



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2015/0296

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50580423
Dated: 14 December 2015**

Appellant: EDWARD DURANT

1st Respondent: INFORMATION COMMISSIONER

2nd Respondent: COMPANIES HOUSE, AN EXECUTIVE AGENCY OF DBIS

Heard at: LEEDS MAGISTRATES COURT

Date of hearing: 7 JULY 2016

Date of decision: 11 JULY 2016

Before

ROBIN CALLENDER SMITH
Judge

and

JEAN NELSON and PAUL TAYLOR
Tribunal Members

Attendances:

For the Appellant: Mr I Clegg.

For the 1st Respondent: written representations by Mr A Sowerbutts, Solicitor for the Information Commissioner

For the 2nd Respondent: Ms J Kerr Morrison, Counsel instructed by the GLD on behalf of Companies House

Subject matter: FOIA 2000

Vexatious or repeated requests s.14

Cases: *Dransfield v Information Commissioner* [2012] UKUT 440 AAC

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 14 December 2015 and dismisses the appeal.

REASONS FOR DECISION

Background

1. Since 2009 Mr Edward Durant (the Appellant) has been engaged in a series of communications with Companies House.
2. The FOIA requests that are the subject of this appeal were made by him on 15 May 2015 in the following terms:

Under the stated Act please advise, in the last 5 years: –
 - How many complaints were made (to Companies House) during this period?
 - How many were resolved in the first two weeks?
 - How many were resolved thereafter?
 - How many remain unresolved?
3. Companies House (the second Respondent) responded on 12 June 2015, refusing the request as vexatious under section 14 (1) of the Act. There was then an internal review that maintained Companies House's original vexatiousness decision.
4. Both Companies House and the Information Commissioner relied on the Upper Tribunal (Information Rights)'s decision about the term "vexatious" and the issue of vexatious requests in the leading case of *Dransfield v Information Commissioner and Devon County Council*.

5. In essence, in that case, the Upper Tribunal had found it instructive to assess the question of whether a request was truly vexatious by considering four broad issues:
 - (1) The burden imposed by the request on the public authority and its staff;
 - (2) The motive of the requestor;
 - (3) The value or serious purpose of the request; and
 - (4) Harassment or distress of and to the staff (of the public authority).
6. At Paragraph 45 of the Upper Tribunal decision it was emphasised that the considerations above were not meant to be exhaustive but rather the

[I]mportance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, the responsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.
7. The Information Commissioner concluded, looking at the history of the matter, that each time Companies House confirmed that information requested by the Appellant was not held, it had complied with its duties under FOIA.
8. Also, its use of section 14 as a reason for not responding further to these requests was lawful.

The appeal to the Tribunal

9. The Appellant's Grounds of Appeal are concise. He maintains that by cross-referencing his request to other cases at the Information Commissioner's Office it is evident that the "Registrar of Companies has been less than honest in its submissions to the Information Commissioner".
10. Also, that the "case histories" the Information Commissioner had referred to do not apply to the case and that letters the Appellant has attached

have been filed with the Registrar of Companies, confirmed as received but not acted upon as complaints.

11. The Appellant seeks two outcomes from the Appeal.
12. These are, firstly, an affirmation that the Registrar of Companies does not follow its own written complaints procedures and that it has intentionally misled Parliament in its Annual Reports.
13. Secondly, that the Information Commissioner be “more pro-active in applying procedures as it has in the past rather than just applying the letter of the law”.

The questions for the Tribunal

14. The question for the Tribunal is whether Companies House and the Information Commissioner had been correct in assessing that the Public Authority’s reaction to the information request from the Appellant – by refusing to respond to it on the basis of section 14 FOIA – is correct.

Evidence

15. The Tribunal has considered all material and witness statements in the Open Bundle which runs to a total of 191 pages.
16. Before the oral appeal hearing it was necessary for the Tribunal Judge to make specific Directions which, as a matter of record, are noted here:

I note the email communication dated 4 July 2016 from Mr Ian Clegg in the FTT Appeal Case EA/2015/0296 *Edward Durant v Information Commissioner and Companies House*.

In an attachment to that email Mr Clegg makes a Witness Statement dated 4 July 2016 where the side heading purports to identify him as "Claimant" in this appeal. As he knows, he does not have that status.

He has received the papers in this appeal only as Mr Durant's representative: see decisions rejecting his Joinder as a Party to the appeal by the Registrar on 25 February, by the Chamber President's rulings on 14 March and 30 March and by Upper Tribunal Judge Nicholas Wikeley's ruling on 3 May 2016.

Judge Wikeley described his application to the Upper Tribunal as "totally without merit".

The First Tier Tribunal hearing the matter at Leeds Magistrates' Court on 7 July - having already read all the papers in this appeal - would expect Mr Clegg to summarise his points on behalf of Mr Durant for no more than 45 minutes.

The Tribunal will not be treating him as a Claimant in this appeal.

17. The Appellant's representative, Mr Clegg, acknowledged what he explained was a typing error - in response to those Directions ahead of the oral hearing and again at the hearing itself - where he made only very brief submissions on behalf of the Appellant.

18. He explained that he and the Appellant had been business partners, that he himself had an outstanding appeal involving Companies House relating to similar issues and he asked the Tribunal to note a number of points.

19. Two of those were that

At no point has companies house advised that they have destroyed archive records before 2009. This news came from the Information Commissioner's Office (ICO). One would have thought that Companies House would have retained outstanding complaints lodged before 2009 as a matter of concern, but obviously not. And when was this destruction of records undertaken?

With regard to seven complaints filed to [the] Tribunal with Notice of Appeal date[d] 18/12/2015, apart from automatic confirmation of receipt, non[e] were acknowledged as complaints and non[e] had express requests for further information or statements of not understanding what each complaint referred to. None of the above fits in with Companies House Code of Compliance.

Conclusion and remedy

20. The Tribunal is satisfied to the required standard, the balance of probabilities, that the operation of the criteria identified in the Upper Tribunal decision in *Dransfield* have been correctly applied to the

Appellant's request in this instance so that Companies House is not required to provide the information to the Appellant under the provisions of section 14 FOIA.

21. Companies House is entitled to take into account any relevant past history of interactions between it and the Appellant. Exploring this situation can clearly throw light on whether a request is a genuine enquiry or part of a campaign conducted to gain personal satisfaction by creating burdens on the public authority that do not lawfully fall within the FOIA regime for making requests.

22. An example of the past history is set out by Companies House at page 128 of the Appeal Bundle. It contains a telling paragraph headed *Context* which notes:

Mr Edward Durant and his associate Mr Ian Clegg has been in protracted communication with our Customer Service department from 2009 and 2008 respectively regarding a complaint that they alleged to have made to CH [Companies House]. However, despite CH requesting further information about the alleged complaint on several occasions, the crux of the complaint was never provided. CH was therefore unable to progress the complaint as part of its usual internal complaints procedure. Neither Mr Durant nor Mr Clegg would clearly explain the basis of their complaint, therefore CH closed the same. CH's customer facing area has now advised both parties that any further correspondence in the same vein will simply be acknowledged and placed on file.

23. It is clear that part of the purpose of section 14 FOIA is to protect the resources of a public authority from being squandered on the disproportionate use of its burdens and duties within the Act on the kind of conduct identified above.

24. Companies House had provided thorough responses to the Appellant's previous requests and correspondence. That much is clear from the evidence provided.

25. That has not altered the Appellant's fixed view. As a result, he calls into question almost all information and answers offered by Companies House.

Further, the Company's House responses are characterised by the Appellant as being untruthful or dishonest.

26. The Tribunal finds that to allow this pattern of request to continue – in the context of the language that has been developed by the Appellant in respect of them – would be an unjustified use of the rights granted to individuals by FOIA and an unjustified use of Companies House's resources.

27. For all these reasons the Tribunal dismisses the Appellant's appeal.

28. Our decision is unanimous.

29. There is no order as to costs.

Other Matters

30. The Tribunal notes that Companies House is treated as the operative Public Authority in this appeal on the basis that it is an executive agency sponsored by the Department of Business, Innovation and Skills (DBIS).

31. In *John Cieslik v Information Commissioner, the Driver and Vehicle Standards Agency, the Department for Transport and Porsche Cars Great Britain Ltd* (EA/2014/0123 decided on 4 August 2015), a warning about the status of such agencies in FOIA/EIR appeals was highlighted at Paragraph 41 of that decision.

32. There it was noted that the issues in relation to the appropriate party in such appeals

.... requires important consideration and the application of caution because the provisions under FOIA/EIRs apply strictly to public authorities, as defined. There is no mechanism by which an organisation or part of an organisation can be treated as if it were a public authority. It either is or is not. Furthermore, as in this case, treating an executive agency as a public authority can lead to confusion on the part of the public as to where information is held and to whom a request should be addressed. Taking this further, there is a risk, through this approach, that an agency might lose sight of its obligation to provide advice and assistance in relation to requests for information which it doesn't hold but which is or may be held by the wider public authority of which it is apart. Such an obligation flows from

the duties conferred under either section 16 FOIA or Regulation 9 EIR...

33. While it has not caused confusion in this appeal, the dangers pointed out in the paragraph above should perhaps be more fully articulated in similar, future decisions.

Robin Callender Smith
Judge
11 July 2016