



Neutral Citation Number

IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2015/0139

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50565874

Dated: 8 June 2015

Appellant: Mr. James Turner

Respondent: Information Commissioner

Public authority: Sunderland City Council

Date of hearing: 9 December 2015

Date of decision: 2 February 2016

Before

Angus Hamilton

Judge

and

Rosalind Tatam

and

Nigel Watson

Subject matter: s 14(1) Freedom of Information Act 2000

Cases considered:

Dransfield v IC and Devon County Council [2015] EWCA Civ 454 ('Dransfield')
Duke v IC and University of Salford (EA/2011/0060)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal for the reasons set out below.

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 8 June 2015 has correctly set out the background to this appeal and we have adopted that description:
- 4 On 9 April 2014 the appellant wrote to the public authority (using the WhatDoTheyKnow website) and requested information in the following

terms:

'Sunderland Council are claiming Cllr Paul Watson and Mr Ian Fitzakerly have met on only one occasion. Please provide all correspondence/minutes of meeting/documents relating to Sunderland Council's involvement in the campaign to relocated [sic] Sailing Vessel City of Adelaide to the Sunderland. Chief Executive Mr David Smith and Council Leader Mr Paul Watson along with Mr Ian Fitzakerly and son Mr Craig Fitzakerly were consultees for the DTZ City of Adelaide final report 2.9.10 I have provided a link to the report below ...'

- 5 The public authority initially responded on 9 May 2014 asking for the appellant's name and address. The appellant initially refused to provide these details and contacted the Commissioner. He was advised by the Commissioner that the public authority was entitled to request this information before it processed his request. The appellant provided the information to the public authority on 12 September 2014.

- 6 The public authority's subsequent response dated 5 November 2014 stated:

We can now supply a series of notes (attached) which were prepared in relation to various meetings about proposals for the Adelaide. None of these notes relates to the meeting referred to in your request. This was an informal meeting that took place as long ago as 2010 where the gentleman referred to attended as one of three representatives of a group

campaigning for the return of the clipper ship City of Adelaide to the River Wear. Minutes are not prepared for this kind of informal meeting.

As the people attending these meetings (both members of the public and junior staff) would not have a reasonable expectation that their names would be released, these details have been redacted from the documents. The description of a specialist construction material has also been redacted to protect a business's intellectual property rights.

7 The appellant contacted the public authority on 18th November 2014 to request an internal review. The public authority responded on 9 December 2014. The public authority explained that although the appellant had been provided with some information in response to his request this was simply in an attempt to provide some assistance to him. The internal review explained that the public authority's response of 5 November 2014 was actually intended as a refusal of his request albeit that the grounds of this refusal were not clear. The public authority stated that it considered the request to be vexatious under section 14(1) of FOIA. Nevertheless, the the public authority suggested that its relevant file about the Adelaide did not contain any documentation which referred to the meeting between council leader Paul Watson and Mr Ian Fitzakerly which appeared to be the information the appellant was most concerned with obtaining.

8 The appellant complained to the Commissioner on 22 December 2014

The Commissioner's Decision

- 9 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.

- 10 The Commissioner served a Decision Notice dated 8 June 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 Commissioner's decision was based upon a finding (which the Commissioner expressed with some reservation) that the appellant was acting in conjunction with others in an organized campaign the intention of which was to discredit the public authority's and certain individuals' (principally the council leader and a Mr Ian Fitzakerly) credibility in respect of what was known as the Marine Walk development and/or to reopen associated issues that had been dealt with by the public authority previously.

The Appeal to the Tribunal

- 11 On 30 June 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 appellant in particular objected to being 'classed as part of a group'. The appellant's full written Grounds of Appeal state 'My interest is mainly in the Sunderland Maritime Heritage yet I have been classed as part of a group'

12 The Commissioner in his very lengthy response to the appeal submitted that the Grounds of Appeal disclosed no basis for overturning the DN.

13 The appellant in his submissions to the Tribunal made reference to his interest in the sought information being stimulated by a campaign conducted (apparently against the council leader – the appellant did not provide clear details) by a Mr Lowther. The appellant also made reference to an alleged incident involving the council leader which occurred 'many years' ago and in which a man was said to have been killed. The appellant also expressed concerns about the relationship between the Fitzakerly family and the public authority. The appellant expressed the view that the Commissioner had been persuaded to treat his request as vexatious.

The Questions for the Tribunal

14 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. The Tribunal accepted that if on the balance

of probabilities it was satisfied that the appellant was not acting in conjunction with others as part of a co-ordinated campaign then this would substantially undermine the assessment of the request as being vexatious.

Evidence & Submissions

- 15 With the agreement of the parties this matter was dealt with by way of a 'paper' hearing. The Tribunal considered the Decision Notice and the Response to Appeal from the Commissioner and the Grounds of Appeal and further submissions from the appellant together with all the supporting documentation. The public authority was not joined as a party to the proceedings and made no formal representations to the Tribunal.

- 16 On the issue of the meaning of 'vexatious' the Commissioner relied, in his response to the appeal, upon *Dransfield* (both the Upper Tribunal and Court of Appeal decisions) 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.'

- 17 The Commissioner submitted that *'if a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted then it may take this into account when determining whether any of this requests are vexatious'*. [p5 Response to Appeal, relying on *Duke v IC and University of Salford* (EA/2011/0060)]
- 18 In his Decision Notice Commissioner expressed some reservations concerning the public authority's argument that the appellant could be

said to be acting in concert with others. However, the Commissioner accepted that *'it was naive, given that the appellant's request emphasised the alleged relationship between the council leader and Mr Ian Fitzakerly, to ignore the common theme between this request and the previous ones in relation to Marine Walk'*. Furthermore, the Commissioner noted that the *'appellant had himself referenced the previous requests concerning Marine Walk and his allegation regarding 'thugs' and the manner in which it was phrased echoed comments made by the individual identified by the public authority as the lead campaigner.'* [p8 Response to Appeal]

- 19 The Commissioner therefore accepted that there was *'a commonality between the request here and the previous requests'* that the public authority had received. The Commissioner found that, *'given the broader context of the request, there were clearly links between this request and the preceding requests and correspondence.'* [p8 Response to Appeal]. These links were just sufficient to persuade him that the public authority could conclude that this request was evidence of a campaign and/or an attempt to reopen associated issues that have been dealt with by the public authority previously.
- 20 The Commissioner acknowledged that disclosure of information about the City of Adelaide – as opposed to disclosure of information about Marine Walk – ostensibly gave the request a more legitimate purpose and value. However, he was persuaded *that the request was also (and arguably primarily) intended to reopen or re-examine the alleged links between the*

two individuals named in the request. [p8 Response to Appeal].

Consequently, the Commissioner was persuaded that this particular request was vexatious.

- 21 The appellant's submissions have already been summarised at paragraph 13 above.

Conclusion

- 22 The Tribunal considered that the Commissioner had conducted his investigation in a thorough fair and balanced manner. The Tribunal could follow his assessment of the evidence and his conclusions that the appellant's request was part of a campaign (which were set out in both his Decision Notice and his Response to Appeal) with ease.
- 23 Conversely the Tribunal felt that Mr Turner's Grounds of Appeal failed to set out any coherent response to the Commissioner's analysis beyond the assertion that it was not reasonable to treat him as part of a group.
- 24 The Tribunal was also not assisted in their consideration of the appellant's case by his further submissions dated 15 August 2015. Indeed, the Tribunal considered that several of Mr Turner's comments in his submissions actually lent support to the Commissioner's analysis. For example: Mr Turner repeated the generalised assertion that the council leader and the council have a lot of questions to answer; he repeated the allegation about the council leader being involved in a serious incident; he

repeated the suggestion that the Fitzakerly family have in some way behaved inappropriately and he confirmed that he has been influenced in seeking information by third parties one of whom has been identified by the public authority as a 'ringleader' (Mr Lowther). The Tribunal noted that Mr Turner failed to deny explicitly that he was acting in conjunction with others.

26 Consequently, the Tribunal concluded on the balance of probabilities that the appellant's request for information was 'vexatious' within the meaning of s14(1) FOIA. This decision is unanimous.

27 The Tribunal asks for it to be noted that they did not consider the initial response from the public authority of 5 November 2014 to be very helpful or coherent, in light of the public authority's subsequent assertions— one member felt that the public authority should have relied on s.14 FOIA immediately rather than engaging in correspondence and then seeking to rely on s.14 and one felt that the public authority simply should have been clear that they didn't hold the information that the appellant was requesting.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 2 February 2016