



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Appeal No: EA/2012/0163

ON APPEAL FROM:

The Information Commissioner's

Decision Notice No: F50433957

Dated: 12th July, 2012

Appellant: Ian Belchamber

Respondent: The Information Commissioner

Determined on the papers: 7th December, 2012

Before

David Farrer Q.C.

Judge

&

Marion Saunders and Narendra Makanji

Tribunal Members

Date of Decision: 15th January, 2013

Representation:

The Appellant acted in person.

For the Respondent: Richard Bailey

Subject matter:

FOIA S.14(1): Vexatious requests

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

[Signed on original]

David Farrer Q.C.

Judge

Dated this 15th day of January, 2013

REASONS FOR DECISION

Introduction

- 1 The Appellant is an experienced engineer who holds emphatic views on the relevance of speed to road safety.
- 2 Over the last seven years or so he has been in frequent contact with different departments and individuals within Dorset Police, making a large number of FOIA requests for information and maintaining by e mail a flow of questions and comments on traffic issues. He runs a website, which enables him to publicise his views and evidence in support of them to a wider audience.
- 3 On a date unknown to us but evidently in 2011, the Appellant requested information under FOIA from Dorset Constabulary as to the cost per participant of its Driver Awareness Course and how those costs were made up. Following the intervention of the ICO, a breakdown of those costs was provided by the Constabulary.
- 4 Following up that request, the Appellant made the following further request on 25th. November, 2011 :-
 - “ 1 The document you originally referred me to showed the “provision of Driver Awareness Scheme” for 2010/11 as £813,000. You are now telling me that The cost is £1.457m. Could you explain the apparent discrepancy ?
 - 2 Please could you detail the staffing costs, numbers of staff, duties, salaries, and if any of these staff receive any other payments for any other duties.

3 *Please could you detail the premises costs. What premises are used for the courses, who owns the premises, who is the payment made to ?*

4 *Please could you detail the I.S. charges.*

5 *The “contribution towards the cost of Dorset Road Safe” is clearly not part of the cost of provision of courses – perhaps this explains some of the discrepancy noted in point 1 ? But then I would expect the true cost to be 1457 – 548.7 = £908,000, could you explain .*

6 *Please could you detail “Force back office service”*

7 *Please could you detail SEES Command.*

In addition to my question 3 please could you detail the last payment date and amount in relation to the premises”.

Taken in isolation, this is a reasonable and purposeful request, though the relevance of the identity of the premises in (3) is not immediately obvious, where the issue is expenditure on a particular form of training, unless some kind of improper favour is suggested.

5 The initial response of Dorset Constabulary was to rely on the cost of compliance under FOIA s.12(1) but, on 31st. January, 2012, following a request for a review, the Assistant Chief Constable, Mr, Mike Glanville, wrote to the Appellant, setting out the history of communications with him, as seen by the police, and asserting that his request was vexatious.

6 The Appellant complained to the ICO the following day. The ICO upheld the Dorset Constabulary`s contention that the request of 25th. November, 2011 was vexatious. Whether he was right is the sole issue for our determination.

7 The Appellant denies that his request could be characterised as vexatious and accuses the ICO of attempting rather to show that the Appellant is vexatious.

He asserts in his Notice of Appeal that Dorset Constabulary can find no reason to avoid answering his questions and therefore focuses on the identity of the requester. It refuses to answer a reasonable (series of) question(s) because it evidently has something to hide. The public, he contends, are very suspicious of Dorset Constabulary, which has dodged an opportunity to prove, if it be the case, that fines which it obtains from the public are “wisely, ethically and responsibly spent”. He insists that the request could be simply answered and that the background, which we take to mean the history of previous requests, is irrelevant. He refutes in considerable detail each point adverse to his request made in the Decision Notice.

- 8 The Appellant further puts in evidence examples of the e mail traffic between himself and various officers of Dorset Constabulary and a “Request History” covering communications between April and November, 2011. His style of expression varies from the carefully reasoned to the provocatively florid, including accusations of financial incompetence “ (or worse)” and of a “sickening” financial performance.
- 9 Whilst referring to an eight – year campaign, he fiercely denies the sending of 4,000 e mails, as asserted in Mr. Glanville`s (the ACC`s) letter following the request for a review. The Appellant, in further submissions, had this to say, on this issue –

“The IC has chosen to believe something from DP which is indeed obviously completely absurd and totally untrue. The number of requests is inflated by a similar degree. The fact that the IC is prepared to believe such nonsense in favour of the authority is proof that it operates in complete conflict with it`s published mission and that it has not even thought about what DP has presented, it has simply chosen to try to protect DP. The only 1 thing in what DP has provided that is quantifiable is a lie and IC has believed it without thinking about it. Disgraceful, and indicative that DP`s contribution to this appeal and the interpretation by IC are totally untrustworthy”.

The emphasis was supplied by the Appellant.

9 Our Decision

There are a number of reported decisions of the Tribunal dealing with s.14(1) of FOIA. The ICO has published a series of criteria which public authorities are invited to apply when considering this issue.

10 Such guidance is undoubtedly helpful but, as the guidance itself recognises, a judgement as to whether a request is vexatious must not become a box – ticking exercise. Plainly, “vexatious” does not mean annoying. It represents conduct, here a request or requests for information, which bear no sensible proportion to the supposed objective. The proper objective of a FOIA request is the obtaining of reasonably accessible information of public importance. It is not to force the authority to change its policy through an unending battery of interrogation, to which the answers are irrelevant, in the sense that they will never stem the flow of requests..

11 Of course, the character of a request must be judged against the backdrop of what preceded it. Many requests appear reasonable and deserving of a proper reply, until the observer examines what went before.

12 Equally, contrary to the Appellant`s assertion, a request may be vexatious when made by a requester with a history of harassing or unreasonable conduct, which is perfectly justified when made by a different individual.

13 In this case it is clear that there was a long history of requests, criticism and campaigning against Dorset Constabulary and Dorset Roadsafe conducted from a hard – hitting website, to which the Appellant invited our attention. Anybody has the right, within certain limits, to conduct the most vigorous campaign to alter public policy in a particular area and to criticise mercilessly alleged failings in the discharge of duties to the public. FOIA is not, however, a weapon which can be used to browbeat an authority, rather than to extract information for use in such a campaign.

14 The exact volume of requests and e mails is of little consequence. It is common ground that the Appellant kept up a pretty constant stream of demands and responses over a considerable period. It is our clear conclusion from what we have seen, especially the Appellant`s own submissions, that he was not making requests in order to obtain campaigning information but rather to maintain unrelenting pressure on Dorset Constabulary and to demand their time and resources. Whatever the replies he obtained, it seems he would come back with further demands.

15 Two extracts from the Appellant`s further submissions seem to us to typify this approach –

“I cannot believe that refusal to provide this financial detail has not yet been recognised IN ITSELF as reason enough to insist that it is provided, let alone all the other reasons I have listed in this appeal and on my website”

And still more tellingly –

“If I lose this appeal, I will just get someone else to make the request, then, if it is bad, it’s going to look even worse for them (and the IC) – this demonstrating perfectly the futility of refusal and the support of the IC. It is therefore DP and the IC who are wasting time, effort and resources on this, not me. Just tell us where the money goes, what do you have to hide? A lot by the looks of things.”

17 This appears to amount to a statement that this assault by requests will continue regardless unless the response is the one that the requester demands.

Conclusion

18 We agree with the ICO that this request was vexatious.

19 For these reasons we dismiss this appeal.

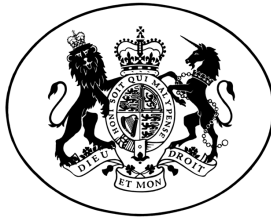
20. Our decision is unanimous.

[Signed on original]

David Farrer Q.C.

Tribunal Judge

15th January, 2013



IN THE MATTER OF AN APPEAL TO THE (FIRST-TIER) TRIBUNAL (INFORMATION RIGHTS)

EA/2012/0163

BETWEEN:

IAN BELCHAMBER

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

The Tribunal`s Decision on an application for permission to appeal

1. This application is made pursuant to Rule 42 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules, 2009.
2. The Tribunal declines to review this decision pursuant to Rule 44 because it is not satisfied that an error of law is involved, as required by Rule 44(1)(b).
3. Permission to appeal, pursuant to Rule 43(2) is refused.
4. The sole issue for determination was whether the request recited at paragraph 4 of our Decision was vexatious.
5. In reaching our conclusion that it was vexatious, we had regard to the terms of the request, the history of previous requests (the number of which, extending over eight years, was plainly very considerable, whether or not it reached 4000) and, the general tenor of the Appellant`s approach to the Dorset Constabulary in relation to his campaign against speed cameras. That included material on his website, to which he

invited our attention, and submissions to the Tribunal, such as those quoted. The further e mail sent to the Tribunal on 19th. January, 2013, after communication of the Tribunal`s decision, is of a similar character but the Tribunal has disregarded it in refusing permission, since it post – dates the Decision and did not therefore influence it.

6. We considered that such material is a legitimate consideration in determining the character of the request, where it reinforces the impression that the object of the request is to harass an authority remorselessly into changing the offending policy rather than to obtain information relevant to arguments which may induce a change of policy by persuading the public authority of, or awakening public opinion to the merits of the Appellant`s case.
7. A critical factor in distinguishing between the two objectives is the plain indication to be derived from the history of demands and requests, together with the further material referred to, that no reply from the authority, short of a declaration of surrender, would staunch the flow.
8. We did not perform the ritual of applying each of the ICO`s criteria, useful as they are. In this case we focussed on the apparent purpose of the request, taken in the context of all the other matters identified above. Despite its terms, we did not consider that it was really the obtaining of information but a further tactical step in a political campaign, whether or not realistic, to force acceptance of the Appellant`s stance on speed and speed cameras in the interests of a quiet life rather than of public safety. The plain implications of impropriety, indeed dishonesty in his e mails, quite unsupported by credible evidence, reinforce that perception.
9. For the avoidance of doubt, the tribunal was and is not in any way concerned with the merits of the Appellant`s views on the importance of speed as a cause of road accidents nor on the use and economic value of speed cameras. He is perfectly entitled to hold those views and to promote them by all legitimate means. Such means do not, however, include the use of FOIA, in the manner evidenced on this appeal.
10. For these reasons this application is refused.

11. The Appellant may apply to the Upper Tribunal for permission to appeal against the Decision. Under rule 21(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended, the Appellant has one month from the date this ruling is sent to him to lodge an appeal with the Upper Tribunal (Administrative Appeals Chamber)
5th Floor Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL. Further information about the appeal process is available on the Upper Tribunal's website at:

<http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/aa/index.htm>

David Farrer Q.C.

Tribunal Judge

4th February, 2013