



Case No.EA/2011/0082 & 0083

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

ON APPEAL/APPLICATION FROM:

**Information Commissioner's
Decision Notices No: FS50347960 and FS50361229
Both dated: 24 March 2011**

Appellant: WILLIAM THACKERAY

Respondent: THE INFORMATION COMMISSIONER

On the papers

Date of decision: 18 May 2012

**Before
CHRIS RYAN
(Judge)
and**

**DAVE SIVERS
PAUL TAYLOR**

Subject matter: Vexatious or repeated requests s.14

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is allowed in respect of both Decision Notice FS50347960 and Decision Notice FS50361229. There shall be substituted for each Decision Notice a decision notice directing the Common Council of the City of London, within 35 days, to either confirm or deny whether it held the requested information at the time of the request and, if it did hold it, either disclose it or issue an appropriate refusal notice explaining why it says that the requested information was not disclosable at the time the request was made.

REASONS FOR DECISION

Introduction

1. These consolidated appeals concern two requests for information which the Appellant, Mr Thackeray, sent to the Common Council of the City of London (“the Authority”). The Authority refused both requests on the basis that its obligation to disclose requested information (under section 1 of the Freedom of Information Act 2000 (“FOIA”)) did not apply if the request was vexatious. It relied on FOIA section 14, which reads:

“(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.”

2. Because the number and timing of requests which Mr Thackeray has submitted to the Authority was relied on to justify the refusals, it is appropriate to start with a summary of them.
3. **The Gifts and Hospitality Chain:** In February 2009 Mr Thackeray submitted two requests about gifts and hospitality provided by “Scientology organisations” to the City of London Corporation and the City of London Police authority. In both cases the information was disclosed without delay. He then sought further information about the gifts and on whether the Planning department was considering any planning applications from the “Church of Scientology Religious Education College Incorporated or other Scientology organisations” at

the time when they were offered. The information was disclosed in March 2009.

4. **The Legal Advice Chain:** Also in February 2009 Mr Thackeray requested a copy of the legal advice which led to the Authority charging a reduced level of business rate to the “Church of Scientology Religious Education College Inc.” (“COSREC”). The request was refused and the refusal was upheld by the Information Commissioner in a Decision Notice (FS50241934) in November 2009. Mr Thackeray appealed to this Tribunal but his appeal was dismissed in May 2010 (under decision number EA/2009/0095). The Tribunal’s decision included a comment to the effect that the Authority should consider providing further disclosure on non-privileged information. Doubtless taking his cue from this, Mr Thackeray sent a request to the Authority in August 2010 asking for further, unspecified, information on Scientology in light of the Tribunal’s recommendation. The Authority considered that this was not a request for information but for an opinion. However on 9 February 2011 the Information Commissioner issued a Decision Notice in which he concluded that it was a valid information request and that the Authority should confirm or deny whether it held any recorded information of the description specified in the request and, if it did, should provide that information or issue an appropriate refusal notice.
5. **The Internal Communications Chain:** In April 2009 Mr Thackeray asked the Authority for all internal communications relating to “Scientology organisations” during the previous five years. The request was refused because complying with it would have exceeded the relevant cost limit imposed under FOIA section 12. Mr Thackeray then narrowed its scope to just the internal communications within the City Solicitor’s Department and the Rates Collection Office. This request was also refused on the same basis (cost) and also because it was said to be vexatious and likely to be covered, in any event, by other available exemptions. Mr Thackeray complained to the Information Commissioner about the refusal, but in the course of the subsequent investigation he agreed to limit the period of time covered by the request to the time between the application for mandatory rate relief (April 2005) until the date when the relief was granted (October 2006). Some of the requested information was then disclosed but some was withheld, relying on the exemptions provided by FOIA section 31 (prejudice to tax assessment and collection), section 40 (third party personal data), section 41 (third party confidential information) and section 42 (legal professional privilege). The Information Commissioner issued a Decision Notice dated 10 February 2011 (FS50277373) in which he decided in favour of the Authority on section 42, but ordered the disclosure of all the information withheld under section 31 and some of that which had been withheld under sections 40 and 41. Mr Thackeray appealed the decision in respect of section 41 only, leading to the decision, having the same date as this decision, under reference EA/2011/0043.

6. **The Mandatory Rate Relief Chain:** In April 2009 Mr Thackeray requested information about an application which he believed the COSREC had made for mandatory relief in respect of its property at 146 Queen Victoria Street in London. A redacted form of the application form was disclosed, but exemption was claimed under FOIA section 31 in respect of the rest of the requested information. However most of the information was made available on the Authority's website during the course of a subsequent investigation by the Information Commissioner. Based on the information made available Mr Thackeray then requested information about a meeting held in August 2006 between legal representatives of COSREC and the Authority to discuss the appeal by COSREC against the refusal of mandatory rate relief. The request was refused and, on complaint being made to the Information Commissioner, he issued a Decision Notice in October 2010 (FS50265544) in which he concluded that the exemptions relied on by the Authority (FOIA sections 31, 40 and 42) did not apply and the information should be released. The Decision Notice recorded in passing that COSREC had repeatedly objected to disclosure by the Authority of any information relating to its application for mandatory relief.
7. **The Alderman Luder Chain:** Documents disclosed in respect of the Internal Communications Chain included reference to a meeting between Alderman Ian Luder and representatives of Scientology organisations. In December 2009 Mr Thackeray requested information relating to those meetings. The Authority refused the request, on the basis that complying with it would exceed the cost limit imposed by FOIA section 12. At that stage Mr Thackeray refined the request by limiting it to communications that fell outside the Alderman's constituency work. The request was again refused, on the same basis. Mr Thackeray then limited it further to cover just three of the Authority's departments, namely Comptroller's Department, Chamberlain's Department and Town Clerk's Department. At this stage the Authority relied on FOIA section 14 (vexatious request) to refuse disclosure. Mr Thackeray's subsequent complaint to the Information Commissioner led to the issuing of the Information Commissioner's Decision Notice FS50347960 on 23 March 2011. This forms the basis for Mr Thackeray's appeal to this Tribunal under reference number EA/2011/0082, on which a decision is being issued on the same day as this decision.
8. **The Charitable Grounds Rates Relief Chain:** In January 2010 Mr Thackeray submitted an information request about mandatory relief from business rates granted on charitable grounds to any organisation that was not either a registered charity or similar organisation. The information was disclosed. On the basis of the information provided Mr Thackeray then submitted a further request, still in January 2010, seeking information about the property owner in respect of each of the premises for which relief had been granted and, in particular, whether

they met certain charitable criteria. On this occasion the Authority refused disclosure on the ground that the cost of the exercise, when aggregated with the cost of the previous one submitted within the previous 60 days, exceeded the FOIA section 12 limit. In March 2010, Mr Thackeray repeated the request but asked the Authority to begin its research in files relating to the premises at 146 Queen Victoria Street mentioned above and, once the cost limit had been reached, place the rest of the enquiry on hold for "the statutory 60 days", before recommencing the search. The request was refused as being vexatious (FOIA section 14) as well as being covered by various exemptions. A complaint was made to the Information Commissioner in May 2010.

9. **Registered Place of Worship Request:** Also in January 2010 Mr Thackeray asked whether the Scientology HQ at 146 Queen Victoria Street was a registered place of religious worship for the purposes of the Places of Worship Registration Act 1855. The information was disclosed.
10. **The Objections to Disclosure Request:** On 24 October 2010 Mr Thackeray lodged a request with the Authority seeking information about the objections to disclosure referred to in Decision Notice FS50265544 in respect of the Mandatory Rate Relief Chain above. The Authority refused disclosure under FOIA section 14(2) and the Information Commissioner upheld its right to refuse in his Decision Notice FS50361229 issued on 17 January 2011. This forms the basis for Mr Thackeray's appeal to this Tribunal under reference number EA/2011/0083 on which a decision is being issued on the same day as this decision.
11. These appeals concern just the Alderman Luder information Decision Notice and the Objections to disclosure Decision Notice.

The Alderman Luder information Decision Notice (0082)

12. The Information Commissioner based his decision in favour of the Authority on criteria set out in guidance he has issued (Awareness Guidance No 22 'Vexatious and repeated requests'). He considered whether the request:
 - a. could fairly be seen to have been obsessive;
 - b. harassed the Authority or caused distress to its staff;
 - c. imposed on the Authority a significant burden in terms of expense and distraction;
 - d. had been designed to cause disruption and annoyance; and/or
 - e. lacked any serious purpose or value.
13. The Information Commissioner concluded that there had been a long history of information requests from Mr Thackeray, with one response frequently leading very quickly to a further one, and the requests frequently seeking a large body of information. He cited as an example

a request for information covering a 5 year period. He concluded that this behaviour was unlikely to cease until the Authority reversed its decision to grant mandatory rate relief to COSREC and that it demonstrated behaviour of an obsessive nature. The Information Commissioner took into account, not only requests lodged with the Authority but also some 114 which he said had been lodged with other public authorities, all the requests having some connection with scientology.

14. In considering whether the request harassed or caused distress the Information Commissioner rejected the Authority's suggestion that the pattern of requests demonstrated a wish by Mr Thackeray to target staff for criticism or that he had displayed an intention to harass. However he considered that the effect on the Authority and its staff of a continual flow of requests, frequently close together in time, did amount to a campaign against the Authority and that it did amount to harassment.
15. The Information Commissioner acknowledged the need, when considering the burden requests imposed on the Authority, to differentiate FOIA section 14 from section 12. He thought that the burden placed on financial resources could be taken into account, but that broader factors had also to be considered. In this respect he considered the extent to which staff would be diverted from other work, taking into account the time and resources that had already been committed to addressing a total of 14 previous requests, all of which he regarded as connected to the Authority's decision to grant mandatory rate relief to COSREC. He took into account the fact that Mr Thackeray had made many more requests to other Authorities across the UK and that the resources applied by the Authority were increased as the result of earlier requests having been referred to the Information Commissioner for investigation. The Information Commissioner concluded that if the Authority had responded to this request it would probably have generated more requests, regardless of the nature of the response, and that providing the information sought in this request would therefore impose a significant burden on the Authority in terms of expense and distraction.
16. The Authority had urged the Information Commissioner to conclude that Mr Thackeray's behaviour and the history of previous requests demonstrated an intention to cause disruption and annoyance. However, he concluded that it had not been established that this was Mr Thackeray's motive.
17. The Information Commissioner considered that Mr Thackeray had real and genuine reasons for pursuing information relating to the grant of rate relief to COSREC and that there was a degree of public interest in the release of information as to the reasons why mandatory rate relief was granted to COSREC (as a differently constituted panel of this Tribunal had indicated in its decision EA/2009/0095 in respect of the

Legal Advice Chain). However, he also felt that those factors did not justify what he described as an “ongoing campaign” against the Authority. In this respect he placed particular reliance on the fact that some of the requests had been submitted at a time when earlier ones were still being investigated by the Information Commissioner or were the subject of appeal to this Tribunal. He concluded that the *“continuation of requests for any information whatsoever relating to COSREC demonstrates that the complainant’s actions became disproportionate to his initial objective and became a campaign against [the Authority] to pursue the reversal of its decision to grant rate relief.”*

The objections to disclosure Decision Notice (083)

18. The Information Commissioner referred to the Alderman Luder Decision Notice, which he said related entirely to the same topic, and accordingly adopted the same rationale in reaching his decision that the Authority had been justified in refusing the information request, relying on FOIA section 14. He also drew attention to further requests submitted by Mr Thackeray, notwithstanding that earlier ones had been characterised as vexatious, and to the fact that Mr Thackeray had made a complaint through the Authority’s internal complaints procedure about its decision to grant mandatory rate relief. He concluded as follows:

“It is the Commissioner’s view that the above events demonstrate to an even greater extent the complainant’s tendency to submit request after request regardless of any response he may receive or information provided. These actions also demonstrate that any response given simply generates further information requests. He is satisfied that a continuation of such behaviour would be seen by any reasonable person to be obsessive and disproportionate to the serious value or purpose which could be attached to the complainant’s initial aims.”

The appeal to this Tribunal

19. Mr Thackeray lodged an appeal against both Decision Notices but, following the pattern set by the Information Commissioner, submitted full grounds of appeal to the Alderman Luder Decision Notice with just some supplemental points set out in the Notice of Appeal on the Objections to Disclosure Decision Notice. The Information Commissioner similarly set out his substantive arguments in his Response to the Alderman Luder Decision Notice appeal and adopted the same arguments, with minor supplemental material, in respect of the Objections to Disclosure appeal.
20. The two appeals were consolidated under a Directions Order made on 3 November 2011. This followed a lengthy stay while certain procedural issues affecting several appeals currently before the Tribunal were resolved. Directions were also given for the appeal to be

determined on the papers, without a hearing (a process to which both parties agreed and which appears appropriate to the Tribunal) and for a timetable for written submissions to be filed.

21. Mr Thackeray laid particular stress in his submissions on the serious nature of his requests, which stem from his view that scientology is a predatory cult, which had been refused charitable status by the Charities Commission and, according to a substantial quantity of material he presented, has been heavily criticised in a number of reports or judgments. The Authority had granted COSREC what Mr Thackeray characterised as an 80% tax relief on charitable grounds and in reliance on what he considered to be false information. There was a measure of agreement on this point in that the Information Commissioner had concluded in its Decision Notice that there was a serious purpose behind the various requests. However, the Decision Notice had gone on to conclude, in light of his findings as to the nature of the request and their impact on the Authority, that the importance of the subject matter did not justify the way in which Mr Thackeray had pursued the various information requests.
22. Mr Thackeray also complained that the Information Commissioner had characterised, as obsessive, behaviour that was no more than thorough research. He also suggested that the Information Commissioner had reached a conclusion about the motivation behind his information requests which was both inaccurate and irrelevant. He provided an explanation of his approach to the question of rate relief being granted to COSREC to demonstrate the perceived inaccuracy of the Information Commissioner's conclusion. Mr Thackeray also challenged the suggestion that if the Authority provided the information requested this would simply generate a further request. He suggested that if that were to happen the Authority would be able to consider relying on section 14 for that request, but not for its predecessor.
23. Mr Thackeray argued that requests submitted to other public authorities were irrelevant and that he should not be criticised for having followed up a refusal to disclose information with a further request designed, as he said, "to discover information which the public authority would be willing to release" (his emphasis). He also argued that, in considering whether a requester was obsessive, the Information Commissioner should not have taken into account any request which had been complied with (either at the outset or under direction from the Information Commissioner). Nor should he have taken into account any request in respect of which a complaint to the Information Commissioner remained open. More significantly, he argued that where a past request had been refused on the grounds of cost and the scope of the request was subsequently narrowed in order to bring it within the cost limit, it was not appropriate to treat any part of that chain of requests as evidence of obsessiveness.

24. Finally, Mr Thackeray expanded on his view as to the importance of investigating matters relating to COSREC and criticised both the way in which the Authority was handling all information requests about the rate relief issue and the tone and language of some parts of the Decision Notice. He also challenged the relevance of either other requests or the separate complaint to the Authority and any possible reference to the Local Government Ombudsman.

Our conclusions

25. Although we agree with the Information Commissioner that each of the information requests under consideration in this appeal may fairly be judged under section 14 in the context of all the requests that Mr Thackeray has submitted to the Authority in respect of scientology, we think that some care must be taken in assessing their significance. As the summaries set out in paragraphs 3 – 10 above show a number of different issues were pursued, albeit that scientology was the common denominator in them all and the rate relief decision was relevant to several.
26. The dogged pursuit of an investigation should not lightly be characterised as an obsessive campaign of harassment. It is inevitable that, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the requester is interested. We think that the Gifts and Hospitality Chain is an example. More importantly, we think that the Alderman Luder Chain is a further example. We would not like to see section 14 being used to prevent a requester, who has submitted a general request, then narrowing the focus of a second request in order to pursue a particular line of enquiry suggested by the disclosure made under the first request. It seems to us that Mr Thackeray was doing no more, in that chain of requests, than pursuing a legitimate line of enquiry. The request was not one that was so similar to the first request that section 14(2) could have been invoked by the Authority, and it was sufficiently distinct from the other requests or chains of request that we have identified that it may not fairly be characterised as the simple re-working of earlier requests. Nor was it an attempt to place on the Authority a burden of work with no corresponding value to the public in having the information disclosed. It may well be that the Authority believes that there are no grounds for suspecting that Alderman Luder has not acted with total propriety throughout. That is not a relevant issue in considering whether this particular request was vexatious.
27. We should add that, in the case of the Legal Advice Chain, Mr Thackeray's follow up request resulted from a clear steer from this Tribunal (differently constituted). And, of course, the Information Commissioner subsequently issued a Decision Notice ordering the Authority to respond to the request. It would be harsh, we believe, to take that request into account when considering whether a course of

activity by a requester constituted harassment or displayed obsessiveness.

28. We also agree with Mr Thackeray's argument in respect of cases where, a wide request having been rejected because complying with it would exceed the cost limit imposed under FOIA section 12, the request is then narrowed in scope to bring it under the limit. In practice public authorities will frequently, in accordance with their obligations under FOIA section 16 to provide advice and assistance to requesters, discuss how a request may be adjusted to avoid objection under section 12. On that basis we do not think that it is appropriate to give any significant weight to the Charitable Grounds Rate Relief Chain among the evidence relied on in seeking to establish that a later request is vexatious.
29. It must also be acknowledged that in respect of the follow up request in the Legal Advice Chain, the Internal Communications Chain and the Mandatory Rate Relief Chain the Information Commissioner gave a measure of support to Mr Thackeray's information requests.
30. As we have indicated we think that the Alderman Luder Chain constituted a legitimate pursuit of detailed information based on the previous disclosure of more general material. The subject matter is also sufficiently distinct from the other requests or chains of request that it does not constitute simply the re-working of a previous request; an attempt to pursue an issue that has effectively already been resolved. The decision is more finely balanced in respect of the Objections to Disclosure Request. It is certainly arguable that this was an attempt to re-activate an issue that had effectively been resolved. However we have concluded, on balance, that it constituted a legitimate pursuit of a line of enquiry which, although stemming from an earlier information request, is distinct from it and justifiable. We do not think that it was vexatious.
31. In summary, therefore, we believe that the Authority was not entitled to rely on section 14 to refuse either of the two requests for information. The effect of our decision is that the Authority should respond to both requests confirming or denying whether it held the relevant information at the time of the request and, if it did hold it, either disclose it to Mr Thackeray or issue an appropriate refusal notice explaining why it says that the requested information was not disclosable at the time the request was made. The Authority should do this within 35 days of the date of this Decision.
32. We wish to add that we have seen no evidence to support the assumptions made by the Information Commissioner that Mr Thackeray's purpose was to continue a campaign of repetitious and overlapping requests simply as a means to attack the Authority for the decision it had made in respect of rate relief for COSREC. Nor do we think it was appropriate for him to place as much weight as he appears

to have done on requests Mr Thackeray submitted to other local authorities.

33. Our decision is unanimous

Chris Ryan

Tribunal Judge
25 May 2012