



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

**Appeal No: EA/2016/0028**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50601806  
Dated: 7 January 2016**

**Appellant: Gerald McNally**

**Respondent: The Information Commissioner**

**Heard on the papers: Chester Civil Justice Centre**

**Date of Hearing: 21 June 2016**

**Before**

**Chris Hughes**

**Judge**

**and**

**Malcolm Clarke and Suzanne Cosgrave**

**Tribunal Members**

**Date of Decision: 23 July 2016**

**Date Promulgated: 25 July 2016**

**Subject matter:**

Freedom of Information Act 2000

**Cases:**

Information Commissioner -v- Devon County Council and Dransfield

Upper Tribunal Case No. GIA/3037/2011

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 7 January 2016.

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

**Appeal No: EA/2016/0028**

**SUBSTITUTED DECISION NOTICE**

**Dated: 23 July 2016**

**Public authority: Plymouth City Council**

Address of Public authority: Ballard House, West Hoe Road, Plymouth, PL1 3BJ

**Name of Complainant: Gerald McNally**

**The Substituted Decision**

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 7 January 2016.

**Action Required**

Plymouth County Council should respond to the request under the provisions of the Act

Dated this 23<sup>rd</sup> day of July 2016

Judge Hughes

[Signed on original]

## **REASONS FOR DECISION**

### **Introduction**

1. The Appellant in these proceedings, Mr McNally, is concerned that a major firework competition held annually in Plymouth, which attracts very large audiences, has not been properly conducted. The competition is sponsored by Plymouth City Council (“the Council”) and organised by The Events Services Association (“TESA”). Following some concerns about the 2013 competition Mr McNally sought and received some information from the Council. There was some confusion over the scoring of the 2014 event due to the last minute change to the order of the competitors’ participation. Mr McNally requested and obtained the score sheets for 2014 (the PCC held them as they had in that year observed the scoring exercise). He states that these indicate that the 2014 prize was incorrectly awarded to the wrong competitor. He asked for the raw scores for the 2013 competition. The Council advised that they did not hold them, and that TESA, who did, had declined to release them. Following an investigation the Respondent in these proceedings, the Information Commissioner (“the ICO”), in a decision notice dated 19 May 2015, concluded that this information was held by TESA on its own account and not held by the Council and therefore could not be supplied by the Council under FOIA (FS50574178).
2. Following this decision Mr McNally on 26 August wrote to the Council seeking further information:-  
  
*“I am requesting the full email correspondence between Plymouth City Council and the Events Services Association (TESA) in regards to the British Fireworks Competition and also any email correspondence between Plymouth City Council and the British Fireworks Pyrotechnicists Association (BPA) with regard to the British Fireworks Competition from its inception to the present.”*
3. The Council responded stating that to do this would exceed the costs threshold provided for by s12 FOIA and upheld this position on internal review. Mr McNally then reformulated his request:-  
  
*“...To simplify matters I will limit this request to the correspondence from the year 2012 through to 2015 (details as per original request). If you consider this is still too*

*burdensome in a single request please let me know as I could file separate requests for each period you and your colleagues feel you could comfortably handle within the time constraint...if that would help.”*

4. Having considered this request the Council concluded that the request was vexatious and maintained that position on internal review. Mr McNally complained to the Respondent in these proceedings, the Information Commissioner (“ICO”).
5. The ICO considered the request in the round taking account of all the circumstances and following the approach set out in *Dransfield*. He considered the background and his previous involvement in the issues between Mr McNally and PCC (DN paragraphs 18-19), he noted PCCs view that complying with the request would involve further resources in a matter of no value to Mr McNally, the PCC or the public, PCC had no evidence to discredit the judging process and the approach was scattergun and unreasonably persistent. He considered proportionality and noted the purpose for the request set out by Mr McNally in his request for an internal review:-

*“... this latest request is asking for information not covered by the previous requests and is required for an investigation into alleged malpractice regarding the British Fireworks competition judging and subsequent award of monies as prizes of which the Council appear to finance in it's [sic] entirety”.*

6. The ICO considered this was fishing ie a broad request without any clear idea what he was looking for. He note the efforts PCC had put into resolving Mr McNally’s complaint and the introduction of a Council officer into the scoring process and the publication of scores online. He noted that PCC:- *“...has instigated discussions between TESA and all interested parties to discuss any issues regarding the BFC – which the complainant did not choose to attend.”* He felt that Mr McNally’s response to the request to focus his information search in which he stated that he would *“file separate requests for each period you and your colleagues feel you can comfortably handle within the time constraint”* indicated that if PCC had agreed to Mr McNally’s approach it would have had to deal with not one large request but several small ones.
7. The ICO noted that Mr McNally was unhappy with the way TESA had scored competitors, PCC had gone to lengths to address his concerns and had no evidence of impropriety. He stated *“FOIA is not a tool to be used in dealing with complaints about such matters”*. He concluded that it was an attempt to reopen a matter which

had been subject to much public scrutiny and it was time to say: \_ “*enough is enough*”.

8. In his appeal Mr McNally emphasised that his concern had been all along about the 2013 scoresheets. He had been told that PCC in January 2014 that it did not have them as they were held by TESA and TESA had not agreed to provide them. He stated (bundle page 14):-

*“TESA have been particularly obstructive with the 2013 data and it appears as if PCC are now protecting TESA because they realise how significant and potentially damaging the information would be to the event.*

*It is because of this anomaly that I requested the email correspondence between TESA and PCC to ascertain what steps PCC had taken to obtain the requested documents and also TESA’s response to those requests, with hindsight I should have been more specific in the request but I was trying to avoid a situation where TESA and PCC would be in a position to redact the information I was interested in on some spurious grounds.”*

9. He emphasised the significance of the public money involved as prize money. There had been a general invitation to discuss the issue addressed to the whole industry not to him personally; his view was that PCC had been concerned with what he was as the generally poor reputation of the competition in the industry rather than to address his concerns.
10. The ICO in his response maintained the arguments in the decision notice. He noted that PCC estimated that they had spent in excess of 55 hours in dealing with him. He noted that the request as now put forward was very different from that originally made – which had been for all email correspondence. If he were investigating malpractice regarding the judging and awarding of prizes, then his request for all correspondence was vexatious since he did not require all the correspondence, he could not now refine his request which was not what was requested or what the PCC and ICO had considered. It was not possible to refine the request during the appeal. The decision notice was based on an objective reading of the request and did not contain an error of law.
11. The ICO argued that there was unreasonable persistence in the pursuit of his concerns in the absence of evidence of wrongdoing. He noted that the disclosure of the

material requested was not necessary for the resolution of Mr McNally's stated concerns about the 2013 and 2014 results. Mr McNally had not challenged the time estimates concerning the work PCC had put into meeting his concerns and while disclosure of the emails would provide greater transparency there was no evidence of wrongdoing and PCC had already acted to address his concerns. Any work to address this request would be disproportionate expenditure of time and accordingly the request was vexatious.

### Consideration

12. Mr McNally is concerned that a major public event, enjoyed by many tens of thousands of people each year and which is a significant competition for the fireworks industry has been poorly administered. He claims that as a result of these errors significant sums of public money – the prize put up by PCC have gone to the wrong competitors. He is aware that PCC does not hold raw data on the scoring of the competition but has asked for all emails between the organisers and PCC between 2012-2015.
13. The tribunal has some sympathy with the criticism that the request was broader than what Mr McNally now states he wanted. However the request was originally for all email correspondence (without time limit), this was in correspondence limited to a 4 year window, 2012 -2015, with an acknowledgement that if this was too burdensome narrow time periods could be considered – although while this “salami-slicing” still indicated a desire to obtain all the email traffic from 2012-2015 it did show a willingness to co-operate with PCC rather than a confrontational attitude; it showed Mr McNally's lack of appreciation of the working of FOIA. If there was concern on the part of PCC that the request was unduly burdensome or unreasonable (in the light of the history of contact) it was open to PCC to respond to Mr McNally's limitation of his request by seeking further clarification of what he wanted and seeking further limitation to what was proportionate and of potential value to Mr McNally.
14. The tribunal was satisfied that there was a public interest in the proper administration of a significant public event and competition; given the valid concerns that have been raised and the evidence provided of the confusion in the scoring in 2014 it was not unreasonable for Mr.McNally to seek the scoring sheets for 2013, given that he had seen them for 2014. It is not surprising that TESA's decision to decline this request

should confirm concerns and suspicions in his mind about what happened in 2013.

Against this background, it was therefore not unreasonable to seek disclosure of material passing between the PCC and TESA, the organiser of the competition, in the period relevant to those concerns. In our view this was not an unstructured 'fishing' exercise but had focus and a serious purpose.

15. The tribunal is therefore satisfied that the ICO erred in his analysis of the underlying facts and his decision that the request was vexatious is therefore set aside.

16. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 23 July 2016