



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]**

Case No. EA/2012/0133

ON APPEAL:

**Information Commissioner's
Decision Notice No: FS50425834
Dated: 28 May 2012**

Appellant: Ian Pratt

Respondent: The Information Commissioner

Heard at: Central London Civil Justice Centre

Date of hearing: 8 October 2012

Date of decision: 4 January 2013

**Before
CHRIS RYAN
(Judge)
and
ALISON LOWTON
NIGEL WATSON**

Attendances:

The Appellant in person: the Respondent did not appear and was not represented.

Subject matter: Whether information held s.1: Vexatious or repeated requests s.14

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is allowed in part but, in the light of the parts of the appeal that did not succeed, no steps are required to be taken by the Public Authority.

REASONS FOR DECISION

Introduction

1. We have decided, unanimously, that the Blagdon Parish Council (“The Council”) did not hold certain information regarding its financial budgeting and recording, which the Appellant had requested, but that his request for that information had not been vexatious. We have decided, by a majority, that two further requests were vexatious.

Background information and Requests for Information

2. This appeal results from a series of disagreements between the Appellant and the Council which started with a dispute over the right to access and tend an area of land. The area of dispute widened as the correspondence (at times balanced and at others intemperate) developed. One of the Appellant’s letters was interpreted by the clerk to the Council (“the Clerk”) as a request for information under the Freedom of Information Act 2000 (“FOIA”). Other requests followed, sometimes expressly referring to FOIA and at others interpreted by the Council as falling within its scope.
3. We are not concerned with any of these requests, or the arguments that lay behind them, save to the extent that the overall context has a bearing on the Council’s contention that the request that we are concerned with should be treated as vexatious. However, by June 2010 the issues in dispute had come to include various financial matters including:
 - a. the recording by the Council of its income and expenditure which, it was said by the Clerk, in a letter dated 15 June 2010, were “recorded on relevant agendas and minutes”;
 - b. the Appellant’s wish to examine, or be provided with copies of, annual returns and auditor’s reports for certain years; and
 - c. the adequacy of the short form financial statements which, the Clerk explained, was all a small council was required to record.

4. The Appellant was provided with a certain amount of information at the time. Then, following the end of the financial year to 31 March 2011, the Appellant asked for a copy of the Council's Annual Return for that year. This was provided to him and on 1 July 2011 he wrote to the Clerk thanking him and continuing in the following terms:

"Unfortunately whilst this contains a series of accounting balances and totals it does not constitute a set of accounts which is what I requested in my email of 24 June 2011. Please now supply me with the detailed Income and Expenditure statement or similar document which I presume as a quality parish council you must be producing. If no such statement is produced please let me know.

"If there is no such statement please provide me with lead schedules showing the make up of every figure on the annual return.

I would also like to be provided with copies of the detailed budget for the year ended 31st March 2011 together with your analysis of any key variances between the budget and the actual figures for that year.

Please also supply me with the budget for the year ending 31st March 2012"

5. This was treated as a request for information under section 1 of FOIA and we will refer to this as the "First Information Request".
6. FOIA section 1 imposes on the public authorities to which it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.
7. On 31 July 2011 the Council responded to the request providing, the opening and closing bank balances and an asset list. It stated that all information relating to income and expenditure was recorded in the minutes of Council meetings and was also already available to the Appellant except that:

"The Commissioner's office (FOI) confirms the clerks net salary is an exempt item (personal) as is any information that would permit its calculation."

As to the budget for the year ended 31 March 2011 the Council stated:

"The Council uses the receipts and payments details for the relevant 12 months and these are available on the publicised

agendas and minutes. The Council add to this any planned expenditure for the coming year with each decision minuted."

8. The Council provided the Appellant with a copy of a note on the Council's calculation of the precept it believed it required for the year in question, which included some indications of various items of expected expenditure. However, it declined to respond to the request for information on key variances, as requested, because, it said:

"...this is an information exchange between accountants and Councils and not for publication."

9. Finally, the Council explained that it did not yet have information on its budget for the year ending 31 March 2012, stating that:

"The first figures will be prepared for the 2012-13 precept discussions later this year. The receipts and payments system allows for a monthly check on the bank balances and agendas and minutes provide details."

10. The Council's response had included an introductory section which indicated that, in the event of the Appellant seeking further information, it might be entitled to aggregate the cost of responding to both the First Information Request and any follow up and that, if the total figure exceeded £450, the Appellant would be required to pay the costs of the subsequent application before information could be provided. It then said:

"Costs are (sic) currently total £254.44 and it is based on work done rather than an estimate. Section 9 of the FOI act applies."

Under FOIA section 12 a public authority may refuse an information request if it estimates that the cost of complying with the request would exceed a maximum fixed under subordinate legislation.

11. On 10 August 2011 the Appellant responded. He complained, first, that the Council had previously decided not to charge for complying with information requests but, referring to the figure quoted in the introduction the Council's letter, wrote:

"They [the costs quoted] are however very interesting as they indicate the speed at which you work and thus the value for money you provide to our village. Given that all the information you supplied to me would have been in your possession I find it thoroughly revealing to discover that it appears to have taken you in the order of 9 to 10 hours to prepare.

"Please provide a breakdown of your time to provide the answers to each numbered point on your reply.

“Turning to other matters please let me know the clerks gross salary. The net salary to which you refer is utterly meaningless as the gross figure is the true cost.

“It leads me to wonder whether the clerk lacks the accounting knowledge to produce these tools and perhaps you could let me know what accounting and budgeting training and/or qualifications the clerk has.”

We will refer to his letter as “the Second Information Request”.

12. By letter dated 22 August 2011 the Council refused to respond to the requests set out in the Appellant’s letter because it took the view that he had conducted an eighteen month campaign of correspondence against the Council and the Clerk with the result that it was entitled to rely on FOIA section 14, which provides that:

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

13. The Council’s refusal was upheld in a letter to the Appellant dated 12 October 2011 and the Appellant filed a complaint with the Information Commissioner on 16 November 2011.

Investigation by the Information Commissioner and his Decision Notice

14. On 28 May 2012, following an investigation into the Appellant’s complaint, the Information Commissioner issued a decision notice. It recorded that the scope of the investigation had been the consideration of the following two issues:
- a. whether the Council held more information falling within the scope of the relevant information request, which should have been disclosed; and
 - b. whether the Council had been justified in its reliance on FOIA section 14.

However, the Information Commissioner also decided that the Clerk’s net salary and pension information constituted his personal data and that it was therefore exempt from disclosure under FOIA section 1 because it fell within the scope of the exemption provided by FOIA section 40 (third party personal data). This part of his decision appeared to have ignored completely the fact that the Appellant had made it very clear that it was the gross salary that he sought. In the event the Appellant informed us during the hearing that the pension information had been disclosed to him by the Council, in any event, and that he had assembled sufficient information to calculate the gross salary. As he did not wish to pursue those elements of the original information request it is not necessary for us to examine in any greater

detail the Information Commissioner's error in this part of his decision notice.

15. As to the information held by the Council the Information Commissioner concluded that the Council had not been entitled to withhold material about variances between its budget and actual expenditure and he ordered it to be disclosed. The information was set out in a form, which had been completed in manuscript to identify variances between the expenditure/income between the financial years 2009/10 and 2010/11, with an explanation for any that exceeded 15%.
16. The Information Commissioner also ordered disclosure of a document, which had been discovered by the Council in the course of the investigation. This was described as a "breakdown" and was headed "Precept 2011/12". It consisted of a table in which the first column was headed "Expenditure head" and listed some 35 items of expenditure. The second column was headed "31/3/10" (which we interpreted as a record of the actual expenditure under each of the itemised heads of expenditure, incurred during the financial year ended on that date). The third column was headed with the self-explanatory phrase "forecast 31/03/11" and the fourth "11/12", which we interpret as either the budget for the financial year to 31 March 2012, or at least an indication of some of the items that might appear in it.
17. The Decision Notice recorded that the Council had confirmed to the Information Commissioner's office that it kept records that were in accordance with its legal obligations but that, as a small parish council, it was permitted simply to summarise what had been paid out and received, together with a closing figure for the bank account(s). For transparency it recorded income (other than interest received, which it had disclosed to the Appellant) in the minutes of each Council meeting. Minutes were published on its website. It said that it was not required to provide a breakdown of its expenditure. On this basis, combined with the Council's assurance that it had not deleted, destroyed or mislaid any relevant information, the Information Commissioner concluded, on a balance of probabilities, that no further relevant information was held.
18. The Information Commissioner also decided that the Second Information Request had been vexatious and that the Council had therefore been entitled to refuse it. He based his decision on a bundle of materials recording the written exchanges between the parties up to a date 20 working days after receipt of the request. He concluded that the history of correspondence on various subjects, together with evidence of discussions during Council meetings, supported the conclusion that the Second Information Request had been obsessive and that the Appellant had pursued a personal grievance against the Clerk over a period of time, which amounted to harassment. The Information Commissioner also concluded that the correspondence received from the Appellant had imposed a considerable burden on the Council and that the requested information would have provided limited

value to the Appellant and would probably have led to further exchanges focused on criticism of the Clerk's competency. On the basis of those findings the Information Commissioner concluded that the information request had been vexatious and that the Council had therefore been entitled to refuse to comply with it.

The Appeal to this Tribunal

19. The Appellant lodged an appeal against the decision notice on 18 June 2012 challenging both parts of the Information Commissioner's decision notice. He asked for his appeal to be determined at a hearing, rather than on the papers, and directions were accordingly given for written submissions and supporting evidence to be filed beforehand. In the event the Information Commissioner decided that he would not appear at the hearing and it proceeded with only the Appellant addressing us. We will deal with each part of his case in turn.

Did the Council continue to hold information falling within the scope of the First Information Request, which it had not disclosed?

20. The Appellant clarified, again, that he sought information about the Clerk's gross salary, not the net salary, although, as indicated above, he did not pursue that item of information (or the pension information) at the hearing. Instead, he focused on the part of the First Information Request which asked for budgetary information. He relied, in particular, on the document that had been disclosed during the Information Commissioner's investigation and suggested that it revealed that the Council had been carrying out an item by item budget assessment at the time when it was created. In his Grounds of Appeal he queried whether it was likely that the Council would have *"abandoned the proper budgetary process midway through a year to produce a four line budget along the lines of opening balance less expenditure reductions add expenditure rises equals closing balance"*. The Appellant also argued that the figure inserted for "Precept requirement" could only have been the result of a budgeting exercise. Finally, he stated that he had heard the Clerk state, during Council meetings, that he intended to amend the budget in line with information that had been provided to him by Councillors. However, the Appellant accepted during the hearing that this statement, appearing in his Grounds of Appeal and not supported by other corroboration, had limited value as evidence.
21. The Information Commissioner contented himself with a statement in his Response that the Appellant's case amounted only to an opinion as to what information should have been recorded, which was not evidence of what had actually been recorded. He argued that, without further justification for believing that, on the balance of probabilities, a more detailed budget existed, the Appellant's case could not be sustained.

22. We believe that the Appellant has done more than say what he, as an accountant, believes should exist. He has drawn attention to two documents that provided some support for the argument that further budgeting materials must have been created. However, we find ourselves forced to accept that, faced with the Council's very firm statement to the Information Commissioner that it did not prepare a more substantial budget than has already been disclosed, the Appellant has not presented us with sufficient evidence to establish, on a balance of probabilities, that further information has been withheld by the Council.
23. The Appellant drew our attention to certain additional documents that came into existence after the date of his information request. Although they indicated that the Council was at that time generating more elaborate financial data, this did not assist the Appellant's case. It is consistent with the Council having adopted more rigorous financial controls (possibly as a result of the Appellant's complaints and questions) but does not point to the existence of information recording the outcome of such controls during earlier financial periods.

Were the information requests vexatious?

24. On one reading of the papers submitted to us section 14 was only relied on as justification for refusing to comply with the Second Information Request. However, we consider that the position is not entirely clear and believe that, in case our decision on the first issue was to be successfully appealed, we should also determine whether the request for budget information in the First Information Request was vexatious. We will deal with that part of the First Information Request first, before considering whether the Second Information Request was vexatious.
25. The Appellant conceded that he had been persistent in pursuing the issues he had with the Council and that he adopted robust language at times. We would agree with the Information Commissioner that his correspondence went further on several occasions and that his criticisms were at times expressed in unnecessarily personal terms. The Appellant argued that, even if that was a justified criticism, correspondence on other disagreements should not have the effect of rendering the particular request under consideration vexatious. The Information Commissioner argued that the whole history should be taken into account because it pointed to an obsessive pursuit of the Council and the Clerk.
26. The contemporaneous records relied on by the Information Commissioner included both correspondence and records of events during the public part of Council meetings. In our view reports of what may or may not have been said or done at those meetings is not relevant to the issue we have to determine. Those events seem to have had no connection with the subject matter of the First Information

Request and it would be unwise to conclude, from disputes between individuals about appropriate conduct at a public meeting, that an information request on a distinct issue was vexatious. We have therefore relied solely on what has become apparent to us from reading the correspondence between the parties. We also consider that some of the issues raised in that correspondence do not amount to information requests and that some of the issues under discussion were very remote from the subject matter of the information request under consideration.

27. When the history of communications on the question of financial recording and budgeting is separated from other issues that have been in dispute over the years, the pursuit of information seems not to have been obsessive, as the Information Commissioner has suggested. Viewed in that light it ought not to have imposed any significant burden on even a relatively lightly resourced public authority. The purpose of the enquiry seems to us to have been a justified one, as is evidenced by our surprise that, given the existence of the documents identified above, no detailed budgetary records have been said to exist.
28. Whether or not any of the Appellant's other information requests, having different subject matter (some of them quite trivial), might have been characterised properly as vexatious is not an issue we have to consider, as the Council did not raise section 14 on those occasions.
29. It remains the case that the Appellant pursued the Clerk with a series of criticisms, including financial mismanagement, adopting a somewhat hectoring tone in his communications from time to time. We can well imagine that the Clerk felt harassed at times (although he generally demonstrated an ability to respond with some vigour) and we should certainly take into account this aspect of the overall history of communications between the parties. However, the persistence of the pursuit of information must be assessed, for section 14 purposes, in light of the seriousness of the issue being pursued and the openness of the public authority in responding to previous requests. Viewed in that context we do not believe that the Appellant was unreasonably persistent, or that the tone he adopted on occasions should have the effect of converting a reasonable pursuit of a legitimate train of enquiry into a vexatious request. We have already expressed our own concern at the Council's apparent lack of records about the budgeting that appeared to have preceded its decision on its annual precept and it seems to us to have been reasonable for the Appellant to have pursued his enquiries on that subject matter with some vigour and persistence.
30. We conclude, therefore, that the part of the information request dealing with the, ultimately fruitless, pursuit of information about the Council's annual budgets was not vexatious. We are unanimous on that aspect of the case. However we were unable to achieve unanimity, when we come to consider the other elements of requested information, namely

a breakdown of the Clerk's time in providing the answers to each of the points arising from the earlier request and his accounting and budgeting training and qualifications. Both arise from the Second Information Request and we will deal with each in turn.

Time spent on earlier request: One of us regarded this as a reasonable and legitimate question to raise, given the Council's decision to raise the issue of the cost cap in its previous letter. The view of this member of the panel was that, while the Appellant knew this request would annoy the Clerk, this was not the sole intention of the query. Being able to tell whether a request would involve chargeable work and the reason for the amount of time that would have to be taken is perfectly reasonable and therefore this request was not vexatious. However the other members of the panel believed that this represented a departure from the line of enquiry, which we have decided justified his pursuit of clarification on financial matters, and was targeted at the Clerk's personal performance. It had no purpose other than to vex the Clerk and was in fact more point scoring than a genuine request. On a majority decision, therefore, we conclude that this request was vexatious

31. Clerk's qualifications: On this issue one of us, again, felt that the request was not vexatious. This panel member thought that, given the difficulty of obtaining clarification on the financial issues that had been raised, it was legitimate for the Appellant to raise this request even though the Appellant's own statements during the hearing showed that he clearly knew the Clerk's background and experience. This panel member acknowledges that the Appellant was definitely getting involved in points scoring with this request but balances that against the responses he was receiving which, if taken at face value, might be said not to accord with the Clerk's background and even being intended to "wind up" the Appellant. Although borderline, therefore, this panel member felt that, given the level of obstruction the Appellant felt he had been subject to, the request fell on the side of not being vexatious. . The other members of the panel noted that questions about the Clerk's qualifications had been raised previously and that his competence had been questioned, in quite personal tones, on previous questions. In the view of these members the fact that the request was expressed in slightly different terms from the previous request did not mean that it was appropriate to pursue. It was an example of a requester being more intent on vilifying an individual by returning to a question that had been substantially responded to previously. Even if regarded as a genuine request it represented a different line of enquiry from the one which we have found to have been justified and is sufficiently distinct from the subject matter of that enquiry that, in the view of these panel members, it is not capable of acquiring legitimacy from it. On a majority, therefore, we conclude that this request was also vexatious.

32. It follows that we have decided, by a majority, that the Second Information Request was vexatious, that the Council had been entitled to refuse it on that basis and that the Information Commissioner was correct in this part of his Decision Notice.
33. We should add that the Appellant expressed concern that the Council had indicated at one stage that its decision that the information request was vexatious had the effect of making any future requests from the Appellant also vexatious. The Council subsequently modified or clarified its position, to explain (as we understand it) that it would only regard as vexatious any requests for information about its decision or any requests that repeated, in effect, the rejected request. However, in the light of that potential misunderstanding, we should make it absolutely clear that our decision affects only the particular information request on which we have adjudicated and not any other that may have been made in the past or may be made in the future. As to the past, we have indicated that we would have had some sympathy for the Council had it challenged one or more of the Appellant's other information requests under FOIA section 14. But it did not do so and chose, as the issue on which to make its stand, one that seems to us to have been of greater significance than some of the other, frankly silly, points the Appellant has sought to pursue from time to time. As to the future, clearly the whole history of the communications between the parties is capable of having an impact on how any future requests may be handled. The fact that we have decided that the history did not justify refusal of the particular information request underlying this Appeal does not mean that it will not have a more decisive effect on future enquiries from the Appellant, whether concerning financial issues or other matters.

Signed; Judge C Ryan
Date; 4 January 2013