



Appeal number: EA/2017/0016

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

SERGE YAKOVLEV

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**TRIBUNAL: JUDGE ALISON MCKENNA
Mr ROGER CREEDON
Mr ANDREW WHETNALL**

Sitting in Chambers on 12 May 2017

DECISION

1. The appeal is dismissed.

REASONS

Background to Appeal

2. The Appellant made an information request to the City of London Corporation (“the Corporation”) on 13 September 2016. He requested the name, position and e mail addresses of Corporation officers, asked who was responsible for disrepair on his Estate, asked why the Corporation’s contractor had not followed its complaints policy, and asked who was responsible for the “*continuing ingress of toxic and nerve gasses into the flats...as a vendetta for their rightful complaints*”...
3. The Corporation declined to respond, citing s. 14 of the Freedom of Information Act 2000 (“FOIA”). The Corporation referred to s. 17 (6) FOIA and explained it would not respond to further similar FOIA requests.
4. On 16 September 2016, the Appellant made a further information request to the Corporation. This was for the name of the officer who had sent the earlier reply. The Corporation did not respond.

5. The Appellant complained to the Information Commissioner, who issued Decision Notice FS50647267 on 31 January 2017, upholding the Corporation's decision and required no further action to be taken.

Appeal to the Tribunal

6. The Appellant's Notice of Appeal dated 2 February 2017 relies on grounds which may be summarised as follows: (i) the Information Commissioner is in breach of her statutory duty to uphold FOIA; (ii) the request was made after previous collective complaints from residents about disrepair on the Estate were ignored; (iii) the Corporation failed to follow its own complaints policy and was in breach of its obligations under FOIA. We understand these arguments to be directed towards the Corporation's reliance upon s. 14(1) FOIA. We note that its later reliance on s. 17 (6) FOIA has not been specifically mentioned by the Appellant in his grounds of appeal, but we have considered it as part and parcel of this appeal in any event.

7. The Respondent's Response dated 14 February 2017 maintained the analysis as set out in the Decision Notice. In inviting the Tribunal to take a holistic view of the case, she referred us to the evidence that the Appellant had sent some 40 e-mails to the Corporation on the same or similar themes between 2014 and 2016 (schedule at page 91 open bundle), had issued unsuccessful court proceedings against the Corporation (pages 83 to 89 open bundle) and had complained to the Local Government Ombudsman (page 57 open bundle), who declined to take the matter further. She also referred us to a previous Decision of this Tribunal in 2015, in which the panel concluded that s. 14 FOIA had been correctly applied to a request from this Appellant, commenting that "...the Appellant will continue to submit requests on a regular basis regardless of the guidance given to him. This is a clear example of a manifestly unjustified and improper use of FOIA".

8. In response to the Appellant's Grounds of Appeal, the Information Commissioner submitted that there was limited purpose and value to the information request made on 13 September 2016. The Corporation had previously explained to the Appellant that it could not disclose the requested details about junior staff (for reasons concerned with data protection) and that the names and contact details of senior staff are published on its website. Even if the Corporation had replied to the request, it was submitted that it would have been unlikely to assist the Appellant with his underlying concern (which is about toxic gasses) because this has already been investigated by the Corporation and other agencies and found to be without substance. The Information Commissioner submitted that the Tribunal should conclude that there was a limited value to the request, and that such value as it did have was out-weighed by the burden on the Corporation in responding to it. Also, that in view of the history of the Appellant's conduct, responding to the Appellant would be likely to lead to further requests and an additional burden on the Corporation. The Information Commissioner submits that s. 17 (6) FOIA was correctly applied by the Corporation in the circumstances of the request.

9. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising about 100 pages, including submissions made by both parties, for which we were grateful.

The Law

10. The duty of a public authority to disclose requested information is set out in s.1 (1) of FOIA.

11. Section 14 (1) and (2) of FOIA provide that:

(1) Section 1 (1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request

from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

12. Section 17(5) and (6) of FOIA provide that:

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1 (1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where –

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

13. The term “vexatious” is not defined in FOIA itself, but it has been interpreted by the Courts. The Court of Appeal recently considered the question of identifying vexatious requests in *Dransfield v Information Commissioner* [2015] EWCA Civ 454, in which case Arden LJ observed at [68] 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, to the public, or to any section of the public*”. We note that the Court of Appeal’s approach was to regard the hurdle set by s. 14 (1) FOIA as a high one. The task for the public authority is to consider whether the request would be likely to cause disruption, irritation or distress to the public authority and, if so, to balance that disruption, irritation or distress against the purpose and public value of the request.

14. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

“If on an appeal under section 57 the Tribunal considers –

*(a) that the notice against which the appeal is brought is not in accordance with the law, or
(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”

15. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant.

Conclusion

16. Having considered all the submissions and evidence before us, we are satisfied that there is no error of law or wrongful exercise of discretion in the Decision Notice.

17. We agree with the Information Commissioner’s conclusion at paragraph 25 of the Decision Notice that in this case “*the line between justified persistence and obsessiveness*” has been crossed by the request which, when viewed holistically, demonstrates manifest unreasonableness and a lack of proportionality. We are satisfied that the disruption to the Corporation of dealing with the request outweighed the limited value and

purpose of the request in circumstances where the Appellant's concerns about gasses have been investigated by the Corporation and other agencies and found to be without substance. Further, as has been explained to the Appellant, he is not entitled to personal data about junior officials and the details of senior officials are in the public domain. The Corporation would not be able to help the Appellant in relation to his query about the behaviour of its contractors. In common with the previous Tribunal, we are satisfied that the request in this case was an improper use of FOIA and that, if answered, it would have generated further correspondence on matters which have been resolved.

18. We also agree with the Information Commissioner's conclusion at paragraph 29 of the Decision Notice that s. 17 (6) FOIA was properly applied to the Appellant's second request dated 16 September 2016. The Corporation had informed the Appellant that this would be its approach to further correspondence on the same theme, and in our view acted permissibly in not responding to the Appellant's further request in reliance upon its earlier application of s. 14 (1) FOIA.

19. For the above reasons, we now dismiss this appeal.

Dated: 23 May 2017

Date Decision Promulgated: 24 May 2017

**Alison McKenna
Principal Judge**

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