



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL UNDER
SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

EA/2016/0051

BETWEEN:

ROBERT LATIMER

Appellant

-and-

INFORMATION COMMISSIONER

Respondent

Before

**Brian Kennedy QC
Alison Lowton
Marion Saunders**

Date of Hearing: 30 June 2016, at Field House, London.

DECISION

Subject matter: Application under the Freedom of Information Act 2000 ("FOIA") and of section 12(4)(b) the Environmental Information Regulations 2004

The Tribunal dismisses the appeal.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) as modified by r18 of the Environmental Information Regulations 2004 (“EIR”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 11 February 2016 (reference FS50598562), which is a matter of public record.
2. In the DN the Commissioner held that the Public Authority, in this case Northumbrian Water (“NW”), had correctly applied regulation 12(4)(b) to parts a-d and f of the request subject matter of this appeal.
3. The Tribunal is provided with a bundle of documents referred to herein as the Open Bundle, (“OB1”) pages 1 – 621 and an additional bundle (“OB2”) containing the Appellants reply to the Commissioners’ response with further attachments and e-mails from the appellant.

Factual Background to this Appeal:

4. Full details of the background to this appeal, Mr Latimer’s request for information and the Commissioner’s decision are set out in the Decision Notice and not repeated here, other than to state that, in brief, the appeal concerns the question of whether Mr Latimer’s requests for information relating to the sewerage treatment system at Whitburn were manifestly unreasonable.

5. **Chronology:**

1992 Appellant's first requests for information from Northumbrian Water ("NW") re Whitburn System - 282 contacts from Appellant, excluding solicitors' correspondence

2001 Public Inquiry re frequency of spills at Whitburn, at which Appellant was present and received information in Inquiry Bundle from NW

14 June 2015 Present request for information

9 July 2015 NW refuses request under r12(4)(b) and (d)

Appellant requests internal review

26 August 2015 NW refuses request under r12(4)(b)

24 Sept 2015 Appellant complains to Commissioner

6. **Relevant Legislation:**

Exceptions to the duty to disclose environmental information

12.(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

7. Commissioner's Decision Notice:

Four of the Appellant's prior requests to various agencies relating to the Whitburn system had come before the Commissioner, all of which were unsuccessful and r12(4)(b) had been applied in relation to two. NW submits that this demonstrates the Appellant's unreasonable persistence and overlapping requests even when the Commissioner had previously noted that the issue had been discussed at length and all relevant information already provided in a Public Inquiry and in an investigation by the Parliamentary Ombudsman.

The Commissioner agrees that the Appellant is being unreasonably persistent, vexatious and obsessive in his pursuit of information that is undoubtedly of importance to him but whose objective importance has been diminished by the fact that they have already substantively been answered. The Commissioner considers that the Appellant is being unreasonable in trying to reopen the discussion. The public interest in disclosure had already been met by a Public Inquiry in 2001; lasting 11 days ("the Public Inquiry") regarding the frequency of spills from Whitburn storage and pumping systems ("the Whitburn system"), prompted by the concerns being raised by the Appellant. It seems the Appellant attended the Public Inquiry, and that a significant amount of information was provided to those attending the Public Inquiry in the form of an Inquiry bundle (a copy of which was provided to the Commissioner). The Commissioner

established for NW considered that the meetings, telephone calls, legal action and full Public Inquiry over the last 23 years demonstrated that everything possible had been done to answer the Appellants concerns and that he had been supplied with a significant amount of information relating to the Whitburn System. NW had explained to the Commissioner that the requested at a – f of the request is contained in the Inquiry bundle and there is no further interest in imposing an unreasonable burden on NW.

8. **Notice of Appeal 26 February 2016:**

The Commissioner erred in concluding that the information sought had previously been provided to him. The Appellant submits that information as to the 'spill rate' figures could not be contained in the Inquiry bundle, as these figures differed from those identified in the course of the Inquiry, and appear to have been produced after the Inquiry took place. His repeated contacts with various authorities represent persistence in the face of authorities wrongly relying on provisions of FOIA and/or the EIR to withhold information, and there is considerable public interest in the provision of information regarding the discrepancy between the figures.

9. **Commissioner Response:**

The Appellant contends that certain figures regarding spillage have differed between those before the 2001 Inquiry and his correspondence with the Environment Agency. However, as NW has already provided the Appellant with all the information it holds, this request, according to the Commissioner, is "futile". The core issue of spillage and discharge at Whitburn, he argues, has already been the subject of extensive public investigation, and the issue of the discrepancy in the figures has already been the subject of other information requests by the Appellant. The Commissioner has previously noted the

Appellant's "unreasonably suspicious view of those with whom he was dealing" and concludes that there is nothing to be gained by asking NW to embark on an expensive endeavour to retrieve the information when it has already been provided, or does not exist.

10. **Further Submissions by the Appellant: 3 May 2016:**

The Appellant contends that he has not received the information, as it could not have been provided in the 2001 bundle if the European Court was provided with a different figure, as used by the Advocate General in his Opinion in 2012. The Appellant believes that the AG was given incorrect calculations and so the present request is designed to see what figures NW are currently relying upon. He disputes that NW does not hold the information, pointing to a 'missing page' in a DEFRA report in 2006, which is no longer missing, and a letter from the European Commission as proof.

11. The Appellant questions the integrity of the ICO and notes that NW must be "laughing all the way to the bank", and wishes to know which quoted flow rate is the correct one.
12. This Tribunal have noted the Appellant's grievances but are of the view that it is not within our ambit or the scope of this appeal to investigate these concerns. The difficulty for the Appellant is that he does not demonstrate an error on the part of the Commissioner in his DN, which is the subject matter of this appeal.
13. Accordingly on the facts now before us and in the circumstances of this appeal, particularly with the history of the Public Inquiry and of the nature and extent of previous requests and inquiries by the appellant to the public authority in question, and other public authorities for the same or similar

information, we can see no grounds for finding that the Commissioner erred in his DN or in the reasons for his finding that regulation 12(4)(b) EIR was applied correctly by NW.

14. Accordingly we dismiss the appeal.

Brian Kennedy QC

30th August 2016.