revisit a complaint which has already been more than adequately dealt with and to undermine the Council and public bodies generally by

attempting to expose perceived wrongdoing, of which there is no evidence in this case.

39. It is noted by the Tribunal that the Appellant has compared the current request for information and the surrounding issues to the tragic events which took place at Hillsborough in 1989 and Aberfan in 1996 and the recent scandal involving the Post Office and the Horizon IT system. It is the Tribunal's view that the subject of this appeal and the disasters and scandals referenced by the Appellant are simply not comparable. The injustices suffered by the Appellant and those affected by Hillsborough, Aberfan and the Horizon IT scandal are significantly incomparable. It is fair to characterise the request and related correspondence as both obsessive and disproportionate.

40. **Value or serious purpose.** The Tribunal considers that the information is trivial, in that the requested information holds no practical value given that the Appellant has already received a satisfactory outcome by way of compensatory damages. He has lodged his complaint with the Council and the complaint has been investigated and adequately dealt with. The Appellant will gain no further benefit by obtaining the requested information. Indeed, it should be noted that it was the Appellant's wish that the tree be removed from the vegetative area at the front of his property as part of the planned removal of other vegetation by the Council. Whilst the Council initially refused this request, ultimately, the Appellant achieved his desired outcome in having the tree removed. The Appellant now takes issue with this decision to remove the tree. Accordingly, the Tribunal considers that the Appellant's request of 6 September 2023 is a positional ploy to build upon the acrimonious exchanges which have already taken place between the Appellant and the Council, which is at odds with the underlying principles of the legislation. The information requested holds no practical value.

41. **Any harassment of, or distressed caused to, the public authority's staff.** The Tribunal does not find that the Appellant has harassed any particular individual working in the Council, nor has he used the extreme types of language and behaviour referred to in the ***Dransfield*** test. However, the Tribunal does accept that the volume of correspondences, complaints and requests for information would have caused some distress to those dealing with them.

42. **The overall circumstances of the case.** As set out in the ***Dransfield*** test, the Tribunal is to take a rounded and holistic approach when considering whether

the IC was correct in finding that the Council was entitled to rely on Regulation 12(4)(b) of the EIR.

43. Having considered all of the circumstances, the Tribunal finds the Appellant's request of 6 September 2023 is manifestly unreasonable. The Appellant had already received a satisfactory outcome to his complaint and received large volumes of information surrounding the same. Whilst the Appellant believes his requests are in the public interest and the Tribunal accepts that the Appellant has a strong private interest in the information, this request appears to form part of a wider campaign to undermine the Council and cause a significant diversion from its main work. The Tribunal finds that this is not in the public interest and the interest in maintaining the exception is not outweighed by the public interest in the release of the information.

44. Reg 12(2) EIR provides that a presumption in favour of disclosure is applied when considering whether any exceptions apply. In ***Vesco v Information Commissioner and the Government Legal Department ([2019] UKUT 247 (AAC) 1 August 2019)*** the Upper Tribunal took the approach that the presumption in favour of disclosure is to be considered as part of the process of engaging an exception and considering the public interest test. In this case, it is the Tribunal's view that the balance weighs authoritatively in favour of non-disclosure, and for that reason the presumption in favour of disclosure does not make any substantial difference.

45. The Tribunal has taken into account the underlying purpose of Regulation 12(4)(b) of the EIR and section 14 FOIA in this case, to protect the limited resources of the Council and accordingly finds that the Council was entitled to rely on Regulation 12(4)(b) of the EIR to refuse to reply to the request of 6 September 2023.

46. The Tribunal dismisses the appeal for the reasons given above.

Signed Judge Peri Mornington Date: 23 January 2025