



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

Case No. EA/2013/0167

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50479890
Dated: 16 July 2013**

Appellant: MR VIPINCHANDRA MALKAN
Respondent: INFORMATION COMMISIONER
Heard at: WANDSWORTH COUNTY COURT
Date of hearing: 16 JANUARY 2014
Date of decision: 5 FEBRUARY 2014

Before

ROBIN CALLENDER SMITH
Judge

and

DAVE SIVERS and DAVID WILKINSON
Tribunal Members

Attendances:

For the Appellant: Mr V Malkan attended in person.
For the Respondent: the Information Commissioner did not attend, relying on earlier, written responses to the appeal.

Subject matter:

Environmental Information Regulations 2004

Exceptions, Regs 12 (4) and (5)

- Request manifestly unreasonable 4(b)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the Decision Notice dated 16 July 2013 and dismisses the appeal.

REASONS FOR DECISION

Background

1. The Appellant controlled and managed several properties in the London Borough of Merton, one of which had been the subject of several environmental health officer investigations over a number of years between 2008 and 2011.
2. Those investigations related to breaches of the Housing Act 1994, Prevention of Damage by Pests Act 1949 and the Public Health Act 1936. The concerns related to hazards of crowding and space, food safety, fire hazard, domestic hygiene (pests and refuse), fuel combustion products and other matters related to size, layout and suitability of living accommodation.
3. As part of the investigations, environmental health officers of the Council visited the premises a number of times to carry out inspections and to try and secure the Appellant's compliance with the legislation. The Council served several improvement notices and eventually prosecuted the Appellant under the relevant legislation.

4. On 16 December 2011 the Appellant was found guilty of 30 separate offences relating to non-compliance with prohibition orders and for failing to comply with improvement notices.
5. He did not appeal those convictions.
6. He had, however, tried elsewhere to reopen issues in relation to the state of his property and in respect of the Council's prosecution which he believed were not justified.
7. He had used the Council's formal complaints procedure to raise issues about the prosecution in May 2011, January 2012 and March 2012. He had also made a complaint to the Local Government Ombudsman (LGO) in March 2012 which resulted in no further action being taken. He complained to the Criminal Cases Review Commission (CCRC) which took no further action.
8. During this period the Appellant continued to write to the Council in an attempt to explore the issues which had led to his prosecution. He then made a series of information requests to the Council. He continued to argue that the Council was prejudiced against him and that the investigations and prosecution were not justified. He believed he was being targeted by the Council.

The request for information

9. The Appellant's four requests were as follows, beginning on 25 June 2012.

Request 1

I am applying for the first time to get the information about the council staff's visit to the above address [address redacted] from - 12-6-2008 to 8-8-2011 for [Redacted] - Senior Environmental Health Officer - Also any other staff accompanied her with date + time registered or noted in the council's record.

On 5 July 2012 the Council responded, enclosing a table of information which provided the details of all council staff visits to the property between 12 June 2008 and 8 August 2011 including dates, times where recorded and persons present.

Request 2

On 20 July 2012 the Appellant submitted a further request:

... under which section did [Redacted] visited our premises on various occasions...

The Council responded on 30 July 2012 by providing the Appellant with the details of the statutory authority under which it had entered his premises.

Request 3

On 12 August 2012 the Appellant submitted a further request for information as follows:

We also request you under the F.O.I act to write us under which act she visited my place.

And:

[Redacted] visited on - 28.09.09 but we have not read any letter about her visit - nor any outcome after her visit. Please under FOI I have a right to know what is stated in the council record about her visit.

On 3 September 2012 the Council provided a response to the request for information of 12 August 2012. Information was given to the Appellant about

the relevant legislation and the visit of the council officer on 28 September 2009.

Request 4

On 9 September 2012 the Appellant made a further request for information:

Please give me the name of person whom she spoke on 28-9-09? In absence of me.

On 19 September 2012 the Council advised the Appellant that it was not obliged to comply with requests under the FOIA which it considered to be vexatious under section 14. It stated that it regarded his recent requests as obsessive and that current unanswered and future requests for information on the property which was the subject of the requests would not be dealt with.

10. On 4 October 2012 he wrote to the Council to express his concerns about the Council and reiterated his request for information about the name of the person to whom the environmental health officer had spoken on 28 September 2009.

11. On the same date he lodged his complaint with the Information Commissioner's Office stating that he was not satisfied with the response he had received to his requests.

12. On 30 November 2012 he wrote to the Council and requested an internal review of the response to his requests. On 20 December 2012 the Council stated to him that it had reviewed the requests under both the provisions of the FOIA and the EIR. It upheld its decision of 3 September 2012 which concluded that the request of 9 September 2012 was vexatious under section 14 of the FOIA or, alternatively, manifestly unreasonable under regulation 12 (4) (b) of the EIR.

The complaint to the Information Commissioner

13. In his Decision Notice, the Commissioner found that the Appellant's requests 1-3 had been responded to by the Council.

14. In respect of request 4, the Commissioner found that LBM had been entitled to refuse the request under regulation 12(4) (b) EIR.

The appeal to the Tribunal

15. The Appellant argues that a number of visits to his property took place without notification to him.

16. The Appellant is also concerned that he believes the Council has not treated him fairly and has "framed him". He argues, in essence, that his final request was not manifestly unreasonable because there was a sufficiently serious purpose to it.

17. He explained to the Tribunal, in answers to its questions, that he would only be happy if he could find out the entire background behind the visit to his property on 28 September 2009.

Conclusion and remedy

18. The Appellant was tried and convicted on 16 December 2011 on prosecutions brought by the Council for matters that touch on his fourth request.

19. He never appealed the result of that trial or the conviction to the Crown Court. He has complained without success to the Local Government Ombudsman and the Criminal Court Review Commission.

20. Neither of those bodies found any deficiency in what the Council had done. He has exhausted the Council's internal complaints procedure and, subsequently, sent a number of information requests to it.

21. The Tribunal finds that both the Council and the Commissioner were correct in forming the view that the Appellant was seeking, inappropriately, to use rights of access to information as a means of seeking to re-open matters or re-argue his view with the Council that it had been wrong to take action against him.

22. The Tribunal is satisfied that this is a clear and improper use of a formal procedure in terms of continuing information requests.

23. It is difficult to gauge precisely what would satisfy the appellant. The Tribunal tried to find this out from him, but concluded that it was unlikely that the Council could ever provide the Appellant with information that would satisfy him.

24. His unreasonable persistence in seeking to reargue matters that had already been decided, coupled with the ongoing burden on the Council to consider his requests, leads us to the inescapable conclusion that his final request was manifestly unreasonable.

25. Our decision is unanimous.

26. There is no order as to costs.

Robin Callender Smith
Judge
5 February 2014