



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

Appeal No: EA/2016/0284

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50624854
Dated: 8 November 2016

Appellant: Jeffrey Levy

Respondents: The Information Commissioner

Determined without a hearing

Before
HH Judge Shanks
and
Pieter de Waal and Henry Fitzhugh

Date of decision: 2 August 2017

Subject matter:

Environmental Information Regulations 2014 (EIR)
Regulation 12(4)(b) (manifestly unreasonable requests)

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

Factual background

1. The Appellant, Mr Levy, lives close to Abbots Gardens in the London Borough of Barnet.
2. On 28 November 2015 Mr Levy noticed that the foot pavement in Abbots Gardens was being replaced. He asked the Borough to inform him why the work was necessary, who was carrying it out, who was paying for it and the total contracted cost. The Borough replied on 2 December 2015 informing him that the work was part of their responsibility to maintain the highway and formed part of a £50 million scheme, that the contractor was Conway/Aecom Ltd, that the Borough was paying for it and that the cost estimate was £187,110. The letter also referred him to the Borough's data portal if he wanted further information.
3. On the same day, 2 December 2015, Mr Levy wrote back stating, in underlined text, his opinion that "... there was no justification whatsoever for [the Borough] sanctioning replacement of the entire footway in Abbots Gardens." He asked to be informed who approved the work and to be provided with a copy of the relevant technical report. On 8 December 2015 the Borough responded through Seral Mustapha by telling him the Environment Committee had approved the works in July 2015 and that the relevant technical report could be obtained from the council website.
4. The same day Mr Levy wrote back to Mr Mustapha stating that he had looked at a document called "Planned road and pavements improvement for 2015/16" and could

find nothing relevant to Abbots Gdns and asking for a copy of the relevant report. He chased this up with an email on 10 December 2015. On 11 December 2015 Mr Mustapha sent him a link to the relevant agenda and minutes of the Environment Committee.

5. On 14 December 2015 Mr Levy wrote again to Mr Mustapha referring to cost effective treatments and repeating his opinion about the work to Abbots Gdns and asking who carried out the detailed assessment on the pavement surfacing and for a copy of their report. He chased up this request on 14, 18 and 23 December 2015 and 5, 11 and 12 January 2106, threatening in the latter three emails to initiate a complaint without further reference to Mr Mustapha if he had not heard back by 14 January 2016.
6. On 13 January 2016 an Information Management Officer from the Borough wrote to Mr Levy informing him about the specific complaints procedure in relation to information requests and stating that the normal time for compliance with his request of 14 December 2015 would, in view of the holiday period, expire on 15 January 2016.
7. On 14 January 2016 the Borough through Jon Hill wrote to Mr Levy enclosing a footway inspection report by Paul Green for Abbots Gdns dated 21 January 2015. The report was a pro forma and included various scores.
8. On 15 January 2016 Mr Levy wrote to Mr Hill asking for the scoring system to be explained and asking how the comments in the report justified the expenditure under the “2015/6 Network Recovery Plan”. He chased up this request in emails marked High importance dated 22 and 26 January 2016, the latter stating that in his view the 20 working day time limit related back to an earlier request because the current one flowed from it and that he would write to the FOI officer without further reference back to Mr Hill if the request had not been dealt with by then. The Highways Service responded in standard form on 27 January 2106 stating that he should get a reply

within 10 working days and reminding him of the high volume of business dealt with by the Borough's Highways Service.

9. Mr Levy chased up the Highways Service on 5 February 2016 and was told that the due date for their response was 9 February; on 9 February he wrote saying that unless he received a substantive request by 15.00 the following day he would immediately request an internal review. On 10 February 2016 at 15.45 in an email again marked important he requested an internal review because his request of 15 January 2016 had not been answered by 15.00. In an email dated 11 February 2016 the Borough informed him that a review would be carried out within 20 working days. On 29 February 2016 he wrote confirming his understanding that the review would be completed by 9 March 2016 and on 8 March he sent another reminder.
10. Apparently co-incidentally on 8 March 2016 Mr Levy also received an email from the Highways Service containing fairly bland and general information about how the Borough decides on works to highways; the reference number related to his request of 15 January 2016 but did not expressly refer to the contents of his email of that date.
11. Mr Levy responded to that email on the same day (8 March 2016) within six hours with a critique of the response, alleging a deliberate policy of obfuscation and delay stating that he was making "one FINAL request" for [1] the information requested on 15 January and also for [2] copies of all materials used as the basis for the recommendation to spend money on a new footway in Abbots Gdns and [3] copies of photos taken of the footway before the works commenced. That request was acknowledged on 9 March 2016 and the usual 20 working day response time was mentioned. Mr Levy responded by saying he was not prepared to accept the usual 20 working day response time (which would be to 8 April 2016) but required an answer by 22 March or he would immediately refer the matter to the Information Commissioner.

12. Also on 9 March 2016 the outcome of the internal review was sent to Mr Levy. Nothing of substance was decided by the review but the reviewer referred to the history and drew his attention to regulation 12(4)(b) of EIR.
13. In response to an email dated 10 March 2016 Mr Levy refrained from sending further reminders until 7 April 2016, when he wrote to say that the absolute deadline was the following day.
14. On 8 April 2016 the Borough wrote extending the time for compliance with the request to 40 working days under regulation 7 of EIR. Mr Levy responded to this within the hour. He stated that he could not see that his request was complex or voluminous and said that “in any well-run organisation all the information [he had requested] should be readily available” and ended by saying that he intended to refer the matter to the Information Commissioner without delay. He chased this email up on 12 and 14 April 2016, stating that he had submitted a complaint to the Commissioner.
15. On 27 April 2016 the Borough sent Mr Levy an answer to the request of 8 March 2016, including a set of photographs of the footway in Abbots Gdns.

The request in question, decision notice and appeal

16. On the following day, 28 April 2016, Mr Levy responded with a series of comments and observations on the scoring system and the decision in relation to Abbots Gdns and a further series of five questions about [1] the scoring system used by Mr Green [2] what cost/benefit calculations were undertaken in relation to Abbots Gdns [3] whether other results were obtained in relation to Abbots Gdns [4] the employment status of Mr Green [5] whether there was anything else on the Borough website relating to the Abbots Gdns footway replacement.

17. The Borough responded to this request by stating that they would not supply the requested information in reliance on the exception at regulation 12(4)(b) of the EIR since the request was “manifestly unreasonable”. Mr Levy complained to the Information Commissioner under section 50 of FOIA and she upheld the Borough’s position in a decision notice dated 8 November 2016.
18. Mr Levy now appeals against the Commissioner’s decision notice to this Tribunal. The parties consented to the appeal being determined without a hearing and we are satisfied we can properly deal with it in that way. We have carried out a full review of the facts and considered the representations of the parties including Mr Levy’s final submissions dated 3 April 2017.

Our conclusions

19. We have set out the factual background in some detail; in our view it is almost sufficient simply to read it to reach the view that Mr Levy’s request made on 28 April 2016 was, against the background of the requests and other communications with the Borough in the preceding five months, “manifestly unreasonable”.
20. In so far as analysis is required, we make the following observations:
- (1) It is clear to us from what he says in the correspondence that it is Mr Levy’s firm view that the work carried out on the pavement at Abbots Gdns was largely unnecessary and a waste of public money;
 - (2) We infer that his motive for continuing to make requests for information about it is a wish to pursue that point, rather than a wish specifically to elicit information; there is of course nothing wrong with pursuing the point and motives often overlap but it seems clear to us that the more appropriate remedy at this stage is some kind of judicial review of the Borough’s actions or through the ballot box rather than continuing to seek information under the EIR;
 - (3) It is not disputed that he made six multi-part requests for information relating to the same matter in the space of five months and that the

requests led on one from another; although not perfectly in every respect the Borough had responded in our view as best it could to the first five;

- (4) Although not abusive, the insistence and frequency of his communications and the unreasonable expectations of instant responses from officials and rather high-handed statements about the performance of the Borough contained in them can in our view be categorised as harassing and must have caused some annoyance to officials, in particular Mr Mustapha and Mr Hill; on any view they show a lack of perspective and understanding on Mr Levy's part;
- (5) It is hard to see that the final request itself had any intrinsic value; it largely covered old ground and looks argumentative in nature rather than being a genuine effort to seek information.

21. Technically a decision that the request was "manifestly unreasonable" is not the end of the matter: under regulation 12(1) the public authority can only refuse to disclose information on this basis if the public interest in maintaining the exception for a manifestly unreasonable request outweighs the public interest in disclosure of the specific information in question. We have considered again Mr Levy's request dated 28 April 2016; while there is clearly a public interest in the fullest possible transparency in relation to decisions to spend public money and how they are reached, we do not think that the provision of further information in response to the parts of the request which really amount to proper requests for information under EIR would have added greatly to the information which had already been supplied under his earlier requests. Weighing the public interest in the disclosure of that further information against the public interest in allowing the Borough not to have to deal with a "manifestly unreasonable" request and the public interest in discouraging such requests, we are of the view that the public interest in maintaining the exception outweighs that in disclosure.

22. For all those reasons we agree with the Commissioner's conclusion that the request of 28 April 2016 was "manifestly unreasonable" and with her assessment of the public

interest balance which in our view comes down firmly in favour of maintaining the exception in regulation 12(4)(b).

Outcome

23. We accordingly unanimously dismiss the appeal.

HH Judge Shanks

2 August 2017