



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS50818494**

Appeal Reference: EA/2020/0110

**Heard over the CVP platform
On 13 May 2021**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

JEAN NELSON & PAUL TAYLOR

Between

PETER WILKINSON

Appellant

and

INFORMATION COMMISSIONER

Respondent

Appearances:-

Appellant: in person

Respondent: did not attend

Cases

Dransfield v Information Commissioner & Devon CC [2015] EWCA Civ 454

DECISION

The appeal is dismissed.

REASONS

1. Mr Wilkinson has been in conflict with Addingham Parish Council for some years. Contentious issues have included the construction of a new building for leisure purposes, the preparation of a Neighbourhood Plan, the management of capital projects, financial controls and the Council's practices and procedures. On 6 January 2019 he made a complaint about its failure to provide him with papers he felt entitled to relating to proceedings of the Council and on 8 January he wrote seeking information:-

1. *The insurance claim referred to in 228/18*

2. *Copies of or reference to the offer of funding from LEADER for improvement works to the Old School and the terms set out in the Agreement Document dated 28 November, ref Minute 230/18*

3. *Copies of or reference to the report on the pre-contract meeting held on 13 December between the contractors, project manager (architect) and engineer, and involving members of the Old School Working Group, Minute 230/18 refers.*

4. *The Contract specification for the works to repair and improve the Old School including roof repairs, and tender documentation and pre-contract quotations received to date, Minute 230/18*

5. *The correspondence from the External Auditor which required a response and the response in the form of the draft letter to the External Auditors circulated to members. Information displaying how the letter and detailed attachments are attributable to challenge correspondence queries raised by members (earlier minutes) Minutes 237/18.*

6. *Correspondence from a local resident as regards financial controls, 239/18*

7. *The report of issues remaining outstanding with the Football Club, and the request received from tenants and occupiers of the Pavilion for a meeting with the Council. Minute 236/18 I observe that the draft notes of the meetings of the Hub Steering Group 14.12.2108 and the neighbourhood plan review group 14.12.2018 have been posted on the website. Minutes 232/18 and 233/18 refer. Will you please inform me of the dates when they were posted.*

I understand that you may find it necessary to redact third party personal data associated with the above request."

2. The Council refused to provide the information on the grounds that it was a vexatious request in its response of the 21 January 2019. On 17 March 2019, referring to a complaint made by another individual he made a further request seeking

"...reference to or copies of the original complaint and the Clerk's written response, together with agreed notes of the informal meeting..."

3. This also was refused relying on s14(1) of FOIA. The Council Chair and Vice Chair carried out an internal review which concluded:-

9. *Conclusions and Decisions*

- 9.1 *The Council's conclusions are summarised as follows:*

This individual's persistent and obsessive determination to pursue complaints against the Council, presented in a high volume and frequency of correspondence directed to

the Clerk, causes an unreasonable disruption to the routine business of the Council, as the Clerk's working time has to be diverted to the investigation, logging and recording of these matters, and to taking advice and checking procedures as required. Addingham Parish Council is a smaller authority, with a precept under £100,000, some 50% of which is devoted to staff costs. The Clerk works 20 hours per week from her home address.

Handling this volume of correspondence from just one individual places a significant burden on the Council in terms of the cost in overtime payments to the Clerk and in terms of the disproportionate amount of time spent on servicing correspondence from this local elector at the expense of other village residents and necessary Council business.

9.2 The Council concluded that servicing correspondence with this individual has placed and is continuing to place the small authority under an unjustified and disproportionate burden.

9.3 The Council concluded that the initial decisions to refuse to release information to Mr Wilkinson in response to his recent freedom of information requests were both proportionate and justified in the context of Mr Wilkinson's contacts with the Council and activities in the community to undermine and disrupt the Council's business over a considerable period of time.

9.4 The Council resolved to confirm the original decisions to refuse both FOIs as vexatious under s.14(1) of the FOIA. Further the Council resolved to uphold the original decisions to exempt all of the requested information from disclosure, and also resolved that the actions of the Clerk in handling communications with the complainant had been proportionate and appropriate over time.

It was agreed that no further action was required in this matter and the instructions provided to the Clerk for the handling of future correspondence and FOIs with the complainant were confirmed.

4. Attached to the review was a schedule of correspondence in relation to three individuals. The total number of items for the other two was approximately 30 (including one claim of slander referred to the Council's lawyers, but not pursued). There were approximately 70 entries over a period of two years for Mr Wilkinson. Some related to individual letters to the Council, others to correspondence copied to several public bodies, to newsletters he had some responsibility for and others to exchanges of emails. The subjects including three referrals of the Chair to the Monitoring Officer, suggesting to the Department for Communities and Local Government that because the Council had co-opted members it could no longer exercise certain powers, writing as an organisation suggesting the Council refer itself to the Equalities Commission and repeated correspondence with the Internal Auditor. There were repeated attempts to get the Council to revisit previous replies or meeting minutes, a phone call to the Clerk resulting in an argument with her, repeated claims of unlawful secrecy and of losing money. On 19 June the Council agreed the internal review resolving:-

"...the findings of an internal review of correspondence between a village resident [the complainant] and the Council be confirmed, and that recent decisions, taken in line

with a resolutions dated 19 December 2018 (Minutes 229/18 refers), to refuse under s.14(1) of the Freedom of Information Act, to release information to the resident in response to two freedom of information requests received during the period January to April 2019, were both proportionate and justified in the context of both the resident's ongoing contacts with the Council and his activities in the community to undermine and disrupt the Council's business over a considerable period of time."

"...the decision to exempt all of the requested information from disclosure be upheld and that the actions of the Clerk in handling communications with the complainant be confirmed as being proportionate and appropriate over time."

5. Mr Wilkinson complained to the Information Commissioner who, following an investigation issued her decision notice on 22 January 2020. She analysed the request in its context relying on the jurisprudence relating to s14(1) using the framework for analysis approved in *Dransfield*:-

23. In the Dransfield case the Upper Tribunal defined a vexatious request as, the "...manifestly unjustified, inappropriate or improper use of a formal procedure" and in making this decision the Tribunal determined that the concepts of 'proportionality' and 'justification' should be central to any consideration of whether a request is vexatious.

24. The Upper Tribunal found it was 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.

25. The Tribunal stressed that these considerations were not exhaustive and therefore it is important to adopt a broad and holistic 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" (paragraph 45).

6. In her decision notice the Information Commissioner considered at length the submissions and evidence submitted by the Council detailing its account of the history of relations and the actions of Mr Wilkinson. She made findings with respect to key issues and while recognising that there was some value in seeking the information the Council was entitled to rely on s14(1):-

100. It is clear to the Commissioner that the information the complainant has asked for has some merit in respect having the Council to account for its actions.

101. That said, in the context of the complainant's on-going correspondence, it is apparent to the Commissioner that the complainant is using his requests in order to pursue and further a campaign against the Council. That campaign, in the Commissioner's opinion, has, and continues to impose a significant burden on this small public authority and its Clerk.

102. *The Commissioner cannot ignore this burden. Particularly because this Parish Council is a smaller authority whose precept is under £100,000 and where 50% of this is devoted to staff costs.*

103. *There is no evidence that the complainant's motive in making his requests is to undermine and harass the Council. However, the effects of his requests, in the context of his on-going correspondence and actions, is enough for the Commissioner to conclude that the requests have achieved that.*

104. *In the Commissioner's opinion, the complainant's requests have passed the point where they are merely an irritant to the Council. They are such that the Commissioner can readily accept the Council's assertion that the effects of the complainant's requests are both disruptive and distressing.*

105. *Viewing the complainant's requests of 8 January and 17 March 2019 in the context of his on-going correspondence, the Commissioner has decided that the Council is entitled to consider those requests to be vexatious and therefore it is entitled to rely on section 14(1) of the FOIA to refuse to comply with them.*

7. Mr Wilkinson appealed against this decision in somewhat lengthy and unclear documents. He argued (incorrectly) that the Council had not relied on s14(1) when refusing his requests, that the Commissioner's investigation was procedurally unfair, that he did not like being described as a vexatious correspondent, that he had not acted in concert with another complainant, that he did not have a long-standing grievance against the Council, that he had not harassed the Clerk and that the Commissioner had been misled with the evidence she had relied upon being fabricated.
8. In resisting the appeal the Information Commissioner noted that since the tribunal was a full-merits hearing the procedure she adopted was not a ground of appeal, her decision related to the request, not any description of Mr Wilkinson by the Council, nor had he been accused of a criminal offence. The Information Commissioner drew attention to the material supplied by the Council of Mr Wilkinson's behaviour which included:-
 - In addition to complaints to the Information Commissioner, raising issues with the internal auditor, Bradford City Council officers, the local MP, consultants under contract to the Council, and the external auditors. He did not accept answers and explanations by the Council and persisted unreasonably in pursuing his query or complaint with the Council and with other agencies
 - In a formal complaint against the Council, unreasonably pursuing it after an informal resolution was reached
 - Three complaints to the Monitoring Officer claiming that the Council Chairman had conflicts of interest, two of which were found to be without merit by the Police and the third of which (which also related to another councillor) the Monitoring Officer had refused to consider

- The perception of his behaviour as bullying which led two female councillors to decide not to stand in 2019
 - His FOI requests had harassed the Clerk requiring overtime and causing stress, he has expected the Clerk to brief him on meetings he has not attended, requiring the provision of information some of which is already in the public domain, challenging her with respect to procedures which he may not fully understand
 - Taking any opportunity to expose assumed errors, however minor, with other agencies, creating an atmosphere for the Council of constant hostile oversight and scrutiny.
 - The hostile behaviour of Mr Wilkinson and his associate to the Chairman during Council meetings, had required a police presence
9. The Information Commissioner noted the burden which Mr Wilkinson's actions had placed on the Council and the role of s14 in protecting public resources from being disproportionately used in meeting excessive or ill-intentioned requests.

10. Two witness statements were provided in support of Mr Wilkinson's appeal. Mr Bryson, a resident who was also a subject of the vexatious correspondence report stated that had only written about 12 times to the Council and this correspondence was not vexatious. He criticised the Council for designating his home as a local heritage asset without consulting him. He criticised the financial management of the Council which had expanded its expenditure and precept with little control or transparency, its handling of the Neighbourhood Plan (coupling that with criticism of the Bradford City Council approach to greenbelt issues). He argued:-

Accordingly, and despite all of the waffle and also despite the dramatic impact of a very-severe personality clash (i.e. between Peter Wilkinson and Catherine Coates) I believe that there is an over-riding public interest involved at this tribunal hearing. Quite-simply, Addingham Parish Council should have done what is required by law: as a public authority, to act responsibly, accountably and transparently.

11. Mr Appleyard, the third individual in the report provided a statement detailing his involvement with the development of the new leisure facilities, and his concern that they were not available for young people in the village. He stated that he was not involved in a campaign against the Council and his complaints against the Council were entirely separate from Mr Wilkinson. He had legitimately and appropriately raised issues with respect to the Neighbourhood Plan and the sports facilities.
12. In his oral argument Mr Wilkinson gave background information about how the disagreements with the Council had arisen. He spoke at length about the history of discussions about the replacement of sports facilities following a capital receipt the Council had received as a result of selling land for a doctors'

surgery and his competing plans for the building. He argued that as a result of his complaints about conflicts of interest the Council's practices had changed. The Council was not a small Council and was not following the appropriate procedures for a Council of its size.

13. Mr Wilkinson claimed that the material submitted by the Council was *untrue, unfounded, unevidenced, damaging, personally damaging and intended to mislead*. He explained that in making requests he had wanted a complete picture of the planning process and his request was not intended to annoy. He argued that there was no record of the Council passing any resolution relating to his activities being "vexatious"; he commented that *"I find it very distressing at my age to be pilloried... I have a right to have wrong personal data corrected or withdrawn... it is my intention to have all the evidence withdrawn."* He argued that the Council's records did not add up to what it had told the Commissioner.
14. He argued that the Council did not comply with ICO guidance on vexatious requests. He felt that he should have been consulted and he found the label *"personally damaging, I am very very hurt"*.
15. He argued that he was entitled to information which he did not receive and therefore made FOIA requests; *"we are tenacious because we have rights to information"*. There was a genuine purpose behind his request and it was not an unreasonable burden. The Clerk in refusing the request had not had the authority to refuse it. He would challenge the Council *"page by page until all the evidence is withdrawn or corrected"*.
16. He had asked for a copy of the report of the Chair and Vice-Chair from the December 2018 meeting about vexatious correspondents. The Council had remained silent; he stated: *"I say it's a forgery"*. He claimed that he had used best endeavours to make the process easier for the Council but that the *"Council has gone to ground. The Clerk resigned. The Chair has indicated she will give up her seat at the next meeting"*.
17. He continued: *"harassment is a very serious criminal matter, I have not harassed anyone on this Council, it is very damaging, I will have it put right. The evidence is not credible, it can be taken apart piece by piece"*.
18. He was concerned at the restriction on the use of material contained in the bundle of evidence claiming that the *"Information Commissioner is withholding certain information and I am not able to disseminate it, there is something to be investigated"*.
19. In connection with the position of the Clerk he confirmed that the Clerk worked part-time, her hours had been increased in the last 12 months and an assistant clerk had been appointed. He felt that the Council itself had chosen to expand and that had put an enormous burden on the Clerk. She was responsible for two building projects and *"at the same time the Clerk has spent a*

great deal of time reviewing the Standing Orders etc, she has done a solid job, although not as good as one would wish". He explained that the group responsible for the Neighbourhood Plan had fallen apart due to a "controversial deletion" of part of the draft plan. The minutes of the group had been finally agreed at a meeting to which his associate was not invited. The burden of re-writing then fell on the Clerk working with a Consultant. She worked intensive overtime in 2019 "and also putting together 400 pages of evidence". He stated that: "the burden is enormous, it is an employer matter." He did not accept that it was legitimate for the Council to deal with certain business without the public being present, "the Council is running under cover and say private, confidential, personal, often a part where the public and press are excluded, it doesn't line up with what the IC says".

Consideration

20. The purpose of s14(1) is to protect the resources of public authorities from requests for information which are manifestly unreasonable. The *Dransfield* decision emphasises that the question needs to be considered holistically in the context of relations between the public authority and the requester and that there are a range of issues which may indicate that a request is vexatious.
21. The schedule to the internal review indicates a very high level of activity in challenging and probing the Council which clearly absorbed a huge proportion of its resources . The tribunal noted the criticisms levelled at the Council by Mr Appleyard and Mr Bryson which may properly reflect underlying concerns; however, those concerns are somewhat distinct from the issues raised by the Information Commissioner's conclusions with respect to the requests from Mr Wilkinson.
22. The administrative resources of the Council were very limited; one part-time Clerk with many responsibilities, and the diversion of her time to dealing with Mr Wilkinson was to the detriment of the effective management of the Council's business. It was notable however that while in his oral presentation he acknowledged that, at the time of the request she had an enormous burden, he accepted no responsibility for the burdens she had carried, saying "it is an employer matter".
23. He has shown a level of hostility and suspicion over many years resulting in repeated complaints to outside agencies with responsibilities for oversight of the Council resulting in legal expenditure and increased Audit fees but with minimal discernible outcome. There are clear indications that, whatever his original concerns were, there was a strong desire to attack the Council and that attack had had an effect on individuals. The observation made by Mr Bryson about a personality clash between Mr Wilkinson and the Council Chair is pertinent.

24. In the hearing he emphasised repeatedly that he was persistent and that he wanted to pursue every issue where he felt that there was an error or he had been unfairly treated to the very end in order to obtain a correction. In addition to suspicion of the motives and actions of the Information Commissioner (paragraph 18 above), he felt highly aggrieved by the actions of the Council but appeared to have no sense that his own actions could have an adverse effect on the welfare of others. The evidence before the tribunal demonstrated that the Clerk and Members of this small Council felt harassed and intimidated by Mr Wilkinson.
25. It is clear by his own admission, that however the Council had responded to Mr Wilkinson there would have been further requests and further burden in dealing with them until Mr Wilkinson was satisfied.
26. The tribunal is satisfied that these requests fell within s14(1) of FOIA; they were a manifestly unreasonable abuse of a statutory right. The Information Commissioner's decision and reasoning (in DN FS50818494, whose conclusions are at paragraph 6 above) are correct.

Signed Hughes

Judge of the First-tier Tribunal

Date: 23 May 2021

Promulgated: 24 May 2021