NCN: [2022] UKFTT 00449 (GRC)

Appeal Number: EA/2021/0187

First-Tier Tribunal
(General Regulatory Chamber)
Information Rights
Between:

Matthew Boden Clark

Appellant:

and

The Information Commissioner

First Respondent:

and

Harrogate Borough Council

Second Respondent:

Date and type of Hearing: 11 May 2022 - adjourned to join the Public Authority as a Second Respondent with Case Management Directions dated 16 May 2022.

Date of full appeal Hearing and Deliberations: 14,15 & 25, November 2022.

Panel: Brian Kennedy KC, Naomi Matthews, and Emma Yates.

Representation:

For the Appellant: Matthew Boden Clark, as litigant in person.

For the Second Respondent: Laura John of Counsel.

Result: Appeal allowed with a Substituted Decision.

REASONS

Introduction:

[1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA"). The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("DN") dated 23 June 2021 (reference IC-47894-L5K4 & IC53258-T4X0), which is a matter of public record.

Factual Background to this Appeal:

[2] Full details of the background to this appeal, the complainant's request for information and the Commissioner's decision are set out in the DN. The appeal concerns the decision of Harrogate Borough Council ("The Council") to rely upon section 14(1) of the FOIA to refuse to answer the Appellant's request, on the grounds that it was vexatious.

[3] The Commissioner maintains the position set out in her DN; namely that the Council correctly relied on section 14(1) the FOIA to refuse to answer the Appellant's request. The Appellant now appeals against the DN. The Commissioner opposes the appeal and invites the Tribunal to strike out same.

History and Chronology:

[4] On 4 June 2020, the Appellant requested as follows:

[5] *"Could you please under FOI provide a list of all operators licence centers in the Harrogate Borough Council district (sic)"*

[6] On the 22 June 2020 the Council informed the Appellant that they did not hold the information and subsequent to an internal review on the 25 August 2020 they were refusing to answer the request citing section 14(1) FOIA.

[7] The Appellant, on 23 June 2020, further requested as follows:

"With reference to your email 22/6/20 at 12.23 20/21-0069. In light of your response Please could you provide all planning applications for operators centers in the Harrogate district. To reduce paperwork and council officers time on this request a list would be acceptable. Also could you provide the attached planning applications applied for, for these centres." [sic]

[8] The Council on 2 July 2020 refused the request on the basis that it had already responded to a similar request on 26 May 2020, where some information was provided, and the that the remainder of the requested information was not held. As a result of an internal review on 20 July 2020, the Council stated it was now citing section 14 FOIA to refuse to answer the request.

[9] The Appellant, on 30 June 2020, further requested as follows:

"Under FOI please provide all responses sent from Harrogate Borough council to traffic commissioner in response to applications for operators centers in the Harrogate district" (sic)

[10] As a result of an internal review on 25 August 2020, the Council stated it was now citing section 14 FOIA to refuse to answer the request.

[11] The Appellant, on 2 July 2020, further requested as follows:

"*I thought I better clarify my request of the 30th so there is no confusion and so as you do not claim it is a repeated request. This request is for all correspondence between the council and the Traffic Commissioner in relation to all other application for operator's license."*

[12] On 2 July 2020, the Council refused to provide the information citing section 14(1) FOIA as it considered the request to be vexatious. The Council maintained this reliance upon an internal review.

[13] Legal Framework:

S1 FOIA – General right of access to information held by public authorities

(1) 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) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 14(1) FOIA provides that a public authority is not required to comply with a request for information under section 1(1) FOIA if a request is vexatious.

FOIA does not define or give guidance on the interpretation of the term "vexatious". However, the Upper Tribunal has considered the meaning of the term 'vexatious' at Section 14 FOIA in detail in its decision in *The Information Commissioner v Devon CC & Dransfield GIA/3037/2011* [2012] UKUT 440 (AAC)*("The Drainfield case".* the Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as *the 'manifestly unjustified, inappropriate or improper use of a formal procedure'*. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.

In the Dransfield case, the Tribunal also found it instructive to assess whether a request is truly vexatious by considering four broad issues:

1. The burden imposed by the request on the public and its staff;

2. The motive of the requestor;

3. The value or serious purpose of the request;

4. Harassment or distress of and to staff.

The Commissioner's Decision Notice:

[14] The Commissioner investigated the matter and held that given the significant correspondence between the complainant and the Council she understands the concern of the complainant, however, she has seen that the Council has made many attempts to resolve the matter for the complainant which has involved what has been described as a huge amount of staff time. The Commissioner saw no real value or purpose to the request outside of the complainant's own pursuit to engage the Council in another protracted communication, inappropriately using FOIA as a means of doing so. With reference to their own guidance, the

Commissioner stated the cumulative burden on the Council of considering and responding to these requests, and the continued the associated disruption and difficulty this can cause staff, which is not in the public interest and serves to divert resources to the Council's detriment.

The Appellants Grounds of Appeal:

[15] The Appellant's Grounds of Appeal detailed that an operator's license was applied for on the Appellant's land, the Council lodged an objection on an application which the Appellant claimed was never applied for. The Appellant averred that the requests were to ascertain if planning was required for an operating centre. The Appellant refuted the Council's claim of a vexatious request. The Appellant argued that the Council have not assisted in the way the Commissioner claimed that they did.

The Commissioner's Response:

[16] The Commissioner maintained her position as outlined in the DN and has resisted the appeal. The Commissioner submitted that they are satisfied that the requests are vexatious under 14(1). The Commissioner stated that the Appellant's requests have been seriously diminished by the Appellants' intransigence which is, in turn, affecting the Council's resources. They stated that on 20 November 2017, the Appellant was provided with an explanation as to the alteration of the planning file, and this should have been the end of the matter, however, the Appellant made a further request which resulted in a further decision notice. When the Council provided the Appellant with the 2 e-mails in relation to the previous appeal, EA/2020/0005, the Appellant could have withdrawn or ended his appeal by a consent order as it was argued there was no further information the Council could provide.

[17] The Commissioner highlighted that the Council were awarded costs against the Appellant, based on his conduct and intransigence in continuing, to the value of £13,307.71. The Commissioner argues that the Appellant continues to display intransigence as none of his Grounds of Appeal try to address why his request is

not vexatious under s14(1) FOIA. The Commissioner opined that the Appellant's appeal should be struck out.

The Appellant's Reply to the Commissioner's Response:

[18] The Appellant replied to the Commissioner' strike out application on 22 September 2021. The Appellant stated that the request is to ensure that the Appellant's tenant is treated fairly. The Appellant contended that the request was made for a legitimate reason to acquire information relating to the operating centre. The Appellant refused to accept the Council's reliance on section 14(1) FOIA. The Appellant stated that the Traffic Commissioner provided some information in the form of a letter.

[19] The Appellant referred to the DN and refuted the alleged breach of planning on the Appellant's land. The Appellant raised correspondence with the Council in August 2020 concerning the planning breach. The Appellant argued that there is a public interest, as all centres are likely to be operating without planning permission and therefore the request is legitimate. The Appellant claimed that Ms. Gangani has misunderstood the issues at hand. The Appellant averred that it is a criminal offence to provide inaccurate information to the Traffic Commissioner in order to prevent the issuing of an operator's license.

[20] The Appellant referred to the Tribunal's decision in *Dransfield* and argued that the purpose of his request is to hold the public authority accountable. The Appellant challenged the purported reliance on *Dransfield* by the Respondents, and further some of the information in the DN on the grounds that it is inaccurate.

Appellant's further Submissions:

[21] The Appellant refuted the submission that the request was vexatious. The Appellant submitted that the request was justified and that the Council have breached the FOIA. The Appellant referred to correspondence between Ms. Gangani and the GRC which concerned the Appellant's involvement with the public authority. The Appellant argued that the Commissioner has erred in her DN.

[22] The Appellant referred to 300 documents which the Appellant claimed were omitted from the response to the Appellant's request. The Appellant raised the importance of accountability. The Appellant argued that the Council have failed to disclose the requested information. Furthermore, the Appellant does not believe that this is a case in which a holistic approach should be required. The Appellant argued that Ms. Gangani has not provided any information to support her claims and relies on hearsay evidence provided by the Council.

[23] The Second Respondent, the Council, provided the Tribunal with a second Open Bundle which included a Response from the Council to the Grounds of Appeal, two witness statements and voluminous papers to illustrate the History and Chronology of engagement between the Council and the Appellant.

The Hearing on 14 & 15 November 2022:

[24] The Second Respondent, called two witnesses' Miss. Sara Haegar, a legal assistant at Harrogate Borough Council, and Mr. James Cullen, Principal Enforcement Officer at Harrogate Borough Council.

[25] Miss. Haegar outlined the Appellant's 9 requests relating to an application for a licence for an HGV Operator's site. Further, she detailed the Appellant's requests relating to a separate planning dispute. She provided accompanying exhibits in relation to both sets of requests.

[26] Ms. Haegar provided evidence on the Second Respondent's restriction of the Appellant's contact with its officers.

[27] The Appellant's contact with the Second Respondent was restricted, on 27 November 2019, under its Unacceptable Behaviour Policy for a period of 12 months. This decision was taken due to the nature of the Appellant's requests, repetitive and overlapping requests, and the drain on the Second Respondent's resources in terms of officer time they required. In addition, there are alleged unfounded personal allegations that had been made against individual officers. In order to assist the Second Respondent with its management of the Appellant's

voluminous contact, the Second Respondent began recording all contact it receives from the Appellant by way of a log from 10 March 2020.

[28] The Second Respondent reviewed the Appellant's restrictions and confirmed in a letter dated 4 December 2020 that it will extend the restriction by a further 6 months *"...due to the excessive amount of correspondence the Council is continuing to receive from you and your persistent refusal to accept explanations provided to you by Council officers.*"

[29] The 6-month extension was reviewed and extended by a further 4 months on 18 June 2021. The Second Respondent are in the process of reviewing the Appellant's restriction again. Against this backdrop, the Second Respondent served notice on 3 July 2020 that any further requests in relation to correspondence between the Second Respondent and the Traffic Commissioners regarding the application of PED Plant Limited for a goods vehicle operator's licence will not be issued with a reply. This notice also included FOIA requests in relation to another planning enforcement matter and SAR requests. The Second Respondent had concluded that the Appellant's many and various requests – detailed, overlapping, and fully answered - had placed a disproportionate burden on the resources of the Second Respondent. They had also caused disruption, irritation and distress as they included allegations against individual officers personally, questioning their professional integrity.

[30] At the time this notice was issued, the log shows that the Second Respondent had received in excess of 138 emails from the Appellant in the previous 4 months alone (i.e. between March and June 2020). It had also had to conclude, on 5 separate occasions, that FOI requests made by the Appellant were vexatious under section 14 of FOIA.

[31] Stepping back, many across the Legal & Governance service and the Place Shaping & Economic Growth services of the Second Respondent have put in significant amounts of time in dealing with the Appellant's various requests and

correspondence, including 9 different officers on the series of 9 requests concerning the application for an HGV operator's licence alone. The Appellant's requests. They argue are placing a disproportionate burden on the Second Respondent's resources.

[32] Mr.Cullen was involved with an appeal to the Upper Tribunal (Traffic Commissioners) which is linked to this particular request for information and relates to the land owned by the Appellant. Mr.Cullen provided the history and factual background of this appeal. Mr.Cullen referred to Ms. Haegar's statement and confirmed that the Second Respondent is not a regulatory body for operator's licence centres and that it does not maintain records of operator's licence centres.

[33] His understanding is that details of all applications for HGV operating licences which are made within each traffic area office are published on a fortnightly basis by the Officer of the Traffic Commissioner. The information is published online, on the ".gov.uk" website. There is no list of the applications made, maintained or kept by the Second Respondent.

[34] All planning permissions granted by the Second Respondent are accessible to the general public via its Public Access site. Public Access is an online module provided by IDOX solutions. This can be used to access information, including documents, which relate to planning applications and planning appeals.

[35] This search facility does not allow a user to search for a particular type of change of use, for example to a *sui generis* HGV operators centre, but searching by a keyword, for example, 'HGV' would potentially enable the user to identify many of the locations where relevant applications and/or appeals may have been made (although the results may be over-inclusive, and it may require multiple keyword

searches to build a composite picture) It is neither straigforward nor readily accessible.

[36] It sould therefore be possible, it was argued, for the Appellant to use this facility to find details of sites that are connected with or relate to HGV use in the Harrogate District and that have been granted planning permission for a related purpose, such as an HGV Operators Centre. He would need to cross-reference the addresses of HGV operator's sites as maintained by the Traffic Commissioner and use the addresses to search the Public Access portal.

[37] The Second Respondent made closing submissions summarised as follows;
The Second Respondent stated that the Appellant can now take the information and use the names/addresses of the 136 HGV operators and input them into the Second Respondent's Public Access database, and find out which of them has planning permission. As the Second Respondent advised. Nothing suggests he's unable to do that. In fact, he indicated in oral submissions that he has already precisely done that – he doesn't "*like"* the results he obtained, but that, it is suggested, is not relevant to this appeal. The point argued is, the Second Respondent has offered what assistance it can. It doesn't hold the precise information he is interested in, but he has, it is argued, what he needs in order to get it (some of it from the Second Respondent, some from the Traffic Commissioners).

[38] In relation to Request 8, the Second Respondent argued the request is not reasonable. The Appellant, and the public, can access information on who holds HGV operators' licenses as well as planning permission, by using the Traffic Commissioner and the Second Respondent's databases. In the context of this particular dispute, and in the context of the Appellant's dealing with the Second Respondent more widely, it is not reasonable to go further and ask for disclosure of all correspondence between the Second Respondent and the Traffic

Commissioners, on all applications for HGV operators' licenses, across an unspecified and open-ended period.

[39] The Second Respondent stated there is no public interest in responding to Request 8. It adds nothing of value to the information that can already be accessed by the public via the Traffic Commissioner and the Second Respondents' databases.

[40] The presumption in favour of disclosure under Regulation 12(2) EIR it is argued, does not add anything in this case. That presumption operates to tip the balance in cases where all else is equal. This is not, it is argued, a case where all else is equal.

[41] The Appellant made his final submissions in reply which are summarised as follows:The Appellant refuted the contention that his request is vexatious. The Appellant stated the Commissioner provided false reasoning to support the claim that the Appellant was vexatious. The Appellant averred that FOIA has been breached. In response to the Second Respondents' claim of sui generis, the Appellant referred to his previous cases in which his appeal was upheld. He stated that the purpose of the FOIA is for accountability. The Appellant maintained he is not vexatious and that the Second Respondent held the requested information.The Appellant referred to the evidence provided and argued that the information contained in the DN is false. Further, this information formed the base of the Commissioner's decision. The Appellant requested a statement of truth from the Commissioner and disagreed with the argument that his evidence is hearsay.

[42] The Appellant argues in relation to FOIA requests, that it was established by Ms. Haeger in her oral evidence that she was liaising with senior planning officers at the Council for the processing of the requests. It's the Appellant's belief that what he was asking for in these requests would have been clear to the officers, as the head of planning had already recently been involved in structuring an argument for the planning requirement for an Operator centre. Indeed, it was the Head of

Planning himself who lent weight to the case for planning made by James Cullen by introducing a specific category of planning of sui generis.

[43] Further, The Appellant believed, in the absence of any contrary information from the Council, that there were planning applications in the Council systems. One reason for this was James Cullen and the planning department had not claimed that the requirement for planning for an Operator centre was a precedent. They had not told the TCO this either. If there are no applications in the Council records, then if PedPlant were to submit a planning application, this would be a precedent.

[44] In consideration of the public interest, the Appellant argued the requirement for planning for an Operator's licence should be published clearly on the Second Respondent's website and, also, on that of the TCO so local businesses do not fall into the same position as Pedplant which has been unable to expand its current operation as planning is required. Pedplant also has incurred costs of over £2k for the combination of hiring a planning consultant and the failed application for an Operator licence.

Conclusions:

[45] The Tribunal reminds itself of the now well established criteria in cases where requests have been held to be "vexatious" (judicially equated at the highest levels with "Manifestly Unreasonable in the EIR regime) and the Upper Tribunal's analysis of section 14 (set out in Dransfield and applied also in Ainslie and Craven)

[46] We accept as a starting point that, depending on the circumstances, a request which is annoying or irritating to the recipient may well be vexatious – but it all depends on those circumstances. In particular, we must also not forget that one of the main purposes of FOIA is to provide citizens with a (qualified) right to access to official information and thus a means of holding public authorities to account. It may be both annoying and irritating (as well as both dissatisfying and disappointing) for politicians and public officials to have to face FOIA requests

designed to expose possible or actual wrongdoing. However, that cannot mean that such requests, properly considered in the light of all the circumstances and the legislative intention, are necessarily to be regarded as vexatious.

[47] In the event of any such misuse of the FOIA procedure, it may be evidenced in a number of different ways. It may be helpful to consider the question of whether a request is truly vexatious by considering the four broad issues or themes as set ou in Drainfield (*see Para 13 at page 5 above*) – (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff). However, these four considerations and the discussion that follows are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list. It is important to remember that Parliament has expressly declined to define the term "vexatious". Thus the observations that follow should not be taken as imposing any prescriptive and all encompassing definition upon an inherently flexible concept which can take many different forms.

[48] The common theme underpinning section 14(1), at least insofar as it applies on the basis of a past course of dealings between the public authority and a particular requester, has been identified by Judge Jacobs as being a lack of proportionality (in his refusal of permission to appeal in *Wise v Information Commissioner* GIA/1871/2011). *Judge Jacobs said in that decision:*

> *"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it. As I have told Mr Wise before, his requests have become disproportionate to his original aim. There are numerous ways in which requests can become vexatious. The background that I have outlined shows what might be called a classic example of vexatiousness by drift…."*

[49] The Tribunal are of the view that the request in this appeal could have been more appropriately considered under the Freedom of Information Environment

Protection as defined within "*The Environmental Information Regulations 2004"* ("the EIR"). The Tribunal direct this should be fully considered by the Council under Regulation 2 (1) of the EIR.

[50] The Tribunal find that the evidence demonstrated that the Request dated 2 July (Request 8) was a clarification of Request 7 which was also in fact a clarification of Request 3. In his evidence, the Appellant explained that he had made Request 7 to attempt to further identify if any planning applications in respect of operator centres existed, or, in the alternative, to receive a response from the Council which stated that no applications were held. This *"drift"* was not of the Appellants making.

[51] In his attempts to use the information provided by the Council to locate the applications, the absence of a positive result to his searches caused confusion and the need for Mr Clark to make further clarification to seek out the correct route to the information. Therefore we conclude that the question raised on 2 July (Request 8) is not unreasonable but is an attempt to clarify the earlier request on 24 May which was not answered under EIR, it is the public authority's duty to either disclose the information under EIR or explain why they have not done so, and if they do not hold the information, or if they wish to rely on an exception in the Regulations, they should state which exception they rely upon setting out adequate reasons. It seems from the evidence before us, it may be common practice for the Council to refer requesters to the public access online planning portal when dealing with requests for copies of planning applications. This process would be acceptable when, for example, a requester is concerned with searching for applications relating to a property at a particular address. On this occasion, the impunged request was more complex as the Appellant was searching for a type of application across the District rather than at a particular address/addresses. This, in our view required more careful consideration by the Council. Although the EIR contains no express obligation to confirm or deny it contains an exception where information is not held. ICO guidance on EIR states that the public authority should respond to the requester in writing telling them whether they hold the information and making that information available unless

an exception applies. In relation to the request. It imposed on the Council a need to confirm whether this information is held or not.

[52] In relation to the Appellants' manner, the Tribunal noted that thoughout his quite lengthy appearances before us in the conduct of the hearing of this appeal, the Appellant was cordial, thoughtful, focused and helpful. At no stage has the nature or extent of his request ever appeared to us to have been unreasonable in any sense. The Tribunal also find it remarkable that we were not presented with any significant or tangible evidence of harassment or distress of, and/or to staff. Accordingly, it is our view, the Council failed to take the appropriate level of care or assistance to the Appellant in carrying out the search of their system to clearly identify whether information was held or not.

[53] Under the EIR, unlike under FOIA, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. The main provision for dealing with burdensome requests under the EIR is regulation 7(1). We have not been presented with any evidence to show that the Appellants request is manifestly unreasonable in terms of cost as neither the 24 May nor the 2 July request was refused on the basis of an unreasonable burden placed on the public authority by providing the information.

[54] Evidence was presented to purportedly demonstrate that the request was manifestly unreasonable. However, we find that there was serious purpose to the request dated 24 May, and that the question posed on 2 July was a clarification as Mr. Clark felt that the request on 24 May had not been answered appropriately. Put simply, Mr. Clark sought an answer as to whether the Council had the applications and if they did not, a response to say this information was not held. Under Reg 9 EIR the Coucil has a duty to advise and assist the applicant therefore the Council, in our view should have referred back to Mr. Clark to assist him and at this point Mr. Clark could and would have confirmed that he was seeking to clarify the 24 May request which had not been properly answered, or not to Mr. Clark's reasonable expectation, as he had been unable to find the information independently.

[55] Ms. John, on behalf of the Council, is correct in her closing submissions in that it is not the remit of this Tribunal to determine whether either party is correct about the planning permission, however, there is a serious purpose to the Request and this is conceded by Ms. John in her closing submissions where she accepts that it is legitimate in principle for Mr Clark to use EIR for this purpose. The Tribnal unanimously agree that there was serious purpose to this request, Ms. John went on to query how far Mr. Clark should be permitted to go in pursuit of this purpose.

[56] Mr. Clark challenged Ms. Haeger in his cross-examination and stated that the response to Request 3 should have been that the requested planning applications were not held. Ms. Haeger explained that the Council process pertaining was to liaise with senior members of the Council planning team to assess whether information is held or not. She stated that in order to do so in this matter, it would have been necessary for them to carry out a search of the public portal and the Council systems, to identify any applications. In evidence Ms. Haeger stated that such a search was not carried out and instead the link to the public access planning portal was provided to Mr. Clark.

[57] In closing, Counsel for the Second Respondent inferred that when Ms. Haeger had accepted in her evidence that it would have been clearer if she had said that the information was not held, what she meant by that was that a subset of information doesn't exist regarding the search for operators' licences. This is Counsels' interpretation of the evidence and not necessariy an accutate, or the correct one. In any event it did not prevent the Council form declaring in clear terms the requested information was not held.

[58] In the circumstances the Tribunal consider and accept that Request 8 was a clarification of Request 3 which, as Ms. Haegar conceded in evidence it was not answered appropriately. Therefore we order a substituted decision where the public authority will need to revert and fully respond to the question asked.

[59] The Council have not persuaded the Tribunal that Request 8 is disproportionate and therefore we find it is not vexatious or manifestly unreasonable. The legitimate objective that Ms. John identified and recognised that had begun Mr. Clark's requests, did not fall away to be replaced by any significant unreasonable

conduct or behaviour, instead the Appellant continued to pursue this objective in seeking out the information he felt was needed to better understand the planning process. The Tribunal do not accept that this was unreasonable in all the circumstances and on the evidence before us.

[60] The Appellant was clear at the hearing and stated several times, that had the Council clearly responded that the applications were not held, that would have been the end of the matter for him and no further requests would have been made. The Tribunal, having heard Mr. Clark at length, unanimously accept his bona fides in this regard.

[61] The Appellant raised issues during the course of the initial hearing which led us to the conclusion that it was in the interests of justice to have an oral hearing. We directed the Council as the Public Authority concerned be joined to this appeal to give us further information and evidence in respect of a series of requests culminating in Request 8 which is the focus of the appeal but not the sole issue for our consideration. We noted and accept that an oral hearing, where the Appellant had assistance from his brother was important to enable Mr. Clark to fully and effectively take part in the hearing, as a result of his protected characteristic.

[62] For the above reasons, the Tribunal consider that the Burden on the Council was not unreasonable in the circumstances (see in particular Paragraphs 61 & 62 above) and that there was a laudible and genuine motive for the request which the Appellant has demonstrated to us had value and serious purpose. We do not find any significant or particular evidence of a history of harassment or distress to Council staff or other evidence that amounts to establishing that the request was Vexatious or Manifestly Unreasonable. Accordingly and taking the holistic view of the history of the Request we allow the appeal and provide a Substituted Decision.

Substituted Decision:

[63] The Tribunal allow the appeal.

Directions:

[64] The Council should reconsier the Request in full and determine the appropriate Regime they intend to apply i.e the FOIA or EIR, with reasons for their determination.

[65] The Council should provide adequate advice and assistance to the Appellant in accordance with the applicable Regime.

[66] The Council should consider any approprtiate exemptions or exceptions they wish to rely on and provide adequate reasons for such reliance.

[67] The Council should comply with the above Directions within one callender month of the date of Promulgation of this Decision.

Brian Kennedy KC **6 December 2022.**

Promulagated: 6 December 2022