



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2009/0043
Information Commissioner's Ref: FS50222404

Decided on the papers on 2 December 2009

Decision Promulgated
14 January 2010

BEFORE

CHAIRMAN

ROBIN CALLENDER SMITH

and

LAY MEMBERS

JACQUELINE BLAKE

ANNE CHAFER

Between

ALAN ADAIR

Appellant

and

INFORMATION COMMISSIONER

Respondent

Subject matter:

FOIA

Vexatious or repeated requests s.14

Cases:

Ahilathirunayagam v Information Commissioner and London Metropolitan University (EA/2007/24); Gowers v Information Commissioner and London Borough of Camden (EA/2007/0114); Coggins v Information Commissioner and Norfolk County Council (EA/2007/0130); Welsh v Information Commissioner (EA/2007/0088); Betts v Information Commissioner (EA/2007/0109) and Hossak v Information Commissioner (EA/2007/0024).

Representation:

For the Appellant: Alan Adair represented himself

For the Respondent: Adam Sowerbutts (Solicitor for the Information Commissioner)

Decision

The Tribunal upholds the decision notice dated 6 May 2009 and dismisses the appeal.

Reasons for Decision

Introduction

1. The Appellant in this matter is Mr Alan Adair (the "Appellant") and the appeal itself arises out of an information request he made under section 1 of the Freedom of Information Act ("FOIA") to the Board of Governors of the Foyle and Londonderry College ("the College") on 19 October 2008.
2. The background issues in respect of this request, however, go back to 2003.
3. The College has associated with it a fencing club. The fencing club was closely linked to the College until 2003 when it became a separate legal entity. The College was a public authority for the purposes of FOIA but the fencing club was not.
4. In 2003 the College did not award the Appellant's son his College Fencing Colours. This was despite the fact that, during that year, the Appellant's son was part of a team of three pupils who had successfully represented both the fencing club and Northern Ireland in the Junior British Home International Championships.
5. The College did award fencing Colours to other pupils in the same year group. The College's failure to award Fencing Colours to his son prompted the Appellant to question the College's criteria for the award of fencing colours and there was a lengthy correspondence between the Appellant and various other parties including the College.
6. The tone of that correspondence became acrimonious and in November 2003 the Fencing Club Coach instructed solicitors who wrote to the Appellant threatening legal action if the Appellant did not immediately stop making allegations and accusations which were said to be defamatory and damaging to the Fencing Coach's personal and professional standing.

History

7. It is necessary to set out previous complaints by the Appellant to the Information Commissioner in order to appreciate the context of this appeal, particularly in any

case where decisions have been under the provisions of section 14 FOIA and the issues surrounding vexatious or repeated requests.

8. Section 14 states:

(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.

9. Following FOIA coming into force in 2005, the Appellant continued the correspondence with the College begun in 2003 and made requests which the Information Commissioner believed could be interpreted as FOIA requests. On 7 September 2006 the Appellant made what he stated was a formal FOIA request to the College under the terms of FOIA. Its contents were set out by the Appellant in his correspondence to the Commissioner on 20 February 2007.

10. That request was for the criteria used by the College for the awarding of fencing Colours. The request was ultimately refused by the College on the grounds that it did not hold the information requested. On 9 October 2006 the Appellant complained to the Commissioner and that complaint was dealt with under Commissioner's reference FS50137107.

11. The Appellant subsequently demonstrated that, in fact, some criteria concerning the award of fencing colours were held by the fencing club (but not necessarily by the College) because the criteria were put verbally to the fencing club committee by the fencing club coach and discussed at a club committee meeting on 11 June 2003.

12. The Appellant's wife was a member of the College staff at the time and was also a member of the fencing club committee (acting as Year 10/11 representative) and "school link" with the College itself. She appears to have been present at the fencing club committee meeting on 11 June 2003.

13. After investigating the matter the Information Commissioner dismissed the Appellants two complaints (FS50137107 and FS50151144) finding that the College held no further information in respect of the fencing colours over and above that already known to the Appellant.
14. The Appellant lodged a complaint with the Information Commissioner about the handling of his complaint dealt with under reference FS50151144.
15. That complaint was referred first to the Assistant Information Commissioner for Northern Ireland and then to the Deputy Information Commissioner for Freedom of Information at the Information Commissioner's head office in Wilmslow.
16. Both individuals reviewed the matters and both concluded that, on the evidence, the College did not hold any further fencing colours criteria.
17. Two further related complaints raised by the Appellant were also dealt with by the Information Commissioner. The first concerned the letter regarding fencing colours which had been written by the Appellant a year earlier and the second concerned a request about why the College did not hold any information concerning fencing colours criteria. Both of these complaints were deemed to be outside the scope of FOIA.
18. It is necessary to set out the matters in this detail because, in his pleadings, the Appellant refers to only two information requests. He characterises these as the "2003 request" and the "2008 request".
19. The Decision Notice which is the subject of this appeal however was issued in response to the Appellant's *fifth* complaint to the Information Commissioner between October 2006 and November 2008. The Appellant's first formally stated request to the College under FOIA was dated 7 September 2006.
20. The Decision Notice which is the subject of this appeal considers a repeated request for the criteria used by the College in the awarding of fencing Colours. This was made in the context of a request for information asking for **all** documents relating to fencing at the college, from its inception to the date of the request, and for **all** e-mails and notes from meetings where fencing was discussed, together with

documentary evidence showing how subscriptions invested by fencing parents had been maximised by the College. [The emphasis is the Appellant's].

21. The Appellant's information request asked for disclosure of:

"**all** documents relating to fencing at the college today. These should include the relevant minutes of the Board of Governors meetings and copies of all e-mails and notes from meetings where fencing was discussed. *I am particularly interested in meetings at which fencing colours criteria were outlined and documented....*

".... I am also particularly interested in documented evidence that;

- Public monies received by the school and invested by the school along with the substantial private subscriptions invested by fencing parents has been maximised.
- The adoption of best practice principles recommended by Sports Northern Ireland has been instilled into Foyle and Londonderry College's policies and procedures and that there are clear published criteria set out for fencing colours." [The emphasis in italics is the Information Commissioners; or all other emphasis, in bold or underlined, is the Appellant's.]

22. This request was a wider request than the one the Appellant made on 7 September 2006 because he asked for "all documents" and "all e-mails and notes" related to fencing at the college. Twice it specified fencing colours criteria as being of "particular interest" to the Appellant.

23. On 29 October 2008 the College refused this request on the grounds that it was vexatious.

The complaint to the Information Commissioner

24. On 10 November 2008 the Appellant complained to the Information Commissioner.

25. The Information Commissioner concluded that the Appellant's request of 19 October 2008 -- his fifth request -- could fairly be characterised as obsessive and that no repetition of the facts established in the course of the Information Commissioner's previous investigations would satisfy the Appellant.

The appeal to the Tribunal

26. The Appellant's undated 7-page appeal was received by the Information Tribunal on 29 May 2009.
27. In it he asserts that the Information Commissioner had decided that his requests for information made on two occasions (the 2003 request and the 2008 request) in relation to information held by the College were identical and that the latter request was vexatious and simply opening up old issues which he refused to drop.
28. He states that the 2003 request was addressed to the Headmaster of the College in relation to the details of why members of the British Home International Champions team were not awarded school colours.
29. According to the Appellant, as a result of the request, an MP expressed concern about how taxpayers' money was being spent by fencing administrators including the Headmaster of the College and contacted the Sports Council of Northern Ireland who subsequently gave documented directions to the Headmaster on the best practice and procedures for administrative and financial matters in relation to fencing at the College.
30. The Appellant states that the 2008 request was in relation to how these best practices and procedures were being implemented. The request was neither intended to be identical or vexatious but in fact was a request in relation to the transparency and accountability of the College who -- as a public authority -- received substantial funding as a British Fencing Centre of Excellence from the Sports Council of Northern Ireland to develop and nurture young athletes. He concluded that the 2003 British Champions had been "snubbed" by the College's failure to award school colours despite the winning of international caps for the country.
31. He submitted that the Information Commissioner erred in deciding that the requests were similar and that his claim was vexatious. Each request was made for different information and there was a period of five years between requests and the Information Commissioner was not motive blind when making his decision. In addition the Information Commissioner relied on statements "from one or two

individuals" and had not consulted with the Board of Governors or made sufficient investigations into documentation held by the College.

32. It was because of the amount of public funding received from the Sports Council of Northern Ireland -- linked to the Department of Education's Strategy for Sport -- that the Appellant believed there was a clear public interest in relation to disclosure of all the documentation relating to the criteria for sports awards at the school. "To simply say 'colours criteria are not documented therefore cannot be disclosed' beggars belief and was untrue and continues to be untrue."

33. The Appellant concluded that the College had consistently refused to fulfil its legal obligation as a public authority in releasing any of the documented information which was a genuine interest to the taxpaying public. The College had "obstructed, prevaricated, being disingenuous, and at best been economic or with the truth." It had treated him with "hauteur and contempt" and had ridiculed him and attacked his character in personal correspondence and in correspondence sent to public representatives.

34. He complains that a more balanced decision by the Information Commissioner would have been in the form of a full investigation of the facts and recognition of the practices employed by the College against a parent whose only aim was to seek fair treatment for pupils.

The questions for the Tribunal

35. The Tribunal considered the history and nature of these requests and determined the issue of vexatiousness in relation to s.14 FOIA and read all the supporting documentation with the appeal.

36. The burden of proof in respect of this appeal is on the Appellant and the standard of proof required for the appeal to succeed is on the balance of probabilities.

37. That means in practical terms that the Appellant needs to convince the Tribunal that it is more likely than not that the decision made by the College (and upheld by the Information Commissioner) was wrong in relation to vexatiousness.

Legal submissions and analysis

38. The Information Commissioner considered that the Information Tribunal's decision in *Ahilathirunayagam v Information Commissioner and London Metropolitan University (EA/2007/24)* was relevant. The Information Tribunal had held that where a request appeared to be "intended simply to reopen issues which had been disputed several times before" it could rightly be judged as vexatious.
39. In this appeal the Information Commissioner took the view that the Appellant's repeated emphasis on previously addressed matters, specifically the issue of fencing colours, displayed a continued pattern of requests which -- when viewed in context -- was simply an attempt to reopen issues previously dealt with and was clear evidence of the request being vexatious in nature.
40. In the cases of *Gowers v Information Commissioner and London Borough of Camden (EA/2007/0114)* and *Coggins v Information Commissioner and Norfolk County Council (EA/2007/0130)* the Information Tribunal had ruled that, although the operation of FOIA is generally motive and applicant blind an appropriate consideration of the context and history of a request is necessary when considering if a request is vexatious.
41. In *Gowers* the Information Tribunal stated that "*the effect of a request may be determined as much, or indeed more, by that context as the request itself*" and in *Coggins* the Information Tribunal held that when considering whether a request was vexatious it was
- ".... bound to look to both the history of the matter and what lies behind the particular request. This is in marked contrast to other types of FOIA appeals where the Tribunal is said to be strictly applicant and motive blind. By necessity however, in order to determine such an appeal, the Tribunal needed to consider the facts leading up to the section 14 decision, the nature of the exchanges with the Appellant and his motives in pursuing the matter."*
42. The Appellant, for reasons already set out above at paragraphs 27 to 34, disagreed with this approach and maintained that the latest request was of a completely different nature to the earlier requests.

Conclusion and remedy

43. In this appeal the Information Commissioner decided that the request was the latest request in a lengthy course of correspondence all of which was substantially similar and which related predominantly to the criteria for awarding fencing colours.

44. The specific request, although framed in broader terms than a request simply for colours criteria, was very closely linked to the Appellant's previous requests and contained two separate references to the issue of fencing colours being of "particular interest". In those terms it was an information request which had been addressed previously by both the College and the Information Commissioner.

45. Looking at the decision notice itself -- and in particular Paragraph 67 -- the Information Commissioner set out his general approach in relation to what constituted vexatiousness in relation to s.14 FOIA. The key indicators listed there are in the form of a series of five questions:

- Could the request fairly be seen as obsessive?
- Is the request harassing the authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction
- Is the request designed to cause disruption or annoyance?
- Does the request lack any serious purpose or value?

46. In relation to whether the request can fairly be seen as obsessive the Information Commissioner concluded that, because it was a "continuation of a pattern of requests" it was obsessive.

47. On this point the Tribunal agrees. The Appellant had been informed that the public authority did not have a copy of a policy that gave the criteria for awarding fencing colours. There were no minutes in possession of the public authority which discussed such a policy and no documented evidence of fencing criteria. Given that that is the reality, the Tribunal concludes that the Appellant's insistence on returning

to the issue of fencing colours does in fact demonstrate obsessive behaviour which moves his requests from the reasonable to the vexatious.

48. The Tribunal agrees that the continued pattern of requesting is also likely to cause disruption and annoyance because -- in essence -- it is always linked back to the issue of fencing colours.

49. In terms of the issue of requests lacking any serious purpose or value the Tribunal notes that, if the Appellant had managed to distance himself from the whole issue of fencing colours and had concentrated only on whether the public authority had adopted the best practice principles recommended by Sports Northern Ireland, it would have been much more difficult to characterise his behaviour as vexatious.

50. The Tribunal -- on this point -- felt the Information Commissioner's decision came close to the border line but, with the past history in terms of requests by the Appellant, was sustainable. The Tribunal was satisfied that the Appellant had not established that -- on the balance of probabilities -- the decision was incorrect.

51. The Tribunal agrees that the requests were not harassing the public authority or causing distress to the staff on the basis that the request was the fifth in three years and because each request had been politely written. The tone and the frequency of the requests could not be characterised either as harassing or causing distress.

52. The Tribunal agrees that complying with the request would not impose a significant burden because in fact the time involved in complying with the request would not be excessive.

53. For all these reasons the Tribunal is not satisfied that the Appellant has discharged the burden of proof on him in this appeal and upholds the decision of the Information Commissioner.

54. The appeal is dismissed.

55. There is no order as to costs.

56. Our decision is unanimous.

Robin Callender Smith

Deputy Chairman

16 December 2009