



IN THE FIRST-TIER TRIBUNAL

(INFORMATION RIGHTS)

IN THE MATTER OF AN APPEAL UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0282

BETWEEN:-

MICHAEL FOY

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

SRIKE OUT RULING

RULING IN RELATION TO THE Information Commissioner's Decision Notice dated 16 November 2011 (references FS50400972; FS50397482)

Introduction

1. In June 2010, the Appellant's wife was issued with a Penalty Charge Notice ("PCN") by the London Borough of Wandsworth ("the Council"). The Appellant made representations against the imposition of the PCN to the Council. The Council told the Appellant that the matter had been placed "on hold" pending its

consideration of those representations. It was not and an escalated charge certificate was sent out. There was correspondence between the Appellant and the Council as to the lawfulness of the PCN, and the Appellant lodged an appeal with the Parking and Traffic Appeal Service. Following the lodging of the appeal, the Council accepted that it had made a procedural error in relation to it (namely that it had not been put “on hold” pending the consideration of the representations). The PCN was cancelled in September 2010 before the appeal was heard. The Appellant continued to correspond with the Council in relation to the issue of the lawfulness of the PCN and issues directly related to it.

2. On 28 February 2011, the Appellant requested from the Council:

“...all parking-related bonus schemes operating in Wandsworth”.

3. A few days later, on 2 March 2011, the Appellant requested the following:

“...full disclosure of Wandsworth’s contract with NSL...Was my PCN issued by an NSL operative? Does NSL pay target bonuses to Wandsworth as part of its contract? Are you setting targets for NSL to meet?”

4. The Council refused both requests as “vexatious” relying on S.14 of FOIA (respectively in letters of 28 March 2011 and 30 March 2011), this position was maintained by the Council after conducting an internal review.
5. The Appellant complained to the Respondent (“the Commissioner”) who over the course of some months conducted an investigation and issued a decision notice on 26 October 2011. The Commissioner carefully reviewed the evidence and applied the analysis set out in his guidance on S14 requests: *Vexatious or repeated requests* (“the Guidance”) formulated in the light of decisions by this Tribunal relating to S14. He concluded that the Council was entitled to rely on S14.

The Appeal

6. The Appellant raises six Grounds of Appeal to the Tribunal:
 - (1) The DN did not meet the criteria for section 14 to be engaged;
 - (2) The Commissioner's investigation was contradictory;
 - (3) The DN was biased in favour of the Council;
 - (4) The Commissioner's investigation was defamatory of him;
 - (5) The DN was untruthful;
 - (6) The Commissioner's investigation was manipulative and selective.
7. The Appellant clearly set out the basis for each of those in the Grounds of Appeal accompanying the Notice of Appeal and in two subsequent communications to the Tribunal (dated 19 January 2012 and 10 February 2010) in in which he resisted the Commissioner's argument that the Appeal should be struck out as having no reasonable prospects of success.
8. The Commissioner set out his arguments in favour of striking out the appeal in his Response of 9 January 2012.

Consideration of the Appeal

9. I turn now to a consideration of each of these grounds in turn
 - (1) An examination of the decision notice shows that contrary to the Appellant's argument the Commissioner did not confuse the request and

the requester in coming to a decision that the request was vexatious. He conducted a careful, thorough and impartial review of the request in its proper context of the Appellant's history of contact with the Council with respect to parking. He used his guidance which is an appropriate tool for analysing the material with which he was faced. I am satisfied that the analysis and conclusions to which the Commissioner came are sound and based on a proper understanding of the law.

- (2) I am satisfied that the contradiction which the Appellant claimed to find in the decision notice is simply not there. The Commissioner did indeed set out the Council's understanding and position of the status of the place where the PCN was issued, however he also set out the Appellant's view of the case. He carefully abstained from coming to any conclusion as to what the true status of the location at which the PCN was issued actually was. The Commissioner and this Tribunal are not in any position to make decisions as to the legal status of highways.
- (3) The Appellant accused is the Commissioner of bias; and there is not a shred or scintilla of evidence contained in the decision notice which can justify this claim. The simple issue is that the Commissioner, having carefully reviewed the facts has come to a conclusion with respect to the request for information which the Appellant does not like.
- (4) The Appellant has argued that the decision notice "accused the Appellant of alleging that many of the councils parking control staff are masquerading as council officers. This damaging accusation is absolutely untrue and unsupportable. It is, indeed, scurrilous that the Commissioner can make this outrageous assault on the Appellant's character". In an annotation to the decision notice the Appellant has written "Defamatory, no I have asked". In a copy of an e-mail he sent to the Council which is one of the documents accompanying the decision notice the Appellant

stated: "I would now turn to the issue of your non-disclosure of Mouchel/NSL staff possibly masquerading as Council officers. I am asking under FOIA Agenda xvi) below, for simple disclosure of their actual employer. Why do you find this so difficult to disclose? What is there to hide? Here is a full list for you to confirm your statements, that they all are, or were employed by Wandsworth at the time of communicating with me:..." There then followed a list of eight individuals. I am satisfied that the Commissioner is absolutely correct in treating this statement as an allegation that individuals are improperly pretending to be Council officers. The decision notice appropriately reflected the evidence.

- (5) While the fifth ground of appeal is not entirely clear it appears to be that the Commissioner was biased and produced a distorted account of what was going on. It is not clear whether he is stating that DN distortion was whether one or two PCN were in dispute at this stage or whether the Appellant was concerned with broader issues. Even if I were convinced that there were factual errors such as the number of PCNs in dispute I would conclude that the Tribunal in exercising its appellate functions should deal with the substance of any decision notice before it rather than minor questions of detailed findings of fact which are of no relevance to the outcome.
- (6) The sixth Ground of Appeal argued by the Appellant appears to have two substantive points:-the first is that the Commissioner relied extensively on and sometimes adopted arguments and statements made by the Council. The second that the decision notice was "an unwarranted and obvious general character assassination of the [Appellant]". With respect to the first argument should the Commissioner conclude in any case that either the complainant or the public body has fairly and appropriately formulated an issue then he is entirely at liberty to adopt that formulation in his DN. Nor am I persuaded that the Commissioner was "transfixed by the desire

to accuse the [Appellant] of wanting to create deliberate annoyance” in essence the Commissioner was coming to conclusions, within the framework of guidance he has adopted for the analysis of cases where S14 is raised and which he transparently works through in order to come to his conclusions. One specific conclusion he reached was that the Appellant must have known the effect that his correspondence was having on the Council in light of previous correspondence with the Council.

Conclusion

10. I am satisfied that the Grounds of Appeal when properly analysed contain a series of statements which are unsupported. In the light of this am satisfied that the appeal lacks any reasonable prospects of success and I therefore strike out the appeal under rule 8(3)(c) of the 2009 Rules.

C G Hughes

Tribunal Judge

21 February 2012



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Appeal No. EA/2011/0282

BETWEEN:-

MICHAEL FOY

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

1. The Appellant in this matter by a form of Application for Permission to Appeal to the Upper Tribunal dated 28/02/12 has appealed against the decision of the First-tier Tribunal dated 20/2/2012. The Appellant raises various issues in numbered paragraphs in his appeal.
2. In Paragraph 1 the Appellant claims that the Respondent “provided different submission documents to the Appellant and the Tribunal”. This is inaccurate; the Respondent relied on his Decision Notice and his Response to the Appeal confirming this in an e-mail to the Tribunal copied to the Appellant on 1 February 2012. The latter document was submitted to the Tribunal on 9 January 2012 by an e-mail copied to the Appellant. There has been no procedural impropriety and the Respondent has no grounds for this claim. .
3. Paragraph 2 is a factual claim against the public body. The Tribunal found that there was no error of law in the application of s.14 FOIA by the Respondent.

4. Paragraph 3 makes factual claims relating to an underlying dispute between the Appellant and the public body which were not relevant to the decision of the Respondent and upon which the Respondent did not make any finding.
5. Paragraph 4 raises factual matters relating to the Appellant's concerns about the employment status of the public bodies officials.
6. The analysis of the six Grounds of Appeal set out by the Appellant found each one of them lacking in substance and therefore they were a series of statements which were unsupportable.
7. The Appellant has not identified an error of law in the decision of the Tribunal to strike out his Appeal and is seeking to argue various factual issues in the Respondent's Decision Notice. His appeal therefore has no realistic prospects of success and accordingly the Tribunal does not grant permission to appeal to the Upper Tribunal.

C Hughes

Tribunal Judge

5 March 2012