ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50544008

Dated: 1st. September, 2014

Appeal No. EA/2014/0238

Appellant: Mario Petrou

Respondent: The Information Commissioner ("the ICO")

Before

David Farrer Q.C.

Judge

and

Roger Creedon

and

Michael Jones

Tribunal Members

Date of Decision: 29th. March 2015

The Appellant appeared in person.

The ICO did not appear but made written submissions.

Subject matter:

FOIA s.14(1) Whether the public authority was entitled to refuse to comply with a request for information on the ground that it was vexatious.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal finds that this request was vexatious. It dismisses the appeal.

Dated this 29th. day of March, 2015

David Farrer Q.C.
Judge
[Signed on original]

REASONS FOR DECISION

The Background

1. The Appellant ("MP") lives in the London Borough of Haringey ("the Council"). He is evidently involved in local groups which scrutinise council housing policies and development plans. Beginning in 2012, he made a series of requests for information to the Council relating to the Bridge New Deal for Communities ("the NDC") and the Council's housing targets. In early 2014 he also made many telephone calls to the Mayor and different council departments on these and other council matters, the nature of which is disputed.

The Requests material to this appeal

2. From 21st. - 25th. February, 2014 MP submitted to the Council five multiple requests for information containing in all thirty questions. Like the Decision Notice ("the DN"), this Decision records them in the form of an appendix due to the length of the text.

3. As can be seen, they related largely to NDC, its membership and finances. They included a group of questions in the Request of 24th. February, 2014 which addressed housing policy more generally. MP stated in his grounds of appeal that his principal concern was the alleged exploitation of the NDC by the Council for the purposes of its own development plans and the related investment of public funds. At the hearing he stated, however, that he also suspected financial impropriety. Whatever the origin of his concerns, there is plainly a strong public interest in the operation of one of a number of such bodies set up nationally to assist in the regeneration of urban areas.

4. The questions in these requests included -

- A series of questions as to an audit on the NDC in 2006 reported in a newspaper article which he had read in 2006;
- "What were the housing targets for Tottenham, Wood Green and Hornsey before the formation of Haringey, who set them and how were they agreed ?"
- "Can you please state what Haringey's housing target was when it was formed in the 60s, who set the target and how was it agreed ?"
- "What were Tottenham's, Wood Green's and Hornsey's housing net additions the year before the Borough of Haringey was formed ?"

(The Tribunal notes that the London Boroughs were created by the London Government Act, 1963 and began to function on 1st. April, 1965, almost exactly 50 years ago.)

- ". . . At the full council meeting on 18 Nov 2013 Cllr Joe Goldberg during his presentation on the Third Annual Carbon report. . referred to 92,000 households in Haringey. What did he mean by 92,000 households in Haringey ?"

5. The Council responded by letter of 18th. March, 2014, stating that it treated the Requests as vexatious pursuant to FOIA s.14. It relied on

- The number of requests made in a brief period.
- The amount of officer time already devoted to sixteen requests from MP in 2013 and the early weeks of 2014.
- Difficulty in ascertaining whether much of the information was held by the Council.
- The fact that some of the questions were not requests for information but rather invitations to argument.

The Council declined to conduct an internal review. MP complained to the ICO. He had by then made two further requests to the Council, dated 28th. March, and 22nd. April, 2014. They do not fall to be assessed in this appeal

The Complaint to the ICO

6. The ICO's enquiry of the Council elicited a fully but succinctly argued presentation of the Council's case in a letter dated 29th. July, 2014, which, in addition to the FOI requests, described the frequency and character of MP's telephone calls and their impact on staff time and resources. It asserted that the requests had begun before September, 2011 though details had now disappeared due to a change of database and the terms of the Council's retention schedule. It summarised the Council's justification for invoking s.14 by reference to the burden of replying, the unreasonable persistence in dwelling on an issue, namely the governance of the NDC, abolished in 2011, which had been definitively investigated , the intransigence of MP who took an unreasonably entrenched position in any disagreement with the Council, the frequency and repetitiveness of the requests and the relative triviality of the information in relation to the staff time that it demanded.

7. The DN upheld the Council's use of s.14 and MP appealed.

The Appeal

8. MP submitted lengthy and somewhat diffuse grounds of appeal, structured as a paragraph by paragraph refutation of the DN.

9. It is perhaps worth emphasising, especially to appellants in person , that the Tribunal is generally assisted by a relatively brief summary, in numbered paragraphs, of the suggested reasons for concluding that the DN reached the wrong conclusion(s). Lengthy analyses of every statement made in the DN, whether or not material to the Tribunal's decision, do not help to crystallise its assessment. Accusations that the Council or the ICO is peddling falsehoods, that the DN reads like the work of a North Korean apparatchik or that the DN is as "rotten" as a Notice served by the Council do little to advance an appellant's case. Indeed, where the public authority is arguing that the requester was behaving obsessively, irrationally or with little regard for proportionality, vituperative and insulting language may tend to fortify its submissions.

10. We read the grounds of appeal with care but do not deem it necessary to repeat them extensively here. Essentially, and so far as arguably material to the issue of vexatiousness, MP submitted that -

    (i) The requests did not involve repetition but fresh inquiries relating to the NDC.

    (ii) The arrival of five requests on the same day was due to fax problems not a desire to harass the Council.

    (iii) The requests were proportionate to the importance of the issues involved. namely, local democracy and governance.

    (iv) So far from these requests constituting a burden, they provided an opportunity for the Council to learn from past mistakes and improve services.

    (v) His telephone calls did not involve lengthy vacuous political pronouncements nor an excessive or unreasonable waste of staff time.

    (vi) The DN was a biased, lazy and inept document based exclusively on the Council's account of the matter.

    (vii) The true explanation for the Council's invocation of s.14 was that it had something to hide and did not want to be held to account by MP.

<u>The evidence</u>

11. It consisted of the documents in the bundle and the Council's account contained in the letter of 29th. July, 2014. In so far as its comments and factual statements were disputed (e.g., as to the nature of telephone calls) we remind ourselves that neither the author nor any other council officer was cross examined so that our ability to make findings of fact , is, to some extent, limited. MP understandably interspersed his argument with some matters of evidence, which we were able to explore where necessary.

<u>Our reasons</u>

12. As this Decision is written, the judgment of the Court of Appeal in *Dransfield v ICO and Devon County Council [2012] UKUT 440 (AAC)* is pending. However, it is appropriate to proceed, applying the principles enunciated by UKUT, whose decision binds this Tribunal.

13. In assessing the character of these requests the Tribunal is entitled to take account of the history of previous requests, as clearly set out in a schedule by the Council, and of the telephone calls made by MP. All forms of contact with the public authority broadly relating to the subject matter of the request under consideration are potentially relevant to the question whether it is vexatious. However, it is not necessary here to make a finding as to the content or effect of the telephone calls because, in our view, the number, frequency and content of the requests submitted over the five - day period in February, 2014, coupled with the sixteen previous requests dating back to October, 2012 vividly exemplify, without more, what is meant by a vexatious request.

14. Accepting that, in general terms, there is a legitimate interest in the operation of the NDC, the sheer number of requests, having regard to the fact that up to ten questions were contained in a request, is, of itself, powerful evidence of vexatiousness. When the content of the requests is examined that assessment is strongly reinforced; they demand a wide range of often minute detail, much of it largely superfluous to any sensible judgement of the operation of the NDC or the role of the Council.

15. Furthermore, as the examples taken in paragraph 4 demonstrate, detailed questions were posed on statistics and policies dating back fifty years and more, including those relating to predecessor authorities. It is hard to believe that MP supposed that the Council held such information, or, if it did, that it could readily or with any reasonable commitment of time retrieve it. What, moreover, was the value of data from the last days of the government of Sir Alec Douglas - Home or the first months of the first Wilson administration on a judgement of policy or performance in 2014? MP found no convincing answer to this question when posed at the hearing nor to the inquiry as to why he waited till 2014 to ask detailed questions about a 2006 audit. He had likewise no plausible explanation as to why he needed to pose thirty questions in a few days in February, 2014. (That they arrived on

the same day is of no consequence and does not count against him.) The Tribunal formed the impression that, whilst his desire for enlightenment was sincere, his manifest hostility to the Council prompted a readiness to harass it with what he must know were burdensome inquiries demanding a disproportionate commitment of time.

16. MP's stance at the hearing simply reinforced this already firm impression. He missed no opportunity to attack the good faith of the Council, stating expressly, for example, that he believed that its response was designed to conceal corruption. He produced no evidence to support such a serious allegation

17. The Tribunal concludes that these requests, taken by themselves, let alone in the context of the earlier history, were grossly burdensome, disproportionate, that is to say of limited value given the demise of the NDC, obsessive and, to some extent, designed to harass.

18. Contrary to MP's contention, we judge that the Council responded for a long time constructively and sympathetically to his requests and was fully justified in closing its doors when it did.

19. For these reasons we uphold the ICO's decision as set out in the DN.

20. Our Decision is unanimous.

David Farrer Q.C.

Tribunal Judge

29th. March 2015