



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0008

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FER0427861

Dated: 10 December 2012

Appellant: Mr W A E Yeoman

Respondent: Information Commissioner

Public Authority: Cornwall Council

Heard at: Field House, London

Date of hearing: 9 July 2013

Date of decision: 14 July 2013

Before

Angus Hamilton

Judge

and

Darryl Stephenson

and

Steve Shaw

Subject matter: EIR 12(4)(b) – refusal to disclose on the basis that the request for information is manifestly unreasonable.

Cases considered: Information Commissioner v Devon County Council & Dransfield [2012] UKUT 440 (AC)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 10 December 2012.

SUBSTITUTED DECISION NOTICE

Dated: 14 July 2013

Public authority: Cornwall Council

Address of Public authority: County Hall, Treyew Road, Truro, TR1 3AY

Name of complainant: Mr W A E Yeoman

The Substituted Decision

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 10 December 2012.

Action Required

Cornwall Council is to respond to the enquiries submitted by Mr Yeoman on behalf of Newquay Regeneration Forum Ltd as set out in paragraph 6 of page 3 of the Decision Notice of 10 December 2012 by 13 August 2013.

Dated this 14 day of July 2013

Signed

Angus Hamilton DJ(MC)
Judge

REASONS FOR DECISION

Introduction

- 1 Regulation 5 EIR imposes a general obligation on a public authority which holds environmental information to make that information available on request. That general obligation is however subject to a number of exceptions.

- 2 Under Regulation 12(4)(b) EIR a public authority may refuse to disclose environmental information if the request is 'manifestly unreasonable' and in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosure (Regulation 12(1)(b)).

- 3 Regulation 12(2) EIR requires a public authority to apply a presumption in favour of disclosure.

- 4 Unsurprisingly, there is no binding definition of 'manifestly unreasonable'. However its meaning has been held as essentially the same as the meaning of 'vexatious' under section 14 FOIA (see *Craven v IC & DECC* [2012] UKUT 442 (AC) at 30).

- 5 The leading case on the meaning of vexatious is now *IC v Devon County Council & Dransfield* [2012] UKUT 440 (AC).

- 6 The Upper Tribunal's analysis of section 14 FOIA is set out at paragraphs 24 to 39 of *Dransfield*. Whilst neither exhaustive or to be used as a formulaic checklist the Upper Tribunal found that it may be helpful to consider four broad issues: the burden (on the public authority and its staff); the motive (of the requester); the value or serious purpose (of the

request) and any harassment or distress (of and to staff).

The Commissioner's Decision

- 7 The Information Commissioner in his Decision Notice (DN) of 10 December 2012 has correctly set out the chronology leading up to this appeal. The DN dealt with matters other than the subject of this appeal. The only matter considered by the Tribunal was whether Cornwall Council was correct to rely on the 'manifestly unreasonable' exemption (and the associated public interest test) in refusing to respond to the enquiries submitted by Mr Yeoman on behalf of Newquay Regeneration Forum Ltd as set out in paragraph 6 of page 3 of the Decision Notice of 10 December 2012.

The Appeal to the Tribunal

- 8 The Tribunal was unclear as to the date on which the Appellant submitted an appeal to the Tribunal (IRT). In the bundle before them the Tribunal had Grounds of Appeal dated 25 February 2013 but were unclear whether this was the original or refined GOA that the Appellant was directed to file. In any event the Tribunal unfortunately found Mr Yeoman's submissions to be unnecessarily lengthy, complex and dense. The Tribunal struggled to understand all the points Mr Yeoman was seeking to make and the Commissioner's findings that he disputed. The Tribunal was able to glean that Mr Yeoman disputed the Commissioner's finding that the specific request was manifestly unreasonable and the Commissioner's decision that the public interest test favoured non-disclosure.

The Questions for the Tribunal

- 9 The Tribunal decided that the first question for them to answer was whether Mr Yeoman's requests for information could, on balance, properly be characterised as manifestly unreasonable bearing in mind the

guidance given in Dransfield.

- 10 The Tribunal further decided that it would only be necessary for them to consider the public interest test in Regulation 12(1)(b) if they first found the requests to be manifestly unreasonable.

Evidence & Submissions

- 11 This matter was considered by the Tribunal by way of an paper hearing. Extensive written submissions were received from the Commissioner and Mr Yeoman. No submissions were received from the public authority and it was not altogether clear to the Tribunal whether or not the public authority had been joined as a second respondent.
- 12 In his decision notice the Commissioner referred to a number of factors which he took into account in reaching his decision that Mr Yeoman's requests were manifestly unreasonable and that the public interest test favoured non-disclosure:
 - a) The length of time that it would have taken the public authority to respond to the requests. The public authority estimated the time at 28 hours 47 mins. The Commissioner felt this to be a reasonable estimate.
 - b) The Commissioner took account of the effective time limits in relation to FOIA applications – the relevant time limit for such a public authority being 18 hours. The Commissioner acknowledged that there was no similar effective time limits in the EIR but nonetheless felt that the time estimate was so far in excess of the FOIA limit as to render the request 'clearly unreasonable'.
 - c) In concluding that the public interest test favoured non-disclosure the Commissioner again relied on the time that responding to the

request would take and the disruption that would be caused to the public authority in carrying out its 'core duties' The Commissioner indicated that he considered the public interest in this case to be 'finely balanced'.

- 13 As previously mentioned the tribunal found it a little hard to understand certain aspects of Mr Yeoman's submissions. In relation to the time estimate for dealing with request 6 Mr Yeoman did not dispute the estimate but did dispute that this led to an inference that his request was manifestly unreasonable.
- 14 in relation to the public interest test Mr Yeoman asserted that the public interest in 'transparency right across the planning obligation process' should be given priority over the public interest in the public authority not being distracted from its core functions.

Conclusion

- 15 Bearing in mind the submissions of the parties and considering the four broad issues raised in Dransfield the Tribunal concluded that the only issue between the parties in relation to the question of whether the requests were manifestly unreasonable was the issue of the burden on the public authority in terms of the time it would take to deal with the request.
- 16 There was not a complete consensus within the Tribunal on this issue. After considerable deliberation the Tribunal concluded, on balance, in this particular case that the Commissioner's analysis was correct and that the length of time to respond to this request did render the request manifestly unreasonable. The Tribunal noted that there was no dispute as to the time estimate and, indeed, concluded that the time estimate appeared to be conservative.

- 17 The Tribunal was not assisted however by the Commissioner's references to the effective time limits imposed in relation to FOIA requests. The Tribunal did not think that it was appropriate to try and import such time limits over into the EIR framework. Such time limits are entirely missing from the EIR and the Tribunal felt that this was a fairly compelling indication that the FOIA time limits were not a pertinent consideration in relation to EIR applications.

- 18 The Tribunal then went on to consider the public interest test. The Tribunal felt that the Commissioner had given far too little weight to the factors favouring disclosure. The Tribunal felt that there was a manifest public interest in having the information sought released so that the public would know about the amount of money (or other obligations) associated with s.106 agreements (defined on page 2 of the Commissioner's DN) and the potential benefit they might have for the public. Disclosure would also allow members of the public to check when commitments under s.106 agreements were due to arise and to check whether developers were meeting their commitments and were doing the things they had agreed to do. The Tribunal considered that collating and publicising such information should in fact be a core function of the public authority rather than being seen as a distraction. The Tribunal also felt that the Commissioner focused too much on the public interest in local businesses knowing the details of s106 agreements. The Tribunal felt that the sought information would be of far wider public interest including to residents of, as well as businesses in, the particular area.

- 19 The Tribunal was also concerned that the Commissioner sought to use the same reason (the length of time it would take to answer the request) to satisfy the 'manifestly unreasonable' criterion and to contend that the public interest favoured non-disclosure. In the Tribunal's view the criteria for arguing that the public interest favoured non-disclosure should be something distinct from the reasons for arguing that the request was manifestly unreasonable. Otherwise the public interest test, which is

clearly something additional to the 'manifestly unreasonable' hurdle, becomes synonymous with rather than distinct from that hurdle.

- 20 Consequently, the Tribunal concluded that, on balance, Mr Yeoman's request could properly be characterised as manifestly unreasonable but also concluded that the public interest strongly favoured disclosure.

Signed:

Angus Hamilton DJ (MC)

Tribunal Judge

Date: 15 July 2013