



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

**Tribunal Reference:** EA/2013/0212  
**Appellant:** Lionel Christopher Lovell  
**Respondent:** The Information Commissioner  
**Judge:** NJ Warren  
**Member:** S Cosgrave  
**Member:** Dr M Clarke  
**Hearing Date:** 11 February 2014  
**Decision Date:** 19 March 2014

**DECISION NOTICE**

**A. Introduction**

1. Mr Lovell appeals against a decision of the Information Commissioner (ICO) that six requests he made to West Felton Parish Council (West Felton) were vexatious under Section 14 Freedom of Information Act (FOIA).
2. Both parties have consented to us deciding the case without a hearing and we are satisfied that we can do so.
3. About a dozen years ago Mr Lovell was internal auditor for West Felton. He was an elected parish councillor from 2007 to 2013 during which time he spent two periods as acting parish clerk. Towards the end of his term of office as a councillor there were some meetings that he was unable to attend because of ill health.
4. Like almost all parish councils, West Felton is a small public authority. It employs a part-time clerk typically working for either twelve hours a week or nine hours a week. The latest internal audit report gives it a clean bill of health. The auditor pointed out, however, that this was the third year running that he felt it important to

**Appellant: Lionel Christopher Lovell****Date of decision: 19 March 2014**

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draw attention to West Felton's inability to retain for any meaningful length of time the services of a clerk. This, he felt, should be a serious concern to the council and the parish. He was concerned that it had taken so long to find a new parish clerk; that it appeared that the new clerk was having problems with the number of e-mails received and the work entailed; and that she had resigned in June 2012, her letter of resignation detailing a lot of the concerns which the internal auditor had himself felt.

5. The requests themselves appear innocent enough. In June 2012 Mr Lovell wanted to know whether three quotations had been submitted for work carried out on the parish burial ground. In September 2012 he wanted to know whether a decision by West Felton fifteen months previously to publish its formal adoption of a code of conduct in a local newspaper had been implemented. The same day he asked whether West Felton's insurance cover included an indemnity described in a local council briefing document. The following month he asked how many requests for information under the Freedom of Information Act (FOIA) had been received and responded to during the previous year. Again in October 2012 he asked for a copy of the register of members' interests. Then in November, in respect of another piece of work commissioned by West Felton, he asked again whether three estimates had been obtained. He also wanted a copy of the order for the work and an indication of which parish council minute awarded the contract.

6. It took months and months, and the intervention of the Information Commissioner (the ICO) for West Felton to respond to these requests. This is because, (page 33), the temporary acting clerk who had taken over from the one who had resigned had done so on the basis that he would not be required to have any dealings with Mr Lovell. When West Felton finally got round to dealing with the requests they refused to answer them on the ground that they were vexatious.

**B. Some Questions of Law**

7. It is convenient next to deal with some questions of law which Mr Lovell has raised in connection with his appeal.

**Appellant: Lionel Christopher Lovell****Date of decision: 19 March 2014**

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8. The ICO, in agreeing that the requests were vexatious, followed the guidance given by the Upper Tribunal in the case of Dransfield. Mr Lovell argues that Dransfield is to be distinguished on the grounds that the facts are different. We acknowledge that the facts are indeed different but in our judgment the approach to the question of vexatious requests which we are bound to follow is explained in Dransfield.
9. Mr Lovell also argues that the refusal of the request eventually issued was invalid on three grounds:-
  - (a) Absence of information about the complaints procedure;
  - (b) Delay;
  - (c) It was signed by the parish council's chairman. Such action, he says, is precluded by Section 101(1) Local Government Act 1972. Instead the notice should have been signed, following proper parish council authorisation, by the "proper officer" appointed in accordance with Section 270(3) of the same Act.
10. Whatever deficiencies there may be in the refusal notice we are satisfied that it was sufficient to trigger a right of complaint to the ICO and thereafter a right of appeal to the Tribunal. We need not take those matters any further.
11. Mr Lovell also complains that the ICO has wrongly interpreted West Felton's decision as being a finding that the requests are vexatious. Mr Lovell argues that West Felton instead regarded him as a "vexatious requester". It is true that the West Felton letter does include the error to which Mr Lovell refers. The question under FOIA is whether the request is vexatious. On the other hand, the letter does refer to the ICO guidance on vexatious requests and we consider that the ICO was entitled to treat the question before him as he did. In any event the ICO's own decision on the request cures any defect in West Felton's decision.
12. In the course of reaching his own decision, the ICO considered information from West Felton's chairman about the amount of correspondence received from Mr Lovell and the effect of it on two parish clerks. Mr Lovell argues (page 25) that

**Appellant: Lionel Christopher Lovell****Date of decision: 19 March 2014**

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these issues are quite irrelevant to the exercise of his entitlement under FOIA and that it was unlawful for the ICO to take them into account. He adds (page 87) that any of the information emanating from West Felton's chairman must be regarded as a nullity because he cannot act on behalf of West Felton. Reference is made to Section 101(1) Local Government Act 1972 and paragraph 39(1) of Schedule 12 to the same Act.

13. We reject this submission. The ICO was entitled to look at the evidence before him in connection with the context of the requests. Indeed he was duty bound to do so. So are we – although naturally the assessment we make of the context may differ from the conclusions reached by the ICO.
14. Finally, Mr Lovell argues that all the information which he requested should be published by West Felton under the ICO's model scheme for parish councils (see Sections 19, 20 FOIA). The Rules on vexatious requests, he says, relate only to persons exercising the general right of access to information in Section 1 FOIA. He refers to ICO guidance which states:-

“You should be aware that you cannot use Section 14 to refuse any request for information that should be published under your publication scheme. You will need to provide this information, or direct the requester to where it is available”.

15. We do not accept that FOIA contains a right to ask for information under Section 19 or Section 20 which is separate from the right given by Section 1.
16. Nor do we accept that it is an essential precondition, for a determination under Section 14 FOIA that a request is vexatious or repeated, that a public authority should check first whether the information requested does or does not come within its publication scheme. Of course, if information is already published by the public authority then this may avoid the need for a Section 1 request under FOIA or make the burden of compliance a very light one. Most requests for such information will turn out not to be vexatious. We do not accept, however, that the publication scheme, which might be open to varying interpretations, is conclusive and that the

**Appellant: Lionel Christopher Lovell****Date of decision: 19 March 2014**

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public authority is robbed of the protection of Section 14 FOIA if the request includes information within the scheme.

**C. Are the Requests Vexatious?**

17. We accept that answering these requests, taken in isolation, would not be particularly burdensome for a local authority. We also accept that it would be valuable for the members' register of interests to be published: the other information is less important. We conclude, however, especially after considering the context of Mr Lovell's dealings with West Felton that the effect on the parish clerks and councillors of Mr Lovell's dealings with them provide a context in which they were right to conclude that the requests were vexatious; answering them would simply trigger more.
18. In our judgment, Mr Hutchinson, the parish clerk who returned to duty on condition that he did not have to deal with Mr Lovell summarises the situation with accuracy and sensitivity when he says (page 180):-

- "1) Having spoken at length with Chris Lovell in a private and personal capacity I now realise that this conflict between Chris and the council is just as distressing to Chris himself as it is to the clerk and the councillors.
- 2) Chris believes passionately in local council law and procedure and he has an unrivalled knowledge of both but sadly his tireless campaign for legal and technical perfection is not only damaging his council, it is also personally harmful to Chris himself ... .."

**D. The Nature of the Harm**

19. Without going into minute detail, it seems to us that we have a duty to explain our conclusion a little further, if only to indicate examples of Mr Lovell's actions which have influenced us most.

**Appellant: Lionel Christopher Lovell****Date of decision: 19 March 2014**

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20. The language is extravagant. A passage in the ICO decision is described as “grossly perverse”. As to his colleagues on the council, they have engaged in behaviour which is “completely irresponsible” and an “unjust vendetta.” The chairman is guilty of “considerable bias”.
21. Mr Lovell’s relationship with the clerk who resigned in June 2012 is instructive. It is dispiriting to compare the enthusiasm of the new clerk as she takes up her part-time post with the tone of her resignation letter. On 24 November 2011 when sending out a set of draft minutes to the councillors she wrote:-

“as you are aware I am still in training and I welcome all feedback on the content of the draft minutes however any amendments need to be agreed by the council at the next meeting.”

A few months later, on leaving, she wrote:-

“I have by no means been the perfect clerk and have made mistakes however one would have hoped that the fact I was learning a completely new job that this would have been taken into consideration. However for some – this did not seem to matter and instead every mistake was made into such a big issue which just added to my feeling of inadequacy and failure.

For anyone to expect a person to learn every Rule, Regulation, case study and standing order that may have an effect on a decision the council makes in such a short time is completely unreasonable and putting far too much pressure on any individual especially within the contracted nine hours a week.”

22. The intervening e-mails from Mr Lovell in the material before us make it quite plain that she is referring to correspondence with him.
23. The tone of his e-mails to Mr Hutchinson who replaced her is no different. On 1 October 2012 Mr Lovell told Mr Hutchinson:-

**Appellant: Lionel Christopher Lovell****Date of decision: 19 March 2014**

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“Thus it appears to me your purported appointment as ‘WFPC’s temporary acting clerk, proper officer and responsible financial officer’ at that meeting was invalid and you have no authority or status to act in that capacity.

Kind regards.”

24. For these reasons we accept the arguments advanced by West Felton in their submission to the ICO (pages 179-180). In our judgment, it was necessary for West Felton to invoke Section 14 FOIA in self-defence. West Felton has few resources; there was a real risk that answering these requests would seriously damage West Felton’s capacity to serve the local community.

**NJ Warren**

**Chamber President**

**Dated 19 March 2014**

**Promulgation Date 20 March 2014**