



IN THE FIRST-TIER TRIBUNAL
0065, 0066, 0067

Appeal No: EA/2013/0064,

GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FS50436741 FS50436742,
FS50436888, FS50440374**

Dated: 6 March 2013

Appellant: Robert Sturmer

Respondent: The Information Commissioner

2nd Respondent: North East Derbyshire District Council

Heard at: Chesterfield Tribunal Centre

Date of Hearing: 2 October 2013

Before

Chris Hughes

Judge

and

Anne Chafer and Dave Sivers

Tribunal Members

Date of Decision: 11 October 2013

Attendances:

For the Appellant: in person, assisted by his wife

For the Respondent: no attendance

For the 2nd Respondent: Adele Wylie, Principal Solicitor, assisted by Sarah Sternberg (Assistant Director and Monitoring Officer NEDDC)

Subject matter:

Environmental Information Regulations 2004

Cases:

IC and Devon CC v Dransfield [2012] UKUT 440 (AAC), [2013] 1Info LR 360.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 6 March 2013 and dismisses the appeal.

Dated this 11th day of October 2013

Judge Chris Hughes

[Signed on original]

REASONS FOR DECISION

Introduction

1. In 2005 the Second Respondent to this appeal (“The Council”) sold land for £80,000. A few months later it was resold for £655,000. In 2009 Mr Sturmer became aware of this and has since then believed that there was fraudulent activity or negligence which has been covered up by Council Officers. He has had a long history of correspondence with the Council attempting to discover evidence to support his contention.

The request for information

2. The four requests which are the subject of this appeal were made in October 2011 and January 2012. Further requests about this issue were also considered by the First Respondent (“the ICO”) in his decision notice. Request FS50436888 of 27 January is representative of the requests:-

“On the basis of these communications, I now submit an official freedom of information request for copies of all relevant documentation relating to the Mickley land sale in which you were instrumental in supporting NEDDC’s [name redacted] and the NEDDC’s Audit and Corporate Governance Scrutiny Committee’s decisions. I refer you to my letter dated 26.11.2011 and to your unhelpful response of 2.12.2011, which have been copied to ICO and the police.”

3. The Council responded to these requests rejecting them on the grounds that they were “vexatious” under S14 if FOIA requests or “manifestly unreasonable” under Regulation 12(4)(b) if the requests fell to be considered under the Environmental Information Regulations. The Council maintained this position on review.

The complaint to the Information Commissioner

4. Mr Sturmer complained to the ICO who, in his decision notice, reviewed the requests in the light of the decision of the Upper Tribunal in *Dransfield*.

5. In considering whether the requests imposed a significant burden he noted that the Council had received 132 items of correspondence from Mr Sturmer in 2011 and had written 91 replies and had expended a considerable amount of officer time (some unpaid) in considering the requests. Mr Sturmer had also complained to the police, the Audit Commission, to professional bodies and:- *“accused the council, individual officers and councillors of lying or covering up in their responses, alleging that fraudulent activity must have taken place. The Commissioner is therefore satisfied that the complainant’s requests have had the effect of creating a significant burden in terms of the expense and the distraction of the council and its officers”*.
6. He noted that the tone and language would create annoyance to the recipients and that *“repeated allegations of negligence, a cover up or fraudulent activity by council officers would create annoyance and distraction, particularly over the length of time in which this correspondence and questioning has been ongoing.”*
7. For similar reasons the ICO concluded that the requests in the context of the history of contact would have the effect of harassing the Council and its staff.
8. The ICO noted that neither the police nor Audit Commission agreed with Mr Sturmer that fraudulent activity had occurred, and that Mr Sturmer had been unable to supply evidence of wrongdoing and no further action had been taken with respect to the land sale since Mr Sturmer had received all the relevant material. The ICO noted that the Tribunal had previously criticised the Council for its handling of requests but *“the requests and correspondence have reached the point where they become obsessional rather than persistent”*.
9. The Commissioner noted that it was seven years since the land sale, that numerous agencies had been involved since then and there had been *”adequate time for action to have been taken should the situation have warranted it.”* While the requests had a serious purpose over time this had diminished and *”the failure to find information relevant to any fraud or negligence over this period of time, and through the disclosure of this information has weakened the purpose and value of these requests.”*
10. The Commissioner concluded that even if the requests were complied with the complainant would continue with further requests; and the public interest in stopping the harmful impact of the requests on the Council outweighed the public interest in allowing the complainant to continue his questioning.

The appeal to the Tribunal

11. Mr Sturmer challenged this in his appeal to the Tribunal. The appeal document was a detailed critique of the decision notice but may be fairly summarised as arguing that the requests were not manifestly unreasonable and the public interest was served by complying with the requests.
12. The ICO and the Council disputed this and maintained that the decision notice was correct.

The questions for the Tribunal

13. The issue for the Tribunal is straightforward, whether the decision of the ICO that the requests were manifestly unreasonable and that the Council was entitled to apply Regulation 12(4)(b) in this case was correct in law.

Evidence and Submissions

14. In his evidence Mr Sturmer confirmed that he was disappointed with the ICO because, after a meeting with an officer of the ICO he had believed that he would be successful in his complaint, but six months later the decision notice had not supported him. He stressed the serious issue of public finances in an age of austerity and that he wished lessons to be drawn from the case in order to protect public finances in the future. He had been told by the police that the matter was “time expired” and he had also been unsuccessful in trying to engage with the Audit Commission and District Auditor. The Local Government Ombudsman had informed him that it was not within his remit, the police “sat on the fence waiting to be spoonfed”. Neither the police nor the Audit Commission had ever investigated the matter. He was encouraged that the Council in an Extraordinary General Meeting in spring had voted unanimously to refer the matter to the police.
15. He was aggrieved “what is the point of receiving a document which is ambiguous and unsubstantiated?” He felt that he was entitled to explanations of documents. When asked when he would know there was nothing more to discover he stated:- “*How long is a piece of string; it is all based on trust*”. He went on to indicate that he could not

trust the Council. He was resentful of the fact that when he wrote to a senior official of the Council, someone else would reply. He was angry that some of his letters were never acknowledged as though he was not worthy of a reply.

16. Mr Sturmer told the Tribunal that, if, as a result of his requests:- “I find anything serious I’ll be going to the police.”
17. Perhaps the most telling part of Mr Sturmer’s oral evidence related to his interaction with the police as he has sought to pursue his concerns with them. He saw a Detective Inspector of the local constabulary. In the light of what she was told she saw the Chief Financial Officer and the Internal Auditor of the Council to explore the issue and concluded as a result of that discussion that no further police activity was needed at that stage. Mr Sturmer stated that he was “pretty angry” at this and has made a formal complaint against her, and in his evidence he described her actions as “antics”.
18. In addition to his complaint about a police officer he informed the Tribunal that he has also complained to the various professional bodies of a number of council officers with whom he has dealt. He felt that it was entirely proper, if he felt someone was negligent, to put in a complaint against that person.
19. He felt that while his language might be old-fashioned it was not threatening, the use of the term “fear and trepidation” with respect to how council officers would feel was not wrong, there was no “nasty motive”.
20. The Council supported the analysis of the decision notice and argued that the case fully met the requirements for being considered manifestly unreasonable. The searches carried out to meet his previous requests had disclosed the Valuer’s and Solicitor’s files on the land sales, which was the information relating to the transaction which the Council held. The Council believed that Mr Sturmer was obsessed and this was evidenced by his inability to accept documents which did not provide evidence of fraud.
21. The Council informed the Tribunal that the current formal position of the police was set out in July:-

“At this stage the Police cannot categorically say that a criminal offence has not taken place. However after consultation with the authority we have not been presented with any evidence that indicates that a criminal offence has taken place”.

22. The Council had, as a result of its concerns for the welfare of its staff, instructed external solicitors to write to Mr Sturmer (bundle pages 172-175). This letter drew attention to issues of defamation and stated:

"We have no doubt that the sheer weight and number of your letters and the accusations and allegations you make therein that they have deliberately lied or been involved in some form of cover-up are intended to place our clients in fear. We note for example that in a telephone conversation with an officer of the Council on the 22nd April 2012 that you were keen to make it clear that because of the pursuit of your case a number of officers would be "in fear and trepidation" thereby making your intentions clear.

The course of conduct which you have undertaken comprises a course of sustained attacks on our clients, on their integrity and characters."

23. As a result of this Mr Sturmer made a request for information as to the cost of instructing the solicitors.

Consideration

24. Mr Sturmer is strongly committed to his cause which he has pursued for the past four years, generating a very large body of correspondence and numerous requests for information which have disclosed all the material (as found by the Tribunal on a previous occasion) which the Council holds relating to the land sale in 2005. Many years subsequent to that, further material is generated by the Council's reconsideration of issues raised by the sale (for example the minutes of the Council Meeting in March 2013 when the Council referred the matter to the police).

25. The requests have imposed a very considerable burden on the Council and its officers. During the course of the requests Mr Sturmer has made harmful allegations against many people; his default position appears to be to criticise and complain against people who do not agree with him or do what he wants. In addition to council officers he has complained against a police officer for taking a different view of the matter from him.

26. Mr Sturmer has not put forward any evidence that there is a real interest in the land sale from any regulator or similar public body. Clearly if the police or a regulator is

presented with proper evidence of relevant wrong-doing then they will take action; in that sense the door is never closed and such bodies would always be “interested”, but none of them are taking any active steps, they will act only if something of substance emerges. Nothing has, and the position statement of the police in July is an admirable summary of the position that such bodies take – and at the present there is nothing for them to act on. There is no evidence of wrong-doing and requests to the Council cannot bring forward information which the Council does not hold. Taking a broad view of these requests in their context it is clear that they can serve no proper purpose and are manifestly unreasonable.

Conclusion

27. It is clear that there is no serious purpose behind these requests. The processes of FOIA and EIR have gone as far as they can and they have disclosed nothing. There is no evidence to sustain Mr Sturmer’s suspicions. The burden on the Council and its staff has been considerable, his attempts to get disciplinary action against officers is evidence of his unreasonable approach. No public interest is served by his requests. The Tribunal is satisfied that the ICO’s decision notice is correct, the requests are manifestly unreasonable and dismisses the appeal.

28. Our decision is unanimous

Judge Chris Hughes

[Signed on original]

Date: 11th October 2013