



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER:
(Information Rights)**

Tribunal Reference: EA.2015.0125

**ON APPEAL FROM:
The Information Commissioner's Decision Notice: FS50557366**

Appellant: Douglas Bould
Respondent: The Information Commissioner

Date of Paper Hearing: 18th September 2015

Date of decision: 8th October 2015

Before

Melanie Carter

Judge

and

Melanie Howard and Nigel Watson

Tribunal Members

This appeal is brought by Mr Bould (the Appellant) against the refusal of Broseley Town Council (the Council) to provide information sought further to a request dated 11 August 2014 under the Freedom of Information Act (FOIA). The request related to the financial arrangements of the Broseley Town Council's Birch Meadow Café Project (the Café) and also for details of the Town Clerk's salary. The Council relied on section 14(1) to withhold information in respect of the Café Project and on section 40(2) to withhold details of its Clerk's salary.

1. The Council sent the Appellant an initial response to his request on 8 September, which advised him that it had already answered his questions regarding the financing of the Café and that the salary paid to the Town Clerk is personal and

would not be provided. The Council made a second response to the Appellant on 3 November following the intervention of the Information Commissioner.

2. The Commissioner upheld the Council's decision in a Decision Notice dated 12 May 2015 (FS50557366) but ordered it to release the salary scale for the Town Clerk (not the exact salary). The Appellant appealed to this Tribunal. His grounds of appeal raised no points of law and constituted a series of further questions with regards to the Council's expenditure on the Café.
3. The decision of this Tribunal is to reject the appeal. This decision is explained below.

Section 14(1) – Vexatious requests

4. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
5. The term 'vexatious' is not defined in the legislation. In *Information Commissioner v Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27).
6. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of 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 requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests".
7. Since the Commissioner's Decision Notice was issued, the Upper Tribunal's decision has been upheld by the Court of Appeal: *Dransfield v The Information Commissioner, Devon County Council* [2015] EWCA Civ 454, at §§61-73. The Tribunal was of the view that the Court of Appeal decision made no material difference to the analysis carried out by the Commissioner in the Decision Notice.
8. The Tribunal agreed with the Commissioner that the appropriate approach was to consider whether the request is likely to cause a disproportionate or unjustified level

of disruption, irritation or distress in relation to the serious purpose and value of the request. A balancing exercise needed to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.

9. It was clear to the Tribunal that the Appellant had been pursuing a persistent line of enquiry since June 2013, about the finances associated with the Café. In the Tribunal's view the Council had appropriately engaged with the Appellant about his enquiries during the ensuing period and did so with apparent good will.
10. The Council has provided the Appellant with recorded information, together with answers to a raft of questions which have been contained in the Appellant's correspondence.
11. In the Tribunal's view the information provided to the Appellant appears to account for the Council's expenditure on the Café.
12. The Council has provided its 'purchaser ledger accounts' relevant to the Café, and also the final year statement of accounts and the relevant section of its Annual Return. It has also supplied copies of its External Auditor's certificate and opinion for 2012 and for 2013.
13. The Tribunal has seen no evidence of any unlawfulness in respect of the Café or with the Council's accounts.
14. The Appellant's on-going correspondence and enquiries have apparently been made in an attempt to reconcile the recorded information he has been given by the Council – and also by Shropshire County Council, with what he believes is at best confusing and at worst at variance with the Council's accounts. We consider that the Council has adequately explained the difference in the figures and there does not seem to be any further worthwhile or legitimate purpose to be pursued by the Appellant in not accepting the explanation.
15. The Tribunal accepted the Council's and the Commissioner's position in turn that it has provided the Appellant with detailed information relating to the Café Project on numerous occasions and that it can add nothing further on that subject.
16. Introducing the clerk's salary to the correspondence added an arguably harassing element to what had previously been an understandable query as to local authority finances. The Tribunal noted reference to the police having been notified with regard to the Appellant's contact with the Council over this matter. There was in the Tribunal's view some objective evidence therefore of the Appellant's conduct causing likely distress to the Council staff.

17. The Council's resources, in line with other authorities of this size, will have been extremely limited. It appears indeed that there are only 3 members of staff, all of whom are part-time. In these circumstances the demands made by the persistent enquiries of the Appellant would be a real and significant burden upon the authority and would detract from its other necessary functions. The Tribunal agreed with the Commissioner that a reasonable person would conclude that the burden imposed on the Council by the Appellant's requests has reached the point where it must be regarded as being unwarranted and disproportionate.
18. The Tribunal was of the view that the Council was entitled to rely on section 14(1) in respect of the Appellant's request for Café-related financial information and that the request should be considered as being vexatious.

Section 40(2) – personal data

19. The Council has relied on section 40(2) of the FOIA to withhold information concerning its Clerk's salary.
20. Section 40(2) provides an exemption from disclosure, for information which is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.
21. The Tribunal considered whether disclosure of the requested information, which it was clear was the personal data of the Town Clerk, would breach any of the data protection principles contained in Schedule 1 of the DPA. The first data protection principle is the one most relevant in this case.
22. The first data protection principle has two components:
 - 1) Personal data must be processed fairly and lawfully, and
 - 2) Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.
23. The Council assert that an employee would have a reasonable expectation that specific details of his or her salary would not be made available to the public and that to disclose his or her salary would be unfair.
24. This is the case with any of its employees whose salary is less than £50,000 per annum and is in accordance with the provisions of the Accounts and Audit (Amendment No. 2) Regulations 2009.
25. In considering fairness, the Tribunal has taken into account the nature of the information, the reasonable expectations of the Town Clerk, the potential

consequences of disclosure and has balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

26. In the Tribunal's view, the role of Town Clerk and the salary it provides is not of a level that the employee in the role would hold an expectation that salary details, which are inherently personal, would be disclosed. Given this expectation the Tribunal was of the further view that disclosure would likely result in distress to this individual.
27. The Council had been ordered by the Commissioner to release the salary scale of the Town Clerk. The Tribunal was of the view that the legitimate public interest in knowing how public money is spent, how public sector salaries compare with those in other areas, and how money is distributed between different levels of staff is met by knowing the Town Clerk's salary scale. Thus, assuming that the Council have released the salary scale as ordered, disclosure is not necessary.
28. disclosure is not necessary.
29. In the Tribunal's view, the Town Clerk's right to privacy outweighs the public interest in publishing the exact salary details. Thus, disclosure would be unfair and in breach of the first data protection principle. This means in turn that the absolute exemption at section 40(2) FOIA applied and the Council and the Commissioner had been correct in concluding that disclosure did not need to be made.

Conclusion

30. In light of the above findings the Tribunal unanimously rejected the appeal.

Judge Melanie Carter

Date of promulgation: 9th October 2015