ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50595508
Dated: 8th. March, 2016

Appeal No. EA/2016/0067

Appellant: **Stephen John Booth**

Respondent: **The Information Commissioner ("the ICO")**

Date of Decision: 13 July 2016

Date Promulgated: 22 July 2016

Before

David Farrer Q.C.

Judge

and

Paul Taylor and

Jean Nelson

Tribunal Members

This appeal was determined on written submissions in accordance with the wishes of the Appellant.

Subject matter : FOIA s.14

Whether Requests made by Mr. Booth to the Land Registry were vexatious.

Authorities referred to

DECC and IC v Henney [2015] UKUT 671 AAC

Dransfield v ICO and Devon County Council [2012] UKUT 440 AAC; [2015] EWCA (Civ) 454.

The Tribunal's decision

The appeal is dismissed because the Decision Notice was in accordance with the law in ruling that the Land Registry was not required to communicate the requested information. However, the Tribunal substitutes for the Decision Notice a Notice

stating that the Land Registry was not obliged to comply with the requests because they were vexatious for the purpose of s.14(1) of the Freedom of Information Act, 2000.

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Abbreviations additional to those indicated above.

The DN	Decision Notice.
FOIA	The Freedom of Information Act, 2000.
The EIR	The Environmental Information Regulations, 2004
The UT	The Upper Tribunal
The LR	The Land Registry

The Relevant Statutory Provisions

EIR 12(4)

For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that –

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(b) the request for information is manifestly unreasonable;

FOIA s.14(1)

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

The Reasons for the Tribunal's Decision

The Background

1. For many years Mr. Booth has been troubled as to the extent of the land registered as Title LR195602 which he purchased in 1971. Having studied copies of title deeds going back to 1966 and made calculations of acreage based on comparison of those documents, he is convinced that part of his land is wrongly registered as part of an adjoining title held by the vendor of Mr. Booth's land or that vendor's successors in title.

2. To prove his case he has sustained a challenging correspondence with the LR since the early 1990s, seeking to rectify what he believes to be a serious error in the registered title.

3. The LR was created by the Land Registration Act, 1925. The most recent successor to that seminal statute is the Land Registration Act, 2002, which makes continuing provision in s.66 for a right to inspect and copy entries in the register and any document lodged with the LR against a particular title. Current regulations made under that provision enable anybody to apply on – line, using form OC2, to receive electronic copies of such information upon payment of a specified fee per document.

4. The effect of registration of a title is to identify the named freeholder or leaseholder as owner of the relevant estate. The same applies to the registration of other registrable interests which do not affect this appeal.

5. The LR's task is to receive and file documents of title lodged with the application for registration and to record the consequent creation or transfers of interest. It does not investigate the accuracy of documents lodged, unless, perhaps, they raise patent doubts on their face. Still less does it adjudicate on disputes between conflicting claims to ownership of land.

6. It is unnecessary for the Tribunal to give a detailed account of the history of Title LR195602 because the principles governing our decision do not depend upon the particular sequence of conveyances and rectification which took place. For the same reason, we do not need to form an opinion on the merits of Mr. Booth’s claim that land forming part of his property has been wrongly included within another title. It is a question beyond our remit or competence. This decision will, however, refer to the LR’s summaries of the position at different times because they are relevant to the character and value of the rejected requests.

The Requests

7. On 5th. June, 2015, Mr. Booth made the following request to the LR. "Could you please tell me what deeds you have used to register the land known as Field End and shown edged blue on your survey dated 5th. March, 1991."

8. After some intervening correspondence, the LR responded on 26th. June, 2015 relying on FOIA s.21, since such information is obtainable via an on – line OC2 application. It also referred to extensive previous communications on this subject leading to the closure of the correspondence by the LR. FOIA s.14 was cited.

9. Mr. Booth requested an internal review which was provided by the LR on 27th. August, 2015; it related and relied on the same arguments and the same exemption, s.21, as the initial response.

10. Mr. Booth then sent several unanswered emails and, on 13th. September, 2015, a copy of a deed of gift dating from 1966, apparently conveying the land now registered under LR 195602, together with a further narrow strip, and a request for the documents held by the LR in respect of title to that land. That request was a repetition of the request of 5th. June, 2015, which is therefore the only request to which it is necessary to refer in this decision. However, the DN approached the case on the basis of two requests and this decision embraces both. Either both are vexatious or neither.

11. An OC2 application made by Mr. Booth at about this time was rejected because the required document was, according to the LR, not adequately identified.

The DN

12. The ICO considered that the requests were for environmental information, hence EIR 12(4)(b) – *"the request for information is manifestly unreasonable"* was the relevant exception. He concluded that substantially the same test applied as for vexatious requests under FOIA s.14(1). He observed that the correspondence on this matter between Mr. Booth and the LR stretched back more than twenty years and that the LR had long since indicated that it had nothing more to say or to provide.

13. Whilst Mr. Booth believed that his requests had a valuable purpose, this was not really the case. The public interest favoured refusal of the request on the ground that it was manifestly unreasonable.

The Appeal

14. Mr. Booth appealed. He observed that the lodging of false documents was a serious criminal offence. He exhibited a deed of release dated 1990 of a 1967 charge on his property, then Field End, later Parkview, Long Lane, in favour of the Bradford and Bingley Building Society as evidence of the area of the land conveyed to his vendor in 1967, hence to him in 1971, hence previously subject to that charge. He also produced a certificate of lawful use in relation to his property, apparently as evidence of the area of the

established use as shown on the attached plan and of the fact that the only acknowledged use was his residential use.

15. As regards requested information, in his grounds of appeal he required the LR to disclose a deed conveying part of his property to the owner of the adjoining title, although, presumably, he believes that no such document exists or that, if it does, it is a forgery. He argued that he had been seeking this document since 1992. This represents a narrowing of the scope of the original request. This decision covers the whole of the requests of 5th. June and 13th. September, 2015, however.

16. He exhibited a wealth of correspondence with the LR and the ICO, a small part of which is referred to below.

17. The ICO, in his Response, confirmed his view expressed in the DN. In summary, he submitted that the question as to what documents the LR held in relation to this title had been settled years ago, that the LR had made its position clear and further requests were fruitless, repetitive and manifestly unreasonable.

The reasons for our Decision

18. The first issue to be resolved is the applicable jurisdiction, as to which the LR and the ICO differed.

19. Until the ICO revealed his opinion that the requested information was "environmental information" by virtue of EIR 2(1)(c), the LR treated the

request as governed by FOIA and invoked s.21 and later s.14.

20. Given the principles governing the treatment of a request as "vexatious" as enunciated in *Dransfield v ICO and Devon County Council [2012] UKUT 440 (AC); [2015] EWCA (Civ) 454 in* the UT and the Court of Appeal, there is an immediate close resemblance to the "manifestly unreasonable" test enacted in EIR 12(4)(b). Whilst there are ancillary procedural differences between the approaches of the two regimes to such requests, the substantive distinction is the further EIR requirement that the Tribunal apply the presumption of disclosure (EIR 12(2)) in respect of a request for environmental information, even though it has found it to be manifestly unreasonable, arguably a statutory paradox. However, taking account of that presumption, the Tribunal's finding in this case, would be the same, for practical purposes, whichever access regime applies.

21. It is nevertheless necessary to determine the appropriate regime before proceeding further.

22. The DN concluded that the requested information was environmental information by virtue of EIR 2(1)(c), which classifies as such, information on

"Measures including administrative measures), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements of the environment referred to in (a)"

(Those elements are air, atmosphere, water, soil, land. landscape, natural

sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among those elements.)

23. The requested information was deeds of title, ultimately one particular deed of title. Such a document is a record of a transfer of an interest in land from one party to another, hence the request is for information on such a transfer.

24. Such a transfer cannot amount to a "measure" in our judgment. A measure, as the extensive following illustrative examples show, generally involves some kind of innovative legislative or administrative action with results intended to produce effects extending beyond an individual case to a community of people, great or small, a specified geographical area or the general population and the entire territory of the state. A general principle of construction requires us to interpret "activities" by reference to the homogeneous examples which precede it.

25. Furthermore, if a transfer of an interest in "Parkview" were an activity within EIR 2(1)(c), it would not be an activity likely to affect the elements of the environment. Such a transfer does not affect the permitted uses of the land transferred in any way. It is quite unlike a grant of planning permission. There is no reason to look beyond the transfer to speculative future consequences dependent on the unknown tastes and plans of the transferee. In an individual transaction of this kind, there is no evidence to justify the "big picture" approach which may be appropriate in cases of large – scale activities with an indirect but foreseeable impact on the elements of the environment (As to which see *DECC and IC v Henney [2015] UKUT 671*

AAC per Judge Wikeley at §§23 – 49).

26. We find, therefore, that the applicable regime is FOIA.

27. So the question is : was the request of 5th. June. 2015 vexatious ? We have no doubt that the answer is "Yes", as it would have been were the question - "Was it manifestly unreasonable?"

28. Plainly, this is an example of that substantial class of case where there is nothing intrinsically vexatious about the index request as regards any of the features identified in *Dransfield,* whether by the UT or the Court of Appeal. The key to the decision lies in the long history leading up to that request.

29. Mr. Booth's requests began around 1992, long before FOIA was enacted. His target never changed. He pursued it indefatigably and, it should be said, patiently and courteously. He wanted an explanation of a discrepancy between the acreage which he believed that he had acquired and that which appeared to be recorded in documents which formed the basis of his registered title.

30. The LR answered his questions and requests with diligence and good grace for a considerable period. He received explanations as to why there could be a disparity between the area of a property as recorded in two different deeds.

31. An important letter, in our opinion, was one dated 8th. July, 1992 from Mr. Wood, the Registrar at the LR in London, to Mr. Booth. It explained

very clearly that the discrepancy arose from an error in the 1966 deed of gift to Mr. Wood's vendor, which had apparently conveyed more land than had been intended. That error had been put right by a Deed of Rectification in August,1982. Mr. Wood had acquired the title in 1971, by a conveyance which did not repeat the 1967 error. The mortgage deed was dated 1967, before any rectification, and repeated the error in the Deed of Gift. which Mr. Booth took over. The area specified in the mortgage deed did not affect the extent of the property conveyed in 1971.

32. There followed a long correspondence stretching through to 1997 and involving the Land Registry in London answering Mr. Booth's queries, explaining what the relevant documents were and generally repeating the points made in 1992. Eventually, the LR closed it, saying that it could provide nothing more and had repeatedly furnished explanations, which Mr Booth could evidently not accept.

33. The correspondence resumed after, it seems, a substantial pause, in 2002 and then again around 2009.

34. There seems to have been a further interval until 2014. Mr. Booth then continued his communications, on the same subject, by email and by telephone call up to and after the request of 5th. June, 2015.

35. This issue was dead and buried twenty years ago so far as any further information from the LR was concerned. Mr. Booth had seen all the deeds material to his anxieties. Indeed, he had received repeated advice as to their significance, most importantly, as to the mistake in the plan attached to the

1966 deed and the imprecision of many verbal references to area in conveyances. The LR's position was that there was no "missing" 0.363 acres; the extra strip had never been conveyed to Mr. Booth, as the deed of rectification confirmed.

36. We regret to say that Mr. Booth's requests were futile and had no value to himself, still less the general public. Yet they occupied a great deal of time and human resources at the LR over many years. The LR had long since told Mr. Booth that it was writing off any further contact on this issue. In any case, statute provided, via the OC2 route, the means of obtaining information of the kind requested, if it existed. FOIA is not the means of access. In as much as the deed requested in Mr. Booth's grounds of appeal does not exist on any version of events, that request was still more of a pointless burden on the LR. This quest has plainly become an obsession for him and he will continue to pursue it with the LR unless the LR and now the Tribunal call a halt to it.

37. We have already observed that, unlike some persistent requesters, Mr. Booth has conducted his correspondence with dignity, restraint and civility. The Tribunal takes no pleasure in the blunt expression of its views delivered in §36. However, such candour cannot be avoided, if this sadly hopeless project is to be terminated, which it must be in the interests of both sides of this appeal.

38. For these reasons we dismiss this appeal but by reference to FOIA, not the EIR.

39. This is a unanimous decision.

David Farrer Q.C.

Tribunal Judge

13th. July, 2016