



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: EA/2007/0130**  
**Information Commissioner's Ref: FS50169994**

**Heard at: Procession House**  
**On : 2 May 2008**

**Decision Promulgated**  
**13<sup>th</sup> May 2008**

**BEFORE**

**CHAIRWOMAN**

**MELANIE CARTER**

**and**

**LAY MEMBERS**

**ROSALIND TATAM**  
**TONY STOLLER**

**Between**

**R H COGGINS**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**Decision**

**Determined on the Papers**

The Tribunal upholds the decision notice dated 7 November 2007 and dismisses the appeal.

## Reasons for Decision

### Introduction

1. This appeal arises from a decision of Norfolk County Council (“the Council”) to treat a request under the Freedom of Information Act 2000 (“FOIA”) as vexatious. The Appellant complained to the Information Commissioner (“IC”) who issued a Decision Notice on 7 November 2007 agreeing with the Council.
2. The Appellant has appealed to this Tribunal on the basis that the Decision Notice was not in accordance with law.

### The Factual Background

3. The Appellant worked as a Money Matters volunteer for Age Concern assisting elderly persons with their financial concerns. As part of his responsibilities he assisted an elderly woman in relation to her payments for domiciliary care. The care was provided by a private sector care company on behalf of the Council.
4. Initially the elderly woman had needed 18 1/2 hours care a week and that was reduced to 15 hours a week. In early 2005 the Appellant discovered that the woman had been being overcharged by the Council in relation to the care she was receiving and he raised this with the relevant officers. This matter was rectified by the Council and the monies repaid.
5. The Appellant became suspicious that amongst other irregularities, the elderly woman had been being charged for four visits a day when, he believed, she had in fact only been visited three times. The Appellant began writing to the Council to seek to uncover what he considered to be both a fraud against the Council and the woman in question. The Council carried out an internal investigation into the matter. It interviewed the carers, the elderly woman herself and neighbours. The conclusion was that whilst there had been failures in record keeping, the care for which she had been charged had been provided. In particular, the Council determined that the fourth visit had been carried out despite consistently not being recorded in the documents. The Council stated that the carer involved was disciplined for failing to maintain adequate records.
6. In July 2006 by mutual agreement, but at least partly related to these issues, the Appellant ceased volunteering for Age Concern. Age Concern investigated the claims of overcharging and came to the conclusion that the care required under the care plan was indeed being provided. The Appellant could not accept this and he continued to correspond with the Council on the matter.
7. The Appellant’s first request under FOIA was on 16 November 2005. The next month the elderly woman died. In his second FOIA request the Appellant asked for, amongst other things, all the time sheets filled in by the woman’s carers for the period between 12 April 2004 and 28 March 2005. This request was refused on the basis that it

contained the personal data of third parties, disclosure of which would have been a breach of the data protection principles – in other words, the Council relied upon the exemption to be found in section 40(2) of FOIA. The Appellant was aggrieved not to receive these and proceeded to make a succession of further requests either aimed at obtaining these documents or to prove the alleged fraud by alternative means.

8. In June 2006 the Council engaged an independent complaints investigator to investigate the Appellant's allegations. He considered the documentary evidence to date and wrote a report concluding that the allegations were unfounded.
9. Similarly in July 2006 the Commission for Social Care Inspection (CSCI) investigated the alleged fraud and decided not to uphold the Appellant's complaint. As part of their investigation they considered the documentation and also evidence from the witnesses interviewed. Whilst the Tribunal had not seen the CSCI report it was of the view that given its remit to regulate care providers, such an investigation would have been a relevant part of its functions and that, in the absence of any evidence to the contrary, its findings would be reliable.
10. During this period, the Appellant continued to write on a regular basis and to make further FOIA requests all relating to the same allegations of overcharging. The Appellant obtained certain of the carer's logs from CSCI and certain of the private sector care company's timesheets from Age Concern. The former were given to the Appellant by CSCI as a result of a FOIA request to that body.
11. The Appellant's contention has been throughout that the only way in which he would accept that fraud had been positively disproved would be if he could compare a complete set of the carer's logs as against the timesheets for the relevant period.
12. The request which is the subject of this appeal was made on 23 May 2007. The Appellant thereby asked for, going back to 2002, copies of all the contracts between the Council and the independent care provider, copies of any contract variations, copies of the elderly woman's care plans, copies of any variations to the care as recorded. In addition and most importantly, he asked for the independent care agency's time sheets showing the hours of visits as charged to the Council for the period 4th January 2002 to December 2005 – except for those for 3 May 2004 to 31 October 2004.
13. The Council rejected the request in a refusal notice dated 29 May 2007 on the basis that it was considered to be vexatious under section 14 of FOIA.
14. Since contacting the Council on this matter in March 2005 and up until the Council's refusal of the FOIA request, the Council reports to have received some 73 letters and 17 postcards on this matter. During that period the Council received some 20 FOIA requests. It is possible that since the Appellant could not pursue his requests for information from the independent care provider (that being a private sector body and not subject to FOIA) this intensified the focus upon the Council.
15. The Appellant complained to the IC under section 50 of FOIA. The IC in turn concluded that the Council had been entitled to reject the request on vexatious grounds.

### The question for the Tribunal

16. The Tribunal's approach was to consider for itself, taking into account all the information before it, whether the request was indeed vexatious under FOIA.
17. Under section 1 FOIA public authorities are obliged to provide information where it is requested by a member of the public. Section 14 however provides that: "(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."
18. As a starting point, the Tribunal noted that it was not its responsibility to determine whether or not there had been any fraud or overcharging in relation to the elderly woman's care. Nor was it directly the task of the Tribunal to determine whether or not the previous FOIA requests made to the Council had been properly complied with – indeed it was not able to do so on the face of the papers before it. It was unhappy however that neither the Information Commissioner nor the Council, a party to these proceedings, had provided sufficient information on this point. It might have been a critical aspect to the case, had it not been for the external investigations into the matter (see below). The Tribunal was left unable to determine whether the Appellant had a justified sense of grievance that the timesheets had not been disclosed. It accepted however that they were likely not to be disclosable either on account of a possible breach of the Data Protection Principles or because of a duty of confidentiality. The Tribunal understood that the Appellant had complained separately to the Commissioner in relation to that earlier request. It had not seen the requested timesheets and did not consider that it needed to for the purposes of determining whether the latest request was vexatious.
19. The Tribunal noted that FOIA gives no definition of "vexatious". It took into account the previous case of *Hossack v Information Tribunal EA/2007/24* in which it was said that the "the consequences of finding that a request for information is vexatious are much less serious than a finding of vexatious conduct in .....other contexts and therefore the threshold for a request to be found vexatious need not be set too high". The Tribunal agreed moreover with the views put forward in the case of *Welsh v The Information Commissioner EA/2007/0088* to the effect that "there is a danger that setting the standard of vexatiousness too high will diminish public respect for the principles of free access to information held by public authorities enshrined in FOIA."
20. The Tribunal took into account the Information Commissioner's Guidance Number 22 issued July 2007 on Vexatious and Repeated Requests which it found useful in some respects. It was concerned however that the two stage test set out in the guidance might be interpreted in too formulaic a fashion by public authorities and the Information Commissioner. So for instance, the Tribunal could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious. For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action. The

case before us might have been such a case had it not been for the existence of the independent investigations. A decision as to whether a request was vexatious within the meaning of section 14 was a complex matter requiring the weighing in the balance of many different factors. The Tribunal was of the view that the determination whether a request was vexatious or not might not lend itself to an overly structured approach.

### Conclusion and Consideration

21. When considering whether a request is vexatious, the Tribunal is bound to look to both the history of the matter and what lies behind the particular request. This is in marked contrast to other types of FOIA appeals where the Tribunal is said to be strictly applicant and motive blind. By necessity however, in order to determine such an appeal, the Tribunal needed to consider the facts leading up to the section 14 decision, the nature of the exchanges with the Appellant and his motives in pursuing the matter.
22. The Tribunal accepted that the Appellant was driven by a genuine desire to uncover what he believed was a fraud against the elderly woman in question, the Council and possibly other recipients of care. This on the face of it was not unreasonable given that the Appellant had already uncovered one financial irregularity and that the Tribunal could see for itself that there were indeed anomalies in the documentation. In addition the Appellant felt the need to clear his name, given the apparent shadow created by the circumstances in which he left Age Concern, despite the statement that there was no suspicion on him and his work. Put together these factors amounted to a serious and proper purpose.
23. The Tribunal noted moreover that the Appellant was entitled to feel frustrated and confused that the Council refused to make disclosure of timesheets under FOIA whilst CSCI, another body subject to the Act, felt able to release certain of the information requested. It might have been useful if the Commissioner had addressed this aspect in his Decision Notice and if appropriate, either criticised CSCI for its approach to the Act or suggested that this was disclosure not required in law. This might have assisted the Appellant in his understanding of the issues.
24. The Tribunal did not accept moreover that the disclosure of the information might not have made a material outcome to the uncovering or refuting of the alleged fraud. The alleged fraud went beyond just whether there had been a fourth daily visit and accordingly, the Appellant had requested contract information dating back to 2002.
25. There came a point however when the Appellant should have let the matter drop. Even if he believed that the Council had not properly complied with his earlier FOIA requests, there had been three independent enquiries into the circumstances giving rise to the request. One of these bodies, CSCI, had seen the witness evidence. In addition, the Appellant was aware that the police had told Age Concern that there was no evidence of dishonesty. Despite all this, the Appellant refused to believe the veracity of the independent investigations. In the Tribunal's view, It was not justified in the circumstances to persist with his campaign to force the Council to make disclosure, in particular, of the timesheets.

26. It was not the case that the Appellant had received the information he was seeking. The Tribunal did not accept the submissions of either the Council or the Commissioner that the request was vexatious partly on account of the fact that the Appellant was said to have received significant amounts of information. The quantity would be irrelevant if the all important information was missing. It had been noted however that the non-disclosure had been reviewed and upheld by another independent person, that is, the Chief Fire Officer of the Norfolk Fire and Rescue Service.
27. It seemed to the Tribunal that the real issue was that the Appellant was not prepared to accept the judgement of others that the missing documents did not prove a fraud. Given the independent nature of these bodies (Age Concern, CSCI and the external complaints investigator) and that there had been more than one review/investigation, the Tribunal did not consider the Appellant's stance to be a reasonable one to take. The Tribunal considered that, in the absence of any evidence to show that these bodies had not properly carried out their functions, it was appropriate for it to give considerable weight to their investigations and findings. To do otherwise would be a duplication of functions and a waste of public monies. The Appellant ought to have accepted that whatever the position with regard to the disclosure of particular information to him, that the alleged fraud had been looked into and had been found to be unsubstantiated.
28. The number of FOIA requests, the amount of correspondence and haranguing tone of that correspondence indicated that the Appellant was behaving in an obsessive manner. It was apparent that this would, over the relevant period, have caused a significant administrative burden on the Council. The Appellant's correspondence was difficult to deal with as it was often very long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received. It is sometimes the case that with the passage of time information which an authority was not previously required to disclose becomes liable to disclosure. This was not such a case however as nothing material had changed in the time between requests. The Tribunal was of the view that dealing with this correspondence and his requests would have been a significant distraction from its core functions.
29. The Tribunal noted moreover the Council's evidence that the interaction with the Appellant had had a negative impact on the health and well-being of certain of its officers.
30. In all the circumstances, the Tribunal was of the unanimous view that the request had been vexatious and that therefore the appeal should be dismissed.

Signed

Melanie Carter

Deputy Chairwoman

Date 13<sup>th</sup> May 2008