



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2019/0053**

**Decided without a hearing  
On 11 July 2019**

**Before**

**JUDGE BUCKLEY**

**JEAN NELSON**

**PAUL TAYLOR**

**Between**

**JOHN CONNOR**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION**

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

**REASONS**

**Introduction**

1. This is an appeal against the Commissioner's decision notice FS50778479 of 30 January 2019 which held that Gateshead Metropolitan Borough Council ('the Council') were entitled to rely on s 14(1) of FOIA. The Commissioner held that the Council breached s 17(5) by failing to issue a refusal notice applying s 14 within 20 working days. The Commissioner did not require the public authority to take any steps.

## **Evidence and submissions**

2. We have read and were referred to a bundle of documents.

## **Factual background to the appeal**

3. There is a long and complex background to this appeal, which will not be set out in detail. In essence the matter arises out of planning applications made by the owners of land adjacent to Mr Connor's property in 1973 and 1996, in which Mr Connor states false information was provided. There are related disputes about the use of the boundary wall as a form of support for the neighbour's garage roof, and about the status of the lane to the rear of the property. Mr Connor is aggrieved that the Council refused to take action against the neighbour(s) for the false information. The Council has informed him that an applicant is only likely to be fined for knowingly or recklessly making a false or misleading statement in exceptional circumstances and that in its view Mr Connor did not suffer injustice as a result of the false declaration. Mr Connor is not satisfied with this.
4. The Council has failed to provide detailed evidence of its dealings with Mr Connor, but the bundle shows that the following correspondence/proceedings with and/or against the Council and/or others all arise from the matters set out in the preceding paragraph.

## *Complaints to the Council*

5. On 6 January 2006 the Council wrote to Mr Connor in response to a letter of complaint dated 18 November 2005. That letter stated that on 2 November 2005 the Council had written to Mr Connor's solicitors to confirm 'once again' that his complaints about the Council would not be pursued. It refers to a letter from the Council to Mr Connor on 11 May 2004 covering the same issues (but in relation to the earlier planning application).
6. The Council's defence in claim number 7NE03964, dated 1 June 2007, states that Mr Connor wrote a number of letters of complaint to the Council, including letters dated 7 April 2003, 18 November 2005 and 10 April 2007 and that he raised a formal complaint with the Council in 2006. There is also reference in that defence and/or its defence in B90NE122 to letters between the Council and Mr Connor on the same issue dated 11 June 2003, 1 September 2003, 17 December 2003, 6 January 2006, 12 March 2007 and 25 April 2013.
7. In that defence the Council also states at para 4(c) that 'The Defendant will aver that it is a matter for itself whether or not it pursues Mr McVicar in relation to a false or misleading declaration being made, none being admitted.'

### *Complaints to the ICO*

8. Mr Connor made a complaint to the Information Commissioner in 2017 (case reference FS50650467) about a previous information request he had submitted to the Council. After obtaining further information from the Council, the Commissioner decided to take further no action.

### *Legal Proceedings*

9. Mr Connor issued legal proceedings against the Council (which seem to be those to which the defence is in the bundle i.e. case number 7NE03964). These were unsuccessful and the claimant was refused permission to appeal. In 2013 Mr Connor issued an application for permission to judicial review, which was dismissed as being 'without merit' and the Council awarded costs. In 2014 Mr Connor issued proceedings in the Newcastle District Registry, Chancery Division (case number A30 NE049) which were withdrawn. He issued further proceedings (case number B90NE122) which were discontinued by Mr Connor in about March 2016.

### *Complaints to the LGO*

10. Mr Connor made complaints to the Local Government Ombudsman (LGO) in March 2004 (03/C/18837), December 2007 (07/C/13118) and in July 2008 (07/C/13118/KEH/sw). The Council's response to a part 8 claim by Mr Connor dated December 2015 refers to complaints to the LGO in 2003 and 2005. In 2005 the LGO informed Mr Connor's solicitors that it would not pursue the complaints against the Council because there was no evidence of maladministration leading to injustice. The investigation in 2008 was discontinued by the LGO, partly because it had previously investigated the same issue. In its letter of 6 August 2008, the LGO stated: 'It is for the Council to consider whether to take action against your neighbour for this and it has decided not to.'

### *Complaints to Northumbria Police*

11. In 2005 Mr Connor made a complaint to Northumbria Police who declined to take any action.

## **Requests, Decision Notice and appeal**

### *The Request*

12. This appeal concerns the following requests, extracted from a letter dated 25 April 2018. Mr Connor accepted, by letter to the Tribunal dated 30 March 2019, that requests 1, 2 and 5 were not requests for information. We have therefore limited our consideration to requests 3, 4, 6 and 7.

1. Clarification on what was meant as set out in relation to your Part 8 Claim Form dated 22/12/2015 and the letter to the court manager dated 24 March 2016.
2. Why Gateshead Council did not inform the Ombudsman that [Council Officer 1] Head of Planning should not have said “only in very exceptional circumstances”.
3. The name and position held of the Gateshead Council Employee(s) who further confirmed to the Ombudsman that [Council Officer 1], Head of Planning was correct.
4. A full disclosure of what would constitute “Very exceptional circumstances”
5. An explanation as to why Gateshead Council did not confirm that [Council Officer 1] Head of Planning should not have said “only likely to occur in very exceptional circumstances”.
6. [Council Officer 2] should have asked any advisors or employees supplying him with the information to be included in a verified document to confirm in writing that the information was correct before he signed his statement of truth to the County Court, I request a copy of that document.
7. A copy of the letter from [the neighbour] to Gateshead Council requesting information that the boundary wall was in not way supporting the peaked roof.

### *The Council's reply*

13. The Council replied by email dated 17 May 2018 stating that no recorded or no information was held. Mr Connor replied to this email on 12 June 2018 and in its response to that email on 19 June 2018 the Council stated:

We are treating this request as vexatious. We have previously responded to you and you have complained to the Information Commissioner who agreed with our position. No further requests for information on this topic will be responded to.

14. Mr Connor applied for an internal review on 23 July 2018. He received no reply and referred the matter to the Information Commissioner on 18 August 2018. The Council does not appear to have conducted any substantive internal review, but emailed Mr Connor on 4 September 2018 repeating its response given on 19 June.

### *The Decision Notice*

15. In a decision notice dated 30 January 2019 the Commissioner decided that the Council had correctly applied s 14(1) FOIA (vexatious request).
16. The Commissioner concluded that the request was a manifestly unjustified, inappropriate or improper use of a formal procedure. She concluded that the substantive matters at the heart of the grievance have been investigated by the Council, the LGO and the Courts, none of which have found that Mr Connor has suffered an injustice. She concluded that the request is an attempt to re-litigate or re-open matters that have already been addressed and is a misuse of the FOIA process. The Commissioner was critical of the Council's failure to engage with the Commissioner's office in respect of this complaint.

## *Notice of Appeal*

17. Mr Connor appealed against the Commissioner's decision notice. His grounds of appeal set out the historical background to his complaint, but do not clearly identify any error of law. In essence, Mr Connor submits that his request was not vexatious and that it is in the public interest that the information is provided.
18. The Tribunal notes that Mr Connor also asserts that the Council do hold the information. This is not an issue before the Tribunal in this appeal.

## *The ICO's response*

19. The Commissioner submits that Mr Connor has not demonstrated why the Decision Notice is wrong in law. The background information provided by Mr Connor supports the conclusion that the request was vexatious.

## *Issues*

20. The issue for the Tribunal to determine is whether or not the request is vexatious.

## **Legal framework**

### S 14(1) Vexatious Request

21. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):
22. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).
23. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The IC's guidance that the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause was a useful

starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).

24. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.
25. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.
26. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].
27. Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].
28. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68: 'In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient

degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...'

29. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
30. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

#### The role of the tribunal

31. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

#### **Discussion and conclusions**

32. The information provided by the Council and the level of its engagement with the ICO has been limited. The Council stated in its letter to the ICO dated 8 October 2018 that:

Mr Connor has has a long history of litigation and complaints to the Local Government Ombudsman (LGO) regarding this matter. He also made a previous complaint to your office reference FS50650467. The Council does not hold the information he has requested. He has been repeatedly advised of that in correspondence which has been ongoing since 1996. He brought proceedings against the Council which were struck out and he was ordered to pay our costs, He has made two complaints to the LGO and this is the second complaint to your office.

There is no merit to his requests, he just repeats the same requests every so often. We have and will continue to treat him as vexatious on any requests he makes pertaining to the planning issues which have been subject to litigation.

33. By email to the ICO dated 21 January 2019 the Council added:

Our response to the part 8 claim essentially sets out the historic position. This is a matter which has been going on since the 1980's. Mr Connor believes we should have prosecuted a neighbour. He has asked on a number of occasions and has been told why that will happen. He has made complaints to the Ombudsman and complaints to your office essentially all about the same matter. We have provided him with access to information which we hold in recorded form. Some of the information we do not hold and he is also seeking interpretation of the Town and Country Planning Act, which we are not obliged to do.

34. We echo the observations of the Commissioner in the Decision Notice on the paucity of information and evidence provided by the Council. The Council is likely to be assisted in future cases by making reference to the section entitled 'What the ICO expect from a local authority' in the ICO Guidance on dealing with vexatious requests and by directing its submissions towards the guidance in **Dransfield**.
35. The Tribunal considers the four factors identified by the Upper Tribunal to be a helpful framework to structure its consideration of whether the request was vexatious but has had regard to the fact that it is not intended to be an exhaustive definition or a checklist for determination of this issue and that a holistic approach must be taken, with no one factor acting as a trump card.
36. In the absence of any detailed submissions or significant evidence from the Council, we have proceeded on the basis of the information before us.
37. The Council in its email dated 8 January 2019, cited above, appears to suggest that the Council may be treating Mr Connor as a vexatious requestor. This is the wrong approach. It is the request that must be vexatious and not the requestor, and that is the approach we adopt.
38. The Council has provided no evidence of any distress or harassment. In terms of burden, the Council's evidence is insufficiently detailed for us to make a finding that a significant burden is imposed by the request.
39. We find that the request has little value and serves no real purpose. It relates purely to Mr Connor's private dispute. We disagree that there is any significant objective public interest in the information requests. Mr Connor has complained about the same issue to the Council a significant number of times over a significant period of time. The Council has already informed Mr Connor on numerous occasions of its decision not to take action and of the reason why no action was taken. Mr Connor has pursued numerous legal actions and complaints to LGO about the same issue. The underlying grievance has been exhaustively considered and addressed. We cannot see how obtaining an answer to this request will contribute in any way to resolving the issue. There are other more appropriate forums for resolving Mr Connor's issues, most, if not all, of which Mr Connor has already used. This is an attempt to find an alternative way to re-litigate an issue which Mr Connor has attempted to re-litigate on numerous occasions through various alternative avenues over a long



period of time. We find that there is no adequate or proper justification for the request.

## **Conclusion**

40. We have taken a holistic and broad approach and have looked at the entire course of dealings. We have considered the history of numerous complaints to different parties and the litigation on this issue, and we have considered the value and purpose of this request. Looking at all these factors we find that the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of the FOIA.
41. For completeness, and because the request relates to planning issues, we determined that we would have reached the same conclusion if we had considered the case under the Environmental Information Regulations 2004/3391 (EIR). Applying the three stage test under regulation 12(4)(b) we would have concluded, taking account of all the factors and matters set out above, that the request was manifestly unreasonable, that the public interest in maintaining the exception outweighed the public interest in disclosing the information in all the circumstances and that the presumption in favour of disclosure did not mean that the information should be disclosed. Whilst the different test under the EIR may lead to a different outcome in some cases, we concluded that on the facts it would not have done.

Signed Sophie Buckley  
Judge of the First-tier Tribunal

Date of Decision: 11 September 2019  
Date Promulgated: 12 September 2019