



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2015/0099

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50557546

Dated: 7 April 2015

Appellant: Mr. Trevor Houlton

Respondent: Information Commissioner

Public authority: Chief Constable of Staffordshire Police

Heard at: Field House, London

Date of hearing: 15 September 2015

Date of decision: 22 September 2015

Date of Promulgation: 29 September 2015

Before

Angus Hamilton

Judge

and

Roger Creedon

and

Mike Jones

Subject matter: s 14 Freedom of Information Act 2000

Cases considered:

Dransfield v IC and Devon County Council [2015] EWCA Civ 454 ('Dransfield')

DECISION OF THE FIRST-TIER TRIBUNAL

By a majority the Tribunal upholds the decision notice dated 7 April 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

- 1 Section 1 (1) of FOIA provides that:

Any person making a request for information to a public authority is entitled:

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

- 2 Section 14 (1) of FOIA provides that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

Request by the Appellant

- 3 The Information Commissioner in his Decision Notice (DN) of 7 April 2015 has correctly set out the background to this appeal and we have adopted that description:
- 4 On 26 June 2014 the complainant wrote to the public authority and requested information concerning property owned or previously owned by

Staffordshire Police in the following terms:

- *Crossfields stood in a large plot on which horses were grazed. Some of this land was sold for housing. Please give the year of sale and price achieved.*
- *Please give the size of the original [Weston Road] site built for the Central Traffic Group.*
- *Please give the size of the additional land later acquired.*

- 5 Staffordshire Police responded on 21 July 2014. The requests were refused, with section 14(2) (repeat requests) cited. That response also, however, made reference to these requests being vexatious, suggesting that section 14(1) was also relied upon.
- 6 The complainant, requested an internal review and Staffordshire Police responded with the outcome of the review on 30 September 2014. The refusal of the requests was upheld. The wording of that response suggested that Staffordshire Police was at that stage citing s 14(1) and refusing the complainant's requests as they were believed to be vexatious.
- 7 On 5 October 2014 the complainant contacted the Commissioner to complain about the refusal of his requests for information.

The Commissioner's Decision

- 8 The chronology of the Commissioner's investigation is set out in the bundle before us. We do not intend to rehearse that chronology here unless it is particularly pertinent. It is significant, in the Tribunal's view, to note that during the investigation Staffordshire Police was asked to clarify whether it was relying on s 14(1) (vexatious requests) or s 14(2) (repeated requests). Staffordshire Police clarified that it was relying only on s 14(1) – vexatious requests. This aspect of the investigation is referred to later in this judgement.

- 9 The Commissioner served a Decision Notice dated 7 April 2015 in relation to this matter in accordance with s. 50 of the Act. The Commissioner found that section 14(1) of the Act was engaged and that that the public authority dealt with the request for information in accordance with the Act.

The Appeal to the Tribunal

- 10 On 20 April 2015 the Appellant submitted an appeal to the Tribunal (IRT). The Notice of Appeal challenged the Commissioner's Decision Notice on grounds that the Commissioner erred in finding that section 14(1) of the Act was engaged. The Notice of Appeal set out several other complaints about the Commissioner's handling of the investigation and also set out, at length, the history of the Appellant's 'various disputes' with

Staffordshire Police – an organization he used to work for as a police officer.

11 The Commissioner in his response to the appeal condensed the Appellant's lengthy grounds of appeal into 4 principal, relevant, points:

- *that the Commissioner accepted the position of Staffordshire police without consideration or investigation of the appellant's position;*
- *that Staffordshire police are deliberately withholding the requested information and provided misleading information in response to earlier requests to suggest that the headquarters were moved to a larger site while the appellant contends they were moved to a smaller site;*
- *that there is a significant interest on the appellant's part, and the part of local people, in the move of the headquarters and the associated sale of property as evidenced by press coverage;*
- *that his requests would be answered quickly and do not require a lot of research.*

The Questions for the Tribunal

- 12 The Tribunal judged that the sole question for them was to consider whether the request was, on the balance of probabilities, 'vexatious' within the meaning of s14(1) FOIA.

Evidence & Submissions

- 13 With the agreement of the parties this matter was dealt with by way of a 'paper' hearing. The public authority was not joined as a party to the proceedings and made no formal representations to the Tribunal.
- 14 On the issue of the meaning of 'vexatious' the Commissioner relied, in his response to the appeal, upon *Dransfield* in which the Court of Appeal held that there is no comprehensive and exhaustive definition of what is vexatious the purpose of section 14(1), but provided the following guidance as to the provision:

I consider that the emphasis should be on an objective standard and that the starting point is that the vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. Parliament has chosen a strong word which therefore means

that the hurdle of satisfying it is a high one and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the request, if the request was aimed at the disclosure of important information which ought to be made publicly available.

15 In his Decision Notice the Commissioner did not refer to *Dransfield* but instead made reference to his own guidance on the meaning of 'vexatious':

a) The Commissioner's Guidance properly reflects the meaning of section 14(1), when it describes the key question as being "whether the request is likely to cause unjustified distress, disruption or irritation".

b) In order to assist public authorities in answering that key question, the Commissioner's Guidance identifies five relevant

considerations:

- *Could the request fairly be seen as obsessive?*
- *Is the request harassing the authority or distressing to staff?*
- *Would complying with the request impose a significant burden in terms of expense and distraction?*
- *Is the request designed to cause disruption or annoyance?*
- *Does the request lack any serious purpose or value?*

16 The Commissioner submitted that, applying *Dransfield*, vexatiousness can be inferred from the appellant's motive in this case. The appellant's primary motive, the Commissioner contended, in making the request was to pressure Staffordshire police and relates to his dissatisfaction as to the issue of his pension:

- *In his letter 16th of March 2014 the appellant addressed first the pension issue before stating that 'if you wish to play silly games then I will ask questions under the freedom of information act'. After setting out his questions regarding the headquarters site he stated 'as you will now realise that sending unhelpful letters is*

perhaps not the best way forward. I have better things to do with my time than discussing £33.20 a week but if you all want to carry on like this then I am game for it'.

- *In his letter of 4 June 2014 after asking further questions relating to the headquarters sites, the appellant stated 'please feel free to tell your Chief Constable and Crime Commissioner the questions posed. They should both be well aware of what is to come'*

17 The Commissioner accepted that there was a public interest in the wider issue as to the sale of the police headquarters and that the appellant himself had some interest in this wider issue. However, the Commissioner contended, that the interest in the wider issue was not in and of itself sufficient to conclude that the appellant's requests were not vexatious.

18 The Commissioner noted that the public authority responded to the requests in the appellant's letter of 16 March but also noted the several supplemental questions raised by the appellant in his letter of 30 August 2014 to Staffordshire Police:

- *When figures were given for the size of the Weeping Cross site, did they include Crossfields?*
- *Please tell me the purchase price of the two large blocks at Weston Road or if they are rented the annual rent?*

- *Where are the police dogs trained and any additional cost involved?*
- *Is a qualified solicitor employed anywhere within Staffordshire police?*
- *If you do not employ one where do you go to receive civil law advice?*
- *If as I suspect, you go to the West Midlands police how long do they take to reply on average?*

19 The Commissioner took the view that any public interest in these further matters of detail was limited and that the further information sought was not '*important information which ought to be made publicly available*' (quoting *Dransfield*) such that the appellant's motive in making the request should be disregarded.

20 The Commissioner further contended that, even if the Tribunal considered that there was significant public interest in relation to the further information sought, the appellant's requests were nonetheless vexatious in light of his clear primary purpose in making the request, the likelihood of further requests and the burden that this would place on Staffordshire police.

- 21 The Commissioner did not dispute that answering the appellant's requests would not take a great deal of time but the Commissioner considered this to be an irrelevant point in the context of the history of the requests made by the appellant and the likelihood of the appellant continuing to make further requests for information. In short, the Tribunal should be looking at the burden imposed by the totality of requests and likely further requests rather than just the time that would be taken to answer the particular request.
- 22 The Commissioner concluded that, taking into account the appellant's motive in making the requests, the nature the information sought, and the likely burden providing the information would place on Staffordshire police that the appellant's requests were clearly vexatious. The Commissioner also submitted that the appellant's grounds of appeal did not really address these central points.
- 23 In his reply the appellant submitted that there was significant public interest in the issue of the move of Staffordshire police's HQ and the waste of money this may have caused. He stated that it was a 'massive' topic in the newspapers. The appellant disputed that his questions indicated an interest in 'arcane detail' as alleged by the Commissioner.
- 24 The appellant also disputed that dealing with the totality of his questions would impose a significant burden on Staffordshire police.

25 The appellant again submitted that the information that he was after was important information that ought to be made publically available as it demonstrated poor decision making leading to avoidable and significant financial losses. He was effectively obliged to ask supplemental questions after Staffordshire police had answered previous FOIA requests because, in his view, their answers were evasive and less than candid and sought to conceal the poor decision-making.

Conclusion

26 The Tribunal first considered its approach towards the term 'vexatious'. All the members of the Tribunal embraced the guidance from *Dransfield* at paragraph 14 above.

27 The majority took the view that the Commissioner's analysis and application of *Dransfield* to the facts of the present case were correct and that on the balance of probabilities the appellant's request for information was vexatious.

28 The majority were particularly influenced by the appellant's letter of 16 March 2014 (paragraph 16 above) and his indication that he was going to start submitting apparently unrelated FOIA requests as a direct response to what he considered to be inadequate responses to questions about his pension. This, the majority felt, established the appellant's 'vengeful motive'. This factor coupled with the persistence of the appellant's FOIA requests and the lack of evidence that he was doing anything with the

responses from Staffordshire police to make them 'publically available' or to bring to wider public notice the issues which he claimed to be of concern to him led the majority to conclude that on the balance of probabilities that the appellant's relevant FOIA request was vexatious.

- 29 The minority considered that there was a more benevolent interpretation of the appellant's actions - that having been a police officer for 30 years he had seen a lot of developments that he regarded as highly questionable and which he considered should be subject to public scrutiny and discussion. The appellant had also given an example, which was unchallenged by any party, where he had been involved in a campaign to adjust the pension payment date for pensioned ex-police officers. He had achieved this by comparing the system for paying pensioned police officers with the way in which senior police officers were paid. The minority felt that there was not the complete disjunction between the issue of the appellant's pension and questions about the move of Staffordshire police HQ (and other issues raised by the appellant) that the Commissioner and the majority considered there was. It was possible, on balance, that this was another 'comparison' campaign whereby the appellant wished to contrast the alleged large wastage of money involved in the move of Staffordshire police's HQ (and other questionable decisions) with the apparent 'penny-pinching' over his police pension. The minority also considered that, on balance, it was possible that the appellant, with the knowledge he had gathered as a serving police officer, was in a position to quite legitimately question and challenge answers given by Staffordshire police by submitting supplemental FOIA requests.

The minority did however consider that the appellant did himself no favours and was largely responsible for any finding of vexatiousness by the manner in which he expressed himself in correspondence with Staffordshire police.

- 30 Finally, the Tribunal as a whole was concerned by the manner in which the Commissioner's Case Officer appeared to provide assistance to Staffordshire police to 'firm up' their case and to clarify the basis upon which they were refusing the appellant's request for information. This is set out in the telephone attendance note of 18 December 2014 (p126 bundle). In the Tribunal's view a Case Officer should be entirely impartial during his investigation and should never place himself in the position of providing advice to a public authority. A large public authority like Staffordshire police should have sufficient internal resources to provide such advice.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 22 September 2015