



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2012/0062

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50411386
Dated: 23 February 2012**

Appellant: MR IAN PRINGLE

First Respondent: INFORMATION COMMISSIONER

Second Respondent: BURY COUNCIL

Heard at: Manchester HMCT Centre

Date of hearing: 23 August 2012

Date of decision: 17 September 2012

Before

ROBIN CALLENDER SMITH
Judge

and

RICHARD ENDERBY
PAUL TAYLOR
Tribunal Members

Attendances:

For the Appellant: Mr Ian Pringle in person
For the Respondent: submissions on paper
For the Additional Party: submissions on paper

FOIA

Vexatious or repeated requests s.14

Cases

Coggins v IC (EA/2007/0130); *Jbol Ltd v IC & Medicines and Healthcare Products* (EA/2011/0238); *Duke v IC & University of Salford* (EA/2011/0060) and *Houlding v IC & Durham Constabulary* (EA/2011/0080).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 23 February 2012.

SUBSTITUTED DECISION NOTICE

Dated 17 September 2012

Public authority Bury Council

Address of Public authority Town Hall
Knowsley Street
Bury
BL9 0SW

Name of Complainant Mr Ian Pringle

The Substituted Decision

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 23 February 2012.

Action Required The requested information should be supplied to the Appellant, subject to any relevant statutory exemptions, within 31 days of notice of this substituted Decision Notice.

Robin Callender Smith

Judge

17 September 2012

REASONS FOR DECISION

Background

1. The Appellant belongs to a group called "Save Our Suite". This group is concerned with the future of the Longfield Suite in Prestwich. The Longfield Suite is described in the Appellant's witness statement dated 23 August 2012 as:

...the last grand statement by the then Prestwich Borough Council to provide a civic centre for the town. The Longfield Suite houses three War Memorials from the former Prestwich Town Hall and a separate dedicated Memorial Hall all of which are Registered War Memorials...

...a venue to promote the health and well-being of the local community and for dancing... the floor in the main hall is considered to be one of the finest in the North West.

2. On 11 April 2011 he made an 11-part information request to Bury Metropolitan Borough Council as follows:
 1. A full copy of the existing, 12 month old Longfield Suite Business Plan & Marketing Strategy.
 2. 2010 – 2011 Audit of accounts for the Longfield Suite including a full set of receipts for all bookings at the venue.
 3. The objectives, strategies, targets and performance measures included in the existing Business Plan. The Suite's role in improving the health and well-being of Bury residents in line with the national and local agenda on increasing physical activity, and how this contributes directly to achieving Team Bury's corporate ambitions.
 4. The strategies adopted/implemented to address any areas of unsatisfactory performance against the existing Business Plan.
 5. The project team's terms of reference, showing key milestones such as deliverables, deadlines and dates for reporting progress and the proposed 12-month review by Bury MBC's management board.
 6. An organisational chart showing which posts are responsible for implementing the existing Business Plan, including those based at the Suite and elsewhere in EDS.

7. The Suite's previous business plan(s).
 8. Progress (if any) against the action plan proposed in the 'Best Value Review of Civic Halls (Bury Venues) Service October 2007'.
 9. A breakdown of where the Suite is regularly available but not being used (any time reserved for room preparation, catering and clearing up should be reflected in this).
 10. An overview of which types of events offered at the Suite yield the most and least profit for Bury MBC after all relevant costs have been covered.
 11. A breakdown of the Suite's users by category (for example, how many/what kinds of people are using the Suite and for what purposes; how many residents or visitors; also which sections of the local community are under-represented among users).
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3. On 13 May 2011 the Council refused that information request and relied on s.14 Freedom of Information Act 2000 (FOIA) on the basis that it was a vexatious request.
 4. It stated that there had been numerous dealings with the "Save Our Suite" campaign and that the request had been considered to be one which imposed a significant burden in terms of expense and distraction, that was designed to cause disruption and annoyance lacked any serious purpose or value.
 5. The Appellant sought an internal review. On 27 October 2011 the Council confirmed its previous reliance on s.14 FOIA.
 6. On 26 June 2011 the Appellant complained under s.50 to the Information Commissioner and the Council responded to requests asked by him – in respect of the complaint – on 7 November 2011.
 7. In the Decision Notice dated 23 February 2012 the following findings were made:

- (1) That the Appellant's dealings with the Council ought to be considered alongside those of the Save our Suite campaign as a whole;
- (2) Moderate weight should be given to the Council's argument about the burden and distraction of staff; some weight should be given to its argument in relation to the historic financial burden, and a small amount of weight in relation to anticipated future burden;
- (3) Some weight should be given to the Council's argument that the request is excessive or manifestly unreasonable;
- (4) No weight should be given to the Council's argument that the request would have the effect of harassing the public authority or its staff;
- (5) Some weight should be given to the Council's argument that part 2 of the request was designed to cause disruption and annoyance;
- (6) The purpose pursued by the Save our Suite campaign group was not sufficiently serious to outweigh the other factors identified;
- (7) Accordingly, the cumulative effect of the factors identified is that the Council correctly refused the Appellants request as vexatious.

8. The Appellant appealed against that Decision Notice.

9. Both Respondents, in their responses, observe that the grounds of appeal lack clarity or precision.

10. Bury Council, in its response, relies on the fact that a public authority, in assessing whether or not a decision is vexatious, can take into account all the facts – including any previous history of contact between it and the Appellant – in arriving at its conclusion. It states that it is clear that the Appellant is part of a group which has persistently requested information by using a number of avenues over a sustained period.

11. In particular (at Paragraph 18 of its Response) it states:

Members of the organisation identifying themselves under the banner of “The Save Our Suite Campaign Group” have repeatedly made requests for the business plans relating to the Longfield Suite. These are set out below for ease of reference:

- May 2010 – J Grosskopf a member of the group submitted an FOI request for the “business plans and assumptions”;
- July 2010 – Alf Wentworth in a letter to the Chief Executive asks “When can we expect to see any evidence of a new business plan?”;
- November 2010 – Alf Wentworth emailed the counsellor in the following terms “The Longfield Suite SOS group, of which I am a member, have tried since March to have sight of the Longfield Suite’s business plan....”;
- At a council meeting in December 2010 Christine Hodges a member of the same group submitted a public question: “.... Can we at the Save Our Suite Group receive a copy of the Longfield Suite’s Business Plan?”;
- May 2011 – Alf Wentworth & Kevin Hodges wrote to the Council’s chief executive raising a variety of issues including the business plan.

12. Bury Council present that as a “snapshot” of the repeated and excessive requests from SOS to the authority over a period from 2009 – 2011. Those requests had caused disruption of, and duplication to the Council’s finite resources. In Bury Council’s view the requests could be seen as excessive and they had and continued to harass the authority and cause distress to the staff, as the group “calls into question not only the competency of the staff but their experience and qualifications”.

13. The Appellant, in his response, maintains that his identity has been “retrospectively conflated” so that he is associated with a series of lawful activities carried out by other individuals and campaign groups not connected with him.

14. He states that his initial and only FOIA request of 11 April 2011 was written in a standard letter using his private address and details. There was no reference to the Save Our Suite Group. The electronic method of delivery should not be used as an argument to deny his basic human rights as an individual to request information. Rhetorically he posed the question about whether he should be discriminated against for being a member of the group.

15. He maintains that the issues in the appeal are between him and the Council and not the SOS Group and the Council. He also claims – specifically – that the Council has made factual errors in associating other named individuals with the SOS Group.

Evidence

16. At the oral hearing of this appeal in Manchester on 23 August 2012 Mr Pringle adopted his written witness statement, signed at court, and additional evidence was similarly offered by Mr Alf Wentworth. There was a written character reference in respect of Mr Ian Pringle submitted in person by Ms Dorothy Fletcher JP BA and a summary of the points the Appellant wished to make prepared by his McKenzie Friend for the purposes of this appeal, Mr Kevin Hodges. The relevant factual and evidential points arising out of this material are covered below in the Tribunal's decision.

Conclusion and remedy

17. All the parties will be aware that this matter was considered for striking out and allowed to proceed to a full appeal hearing by the Tribunal Judge in a ruling dated 11 July 2012.

18. The Tribunal could see that, in the chronology of this matter, there had been an attempt by Bury Council to seek "critical friends" – following a press statement on 4 March 2010 - within the local community as it embarked on consideration of plans relating to the Longfield Suite.

19. This open approach appears to have narrowed rather rapidly when individuals, and groups like Save Our Suite, took the Council at its word and sought to provide inputs that were sometimes critical and potentially time-consuming in terms of requiring reasoned responses.

20. Bury Council's position is that Mr Pringle was not just making an individual information request but was also representative of a volume of information requests, mainly generated by the Save Our Suite campaign, that it was having to deal with.

21. What the Council does not seem to have done is to consider inviting Mr Pringle to narrow and focus his request (the subject of this appeal) so that it might consider dealing with it in a more effective way and one that would be less onerous in terms of staff time and resources.

22. On the specific facts of this case while the request in question is a lengthy series of questions – which we consider could have been narrowed without losing their purpose – we have to bear in mind that it is the one and only one generated by the Appellant. He makes this request as an individual but does not disguise the fact that he is a member and supporter of the Save Our Suite campaign.
23. Appeals such as this involve, of necessity, the exercise of judgement in terms of practicality and proportionality. We find that Bury Council, and the Commissioner, were too keen to aggregate this request by an individual into parallel activity by the campaign group of which he was a part without considering whether there were elements – if the request itself was reduced in scope – that could rightly and properly be dealt with or (on the other hand) resisted by way of any other relevant exemptions that might be appropriate.
24. This was his first and only request. It was sent in a standard letter from his personal email address. In the scale of things this did not amount to the kind of email bombardment of a public authority seen, for example, in *Duke v IC & University of Salford* (EA/2011/0060).
25. We note that Bury Council, as part of its claim of vexatiousness, included the impact of questions submitted at public council meetings, to the Audit Commission and to a local Member of Parliament. It seems to us that whilst such enquiries may indeed result in a draw on resources, these are legitimate avenues of enquiry, outside of the Freedom of Information Act and necessary in a democratic society.
26. In our opinion, the sustained pursuit of a matter of such importance to the local community via such avenues should not lightly be characterised as a vexatious campaign, particularly in the context of the Council's request for "critical friends".
27. For all these reasons we find, unanimously, that his request should not immediately have met the s.14 FOIA refusal that it did and, as a result, we have issued a substituted Decision Notice.

28. There is no order as to costs.

[Signed on the original]

Robin Callender Smith

Judge

17 September 2012