

MINUTES OF A MEETING OF LYDD TOWN COUNCIL

Held on Monday 3rd July 2023 at 7.00 pm in the Council Chamber at the Guild Hall

Present: Town Mayor, R.S. Jones, Councillors, Maria Beach, Darren Chapman (Deputy Mayor), Ann Duncan, Clive Goddard, Mrs Pippa Harston, Mrs Jean Jones, Len Laws, Mrs Kerry Manahan, Alan Martin, Mrs Suzanne Piper, Mrs Kim Rye, Paul Rye and Martin Sweeney.

Angela Alexander – Town Clerk

Mrs Diane Cavey - Assistant Town Clerk

PRAYERS – Rev. David Parrott led the Council in prayers.

141. APOLOGIES FOR ABSENCE

Cllr Tony May (unwell), Cllr Mrs McKenna (no reason given)

142. COMMUNITY AWARD PRESENTATIONS

The Town Mayor presented Lydd Town Council community award certificates to the organisers of the Lydd Town Jubilee and Coronation events, Jessica Duncan, Kerry James and Emily Smith following a proposal made by the Deputy Mayor Cllr Darren Chapman at the Annual Council meeting. Cllr Chapman thanked them for organising a fantastic event for the community of Lydd

143. MINUTES

- a) **RESOLVED: That the minutes of the Annual Statutory Meeting held on 22nd May 2023 were approved and signed as a true record**
Proposed by Cllr Sweeney and seconded by Cllr Mrs Jones
Unanimous
- b) **RESOLVED: To receive the already approved minutes of the Planning Committee meetings held on 6th March 2023**
- c) **RESOLVED: To receive the already approved minutes of the Personnel Committee meeting held on 30th January 2023 and 3rd April 2023**

144. DECLARATIONS OF INTEREST

Cllr Goddard declared an interest in any matters relating to Folkestone and Hythe District Council and item 14 on the agenda being a request to display trophies in the Guild Hall

Cllr Mrs Piper declared an interest in item 9 being the installation of a donated bench

Cllr Mrs Duncan declared an interest in item 10 being the ex-servicemen's club

Cllr Martin declared an interest in any matters relating to Folkestone and Hythe District Council.

145. QUESTIONS FROM THE PUBLIC

The meeting was adjourned for questions from the public

1. Peter Webb – please explain the involvement of Lydd Town Council Planning Committee with Planning Application 23/0814/FH regarding the railway yard.
Cllr Mrs Duncan (Chairman of the Planning Committee) explained that the application had been considered at the Planning Committee meeting held at 6pm this evening and it was voted against as the Committee members have concerns.
Mr Webb went on to say that it is worrying that it has asbestos and oil and is a fire hazard area which will put residents at risk and asked why the Town Council have only just considered it when it has been in with FHDC for 38 days
Cllr Goddard explained that Lydd Town Council are consultees on the application and it is going through the usual process as with any other planning application for example validation. Cllr Goddard went on to say that as a District Councillor he has called this in to the FHDC planning committee

2. Martin Hooper

- a) *Will this town council seriously look into the sound system for the main council chamber as this question has now been asked on numerous occasions over many years. Normal response we'll look into it or we have more important things to spend money on.?*

The Mayor replied that there was no money included in the agreed budget for this financial year which was agreed by full Council in the last financial year – the position on this matter has not changed since the response given by Cllr Martin Sweeney when he was the Mayor

- b) *What is the process for nominations for Freeman of the parish?*

The Mayor replied that there is an adopted Honorary Freeman Scheme which is on the Town Council website to view and the Mayor read out the criteria. Mr Hooper asked if a resident could nominate someone and the Town Clerk advised that they could but would need to be sponsored by a Councillor and advised that the Honorary Freeman Scheme is on the website where he would be able to view all the details to follow should he wish to make a nomination.

- c) *I would ask Councillors Bob Jones. Martin Sweeney Jean Jones to explain the negative comments they made to the organisers of the coronation celebrations?*

Cllr Sweeney said that he would like to respond and that Jess Duncan had phoned him on Thursday prior to the Coronation event on Sunday. Cllr Sweeney said that the Town Council provided electricity for the event but that he was not available to assist as he was attending the Coronation at Westminster. An assumption was made that Cllr Sweeney would make the electrical connections as he does this on a voluntary basis for Lydd Club Day. Cllr Sweeney said that he had donated £120 from his Mayors fund and that he had received a complaint from a Manor Road resident about the event which he assessed and didn't take this any further. He advised that a new socket has been installed at the cost of Lydd Town Council.

- d) *As this council is now only holding half the meetings do Councillors feel it is necessary to have a full- time staff?*

Cllr Chapman responded in his role of Chairman of Personnel and advised Mr Hooper that from June 2023 until May 2024 there are 24 meetings on the timetable and that we don't just hold 6 meetings a year as Mr Hooper had suggested. This averages out at 2 per month some months there are three meetings a month which all require agendas, minutes, preparation and time for actions and feedback. There are no meetings in August so that the staff can take some holiday.

Cllr Chapman said that the Town Clerk works full time and there is an Assistant part time and a caretaker and finds it an insult when the staff are working hard and that he considers we are actually understaffed. The bigger picture is that the meeting schedule was agreed by full Council and is planned for the benefit of the Town.

- e) *Can the Councillors responsible for phase 2 of the play park on the Rype please look at the position of the baby swings as looking at the plans they face completely the wrong way. As any Councillor who has taken small children on to the Rype in windy weather will realise the wind blows mainly from Paine Avenue or the roundabout. NOT MANOR ROAD OR THE DOLPHIN. So would suggest a bit more thought is put in to the positioning of the swings*

The Mayor advised Mr Hooper that the Layout will be finalised with RoSPA and the installers of the equipment.

The meeting was reconvened

146. LYDD ARMY CAMP

The Town Clerk advised that following noise complaint made by residents about the training at the Army Camp she had made contact with the MOD and had received the following letter which she read aloud.

27 June 2023

Noise From Lydd Camp

To the good people of Lydd,

I am the Commanding Officer of Operation INTERFLEX at Lydd Camp. We are deeply appreciative of the support we receive from Lydd while we train the Armed Forces of Ukraine. I understand that this creates noise above and beyond what was typically produced by UK forces training at Lydd.

In response to a number of letters raised about the noise, I have directed my team to review our processes and have the following to report:

1. We have reduced training activity by 30%.
2. We have rescinded the use of the most intense smoke effects.
3. We will reduce the duration and intensity of the loudest sound effects.
4. We will publish a schedule of training to Lydd Town Council.

Collectively, I believe these measures will significantly reduce the disruption training causes while still providing the best possible support to the people of Ukraine.

The people of Lydd have been unfailingly welcoming to my team and I am wholly committed to maintaining a strong relationship. Please do not hesitate to reach out if there are ever any concerns.

Yours sincerely,

Mark Powell
Lieutenant Colonel
Commanding Officer, Training Delivery Unit 2 (Lydd)
Op INTERFLEX

147. FINANCIAL MATTERS (Appendix A page 178 to 183)

- a) **RESOLVED:** *To note the receipt of the sum of £5096.39 from Arqiva for the rental of allotment plots for the Mast sited at Lydd allotments and that this money is specifically ringfenced to be used at the allotment and not to be used as part of general expenditure*
- b) **RESOLVED:** *The report from the Internal Auditor for the financial year 2022-23 was received and adopted*
- c) **RESOLVED:** *To receive and ratify the payments and receipts from 1st April to 31st May 2023*

d) RESOLVED: To receive and note the bank reconciliations and supporting bank statements to 31st May 2023

e) RESOLVED: To receive and note the budget monitor from 1st April to 31st May 2023
RESOLVED: To approve items a to e

Proposed by Cllr Mrs Jean Jones and seconded by Cllr Mrs Ann Duncan
Unanimous

148. D-DAY 6TH JUNE 2024 THE INTERNATIONAL TRIBUTE

The Town Clerk advised that we are now receiving the arrangements for the D Day event to be held on 6th June 2024 from the Pageant Master Bruno Peek.

The reading of the International Tribute will take place at 9.15pm with the Beacon lighting ceremony which will be at The Banks Dennes Lane. The Nation's Tribute will be read at the time of the beacon lighting.

The International 80th Anniversary D-Day Beacon will be lit at 8.15pm (British Summer time), at the British Normandy Memorial overlooking Gold Beach, with the other Beacons located on Utah, Omaha, Juno and Sword, in Normandy, France, being lit at 8.30pm BST, followed by the Principal United Kingdom, Channel Island and Isle of Man Beacon at Portsmouth, England at 9.15pm BST, all communities in France and the UK to commemorate D-Day and give thanks for eighty years of peace and freedom

Received and noted

149. REQUEST FOR THE INSTALLATION OF A DONATED BENCH ON THE RYPE

- A) Councillors considered a request from Cllr Mrs Piper to install a bench donated by her on the Rype. Cllr Mrs Piper said that she had approached Cllr Hills for funding with a view to install a bench at the end of Vinelands as there was no room for a perch seat in the bus shelter. Cllr Hills had said that the request for funding would need to come from an organisation. There was a site meeting in February but the ownership of the land where she would like the bench installed had not been ascertained and she had already ordered and paid for the bench from Folkestone and Hythe District Council. Following a meeting with the Mayor and Town Clerk advice had been given that the Town Council could only consider the installation of the bench on their land and not land belonging to other owners and therefore Cllr Mrs Piper was requesting that the bench be installed on the Rype in the children under 5 play area.
- B) Councillors agreed that the cost of the installation and the ongoing upkeep is the responsibility of Lydd Town Council.

RESOLVED: That the Council support the installation of the bench in the under 5s play area and pay for the installation. Town Clerk and Mayor to meet with the contractor to progress the siting and installation

Proposed by Cllr Mrs Jones and seconded by Cllr Mrs Duncan
Unanimous

150. EX-SERVICEMENS CLUB ROYAL BRITISH LEGION

Following the election of Mayor and Deputy Mayor as Trustees for the Lydd Ex-Servicemen's Club Immediate Aid Fund at the May Annual Council Meeting Councillors considered the appointment of one senior councillor being the third appointed trustee member of Lydd Town Council for the distribution of the funds held in trust

The Mayor and Deputy Mayor are automatically appointed annually as part of their elected role. Cllr Goddard said that as Cllr Sweeney had been involved with the Town Clerk and Ex-Servicemen's Club on this project that he should continue with this as a Trustee

RESOLVED: That Cllr Martin Sweeney be appointed as Trustee

Proposed by Cllr Goddard and seconded by the Town Mayor

For: 13

Abstention: 1 Cllr Mrs Duncan

151. LYDD IN BLOOM

- a) Councillors received their lists for preliminary judging of Lydd in Bloom 2023 to be returned to the Guild Hall by 9am on 17th July 2023.
It was noted that members of the public can nominate gardens for the final judges to consider as well as Councillors.
- b) The final judging will be carried out by the Mayoress, Cllr Mrs Jean Jones and the Chairman of the Allotment Association Management Team, Mr Roger Hooper.

Received and noted

152. CIVIC ENGAGEMENTS (Appendix B page 184 to 185)

The civic engagements at which the Town Council has been represented by the Mayor were received and noted.

153. PRESS AND PUBLIC EXCLUDED

RESOLVED: That public and press be excluded from the following confidential sensitive agenda item relating to an individual and being exempt as defined in Schedule 12 of the Local Gov Act 1972.

Proposed by Cllr Mrs Duncan and seconded by Cllr Chapman

For: 12

Against: 1 Cllr Laws

Abstention: 1 Cllr Mrs Rye

154. REQUEST TO DISPLAY TROPHIES DONATED BY GT PAINE IN 1948 IN THE GUILD HALL CHAMBER

Cllr Clive Goddard reported on this matter saying that the Lydd Club Day Trophies had been donated in 1948 by GT Paine and advised Councillors that Barbara Walker had approached him in November 2022 as they were in her possession for her role on Lydd Club Day Committee and read a letter from Mrs Walker as follows:

Following a valuation of the three Lydd Club Day trophies I have been advised by the valuer, Topps Jewellers Ashford that these items should be kept in a safe and secure place.

The history of these trophies is that they were gifted by GT Paine in 1948 and the Lydd Club Day constitution details that if Lydd Club Day were to cease that assets would be placed in trust.

Prior to COVID the Committee had discussed requesting the Town Council to hold the trophies on their behalf as they had not been given out for over 10 years and following valuation feel that this is appropriate now as there are insurance implications for any winner of these trophies.

I have spoken with Cllr Clive Goddard who has suggested that he will formally propose this on my behalf and the potential opportunity to display them in the Guild Hall as a memory of the Town's history.

Cllr Mrs Duncan said that this matter was not discussed by the Club Day Committee and did not know where the trophies were until recently.

Cllr Goddard replied that the trophies are worth a lot of money and had suggested that they could be put into safekeeping in the Guild Hall safe with a view to being displayed in the Council chamber in the future.

Cllr Mrs Manahan said that she been asking where the trophies were and that Topps are a pawn broker not a jeweller and that Barbara Walker was no longer on Lydd Club Day Committee.

Cllr Mrs Duncan said that years ago they were kept at Lydd Town Council as Lydd Club Day does not have a permanent base.

Cllr Laws said that the trophies are too valuable to put on display.

Cllr Sweeney proposed that the trophies are kept in the Guild Hall for safe keeping.

RESOLVED: That delegated authority is given to the Town Clerk to speak to our Insurers on this matter to establish their opinion and to determine how they wish to proceed under the Town Council's insurance for the Lydd Club Day trophies.

156. DISMISSAL OF TRIBUNAL LYDD RESIDENT V ICO (Appendix C page 186 to 205)**Confidential Report 2023/C0011**

The Chairman of the Personnel Committee reported to Councillors on the outcome of the cases brought by a Lydd resident v the Information Commissioners Office in relation to their various decision notices relating to the residents Freedom of Information Requests concerning Lydd Town Council saying that the Judge had dismissed the case brought by the Lydd resident. Cllr Goddard congratulated Cllr Chapman on his report.

RESOLVED: Report received and adopted

Proposed by Cllr Chapman and seconded by Cllr Mrs Duncan

Unanimous

The meeting closed at 8.35pm

Chairman _____

Date _____

**LYDD TOWN COUNCIL
INTERNAL AUDIT REPORT 2022-23**

I am pleased to report to Members of the Town Council that I have carried out an internal audit of the Town Council's records for 2022-23 and have been able to complete the Annual Internal Audit Report for the 2022-23 Annual Governance and Accountability Return

Members should be aware that the audit tests that I undertook during the audit cannot be relied on to identify the occasional omission or insignificant error, nor to disclose breaches of trust or statute, neglect or fraud which may have taken place and which it is the responsibility of the Members of the Council to guard against through the Town Council's internal control procedures.

Members will be pleased to know that I did not find anything major in the audit to report and that I found the record keeping is of a good standard and the Town Council's approach to the management of risks to be sound.

I would like to take this opportunity to thank your officers for the assistance given to me in the conduct of the audit that took place on 16 May 2023.

PREVIOUS AUDITS:**External Audit Certificate 2021-22:**

PKF Littlejohn LLP issued their certificate for 2021-22 without qualification or comment. It was dated 23 August 2022. The Council considered the auditor's report on 5 September 2022.

Internal Audit 2021-22:

I note that the Council has revalued its civic insignia and amended the asset register and insurance to suit.

NOTES FROM THIS VISIT:

During the audit I carried out sufficient work to enable me to complete the Annual Internal Audit Report. I concentrated on the trail from the annual accounting statement back to the receipts & payments A/c and bank statements while testing a number of transactions to invoices or other supporting documentation. I have also reviewed the Council's minutes for compliance with legal obligations, its general functioning and for mutual consistency with the accounts.

The accounts are consistent with the Council's activity as evidenced in its minutes, receipts and payments.

I have nothing further to report.

**Lionel Robbins
Independent Internal Auditor
27 May 2023**

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	A	B	C	D	E	F	G	H	I	J	K	L	M
52	24/05/2023	British Gas	Inv 4691052 Guild Hall - 12 April 2023 to 10 May 2023	90	966.15								
53	25/05/2023	ITNI	Inv 2229 - iPad screen repair (Mayor) and two Apple charges	004621	134.98								
54	25/05/2023	ITNI	Inv 2228 - Email address and mailboxes to Sept 2023	004621	221.50								
55	26/05/2023	The Mayor of New Romney Charity Acct.	St Georges day 4 tickets	004579	160.00								
56	26/05/2023	Waterlogic	Water cooler rest.	90	38.76								
57	30/05/2023	Opus Energy	Christmas Tree & Lighting 1 April 23 - 30 April 23	90	24.45								
58													
59	PAYMENT FROM STRIPE ACCOUNT												
60	03/05/2023	Stripe	Stripe fee		0.42								
61	07/05/2023	Tennis Court bookings	Court booking refund		6.00								
62	07/05/2023	Stripe	Stripe fee		0.42								
63	10/05/2023	Lloyds	Transfer to Lloyds current account		5.58								
64	15/05/2023	Lloyds	Transfer to Lloyds current account		5.58								
65													
66	RECEIPTS INTO CURRENT ACCOUNT												
67	04/04/2023	Graviti Health	Substn and installation of memorial bench on Ryde	500366	935.00								
68	04/04/2023	Banking	Altimetris rents and deposits	500365	70.00								
69	06/04/2023	Folkstone Hythe DC (prestek)	Preced		79,501.00								
70	06/04/2023	Corona Energy	Refund for Guildhall standing charges after meter removed, refund for time and costs, refund for garage meter on incorrect rdn		2,506.13								
71	28/04/2023	Antiva	Altimetris Rents		5,096.39								
72	10/05/2023	Stripe	STRIPE PAYMENTS (TENNIS COURTS)		5.58								
73	15/05/2023	Stripe	STRIPE PAYMENTS (TENNIS COURTS)		5.58								
74	15/05/2023	HHRC VAT	March 2023 VAT return		12,936.77								
75													
76	RECEIPTS INTO RESERVE ACCOUNT												
77	09/04/2023	Lloyds Bank	Reserve account interest		48.25								
78	09/05/2023	Lloyds Bank	Reserve account interest		41.37								
79													
80	RECEIPTS INTO STRIPE ACCOUNT												
81	03/05/2023	Stripe	Court booking		6.00								
82	07/05/2023	Stripe	Court booking		6.00								

LYDD TOWN COUNCIL
Bank Reconciliation Statement
for the Period Ending
31st May 2023

BANKS	Statement Date.	£	
Lloyds TSB Current Account	31-May	118,226.52	
Lloyds TSB Reserve Account	31-May	76,330.15	
Stripe	31-May	-6.00	194,550.67
LESS Unpresented Items:			
004376	05/05/2022	50.00	
004404	04/07/2022	25.00	
004440	07/09/2022	50.00	
004614	22/05/2023	8.50	
004619	22/05/2023	2,034.00	
004620	22/05/2023	43,649.20	
004611	22/05/2023	1,974.60	
004613	22/05/2023	129.44	
004618	22/05/2023	23.18	
004623	22/05/2023	141.50	
004615	22/05/2023	261.84	
			48,347.26
			-
			146,203.41
Opening balance		118,701.39	
PLUS Receipts		101,159.57	
LESS Payments		73,657.55	
PLUS payments not yet hit			
LESS receipts not yet hit			
Balance Carried Forward:			146,203.41



J31D63010M7MBA000016631001001 367 000

LYDD TOWN COUNCIL
MS A ALEXANDER
13 HIGH STREET
LYDD
ROMNEY MARSH
KENT
TN29 9AF



Your account statement

Issue date: 2 June 2023

Write to us at: PO Box 1000, Andover, BX1 1LT

Call us on: 0345 072 5555 (from UK)
+44 1733 347338 (from Overseas)

Visit us online: www.lloydsbank.com

Your branch: ASHFORD (309028)

Sort code: 30-90-28 Account number: 00731251

BIC: LOYDGB21138

IBAN: GB90 LOYD 3090 2800 7312 51



BUSINESS ACCOUNT

LYDD TOWN COUNCIL

2 JUN 2023

Account summary

Balance On 26 May 2023	£119,924.06
Total Paid In	£0.00
Total Paid Out	£4,057.98
Balance On 02 Jun 2023	£115,866.08

Account activity

Date	Payment Type	Details	Paid In (£)	Paid Out (£)	Balance (£)
26 May 23		STATEMENT OPENING BALANCE			119,924.06
30 May 23	DD	OPUS ENERGY CORP 1069899		24.45	119,899.61
31 May 23	CHQ	004612		1,673.09	118,226.52
01 Jun 23	DD	SCOTTISH WATER BUS 27400223		13.00	118,213.52
01 Jun 23	DD	FSTONE HYTHE DC 6826592		111.00	118,102.52
02 Jun 23	CHQ	004611		1,974.60	116,127.92
02 Jun 23	CHQ	004615		261.84	115,866.08
02 Jun 23		STATEMENT CLOSING BALANCE	0.00	4,057.98	115,866.08

The "Details" column in your statement shows the date that a Debit Card payment went into or came out of your account only if that happened on a weekend or a Bank Holiday.

Payment types:

DD - Direct Debit

CHQ - Cheque

* closing balance 31/May 2023



J310E001C1CMBAG000018782001002 367 000

LYDD TOWN COUNCIL
MS A ALEXANDER
13 HIGH STREET
LYDD
ROMNEY MARSH
KENT
TN29 9AF



Your account statement

Issue date: 12 May 2023

Write to us at: PO Box 1000, Andover, BX1 1LT

Call us on: 0345 072 5555 (from UK)
+44 1733 347338 (from Overseas)

Visit us online: www.lloydsbank.com

Your branch: ASHFORD (309028)

Sort code: 30-90-28 Account number: 07746475

BIC: LOYDGB21138

IBAN: GB69 LOYD 3090 2807 7464 75



BUS BANK INSTANT

LYDD TOWN COUNCIL

Account summary

Balance On 14 Apr 2023	£76,286.78
Total Paid In	£43.37
Total Paid Out	£0.00
Balance On 09 May 2023	£76,330.15

Account activity

Date	Payment Type	Details	Paid In (£)	Paid Out (£)	Balance (£)
14 Apr 23		STATEMENT OPENING BALANCE			76,286.78
09 May 23		INTEREST (GROSS)	43.37		76,330.15
09 May 23		STATEMENT CLOSING BALANCE	43.37	0.00	76,330.15

PLEDOKSS100000

MAG00000FTK D0206000FTK

Page 1 of 4 / 0010782 / 008735

22 MAY 2023



CIVIC AND SOCIAL ENGAGEMENTS 2023

May 2023

The Town Mayor

Cllr Martin Sweeney

6th

Kings Coronation

Westminster Abbey

21st

Standing Joint Committee

Town Clerk and Town Sergeant

TS

May 22nd May 2023 Mayor Making – Statutory Annual Meeting

The Town Mayor

Cllr Bob Jones

25th

CARM – Unveiling of a community wall hanging

Dungeness train station



CIVIC AND SOCIAL ENGAGEMENTS 2023

June 2023

The Town Mayor

Cllr Bob Jones

10th	Lydd Football Club Presentations	
17th	Lydd Club Day Luncheon	TS
20th	Maidstone – Armed Forces Day Flag Raising	TS
26th	Lydd Mayors Reception	TS
29th	Deal – Annual Ceremonial Mayor Making	TS



First-tier Tribunal
(General Regulatory Chamber)

Appeal Reference: EA-2022-0145
Neutral Citation number: [2022] UKFTT 00462 (GRC)

INFORMATION RIGHTS

Before

DISTRICT JUDGE REBECCA WORTH
(sitting as a Judge of the First-tier Tribunal)
TRIBUNAL MEMBER RAZ EDWARDS
TRIBUNAL MEMBER PAUL TAYLOR

Between



Appellant

and

INFORMATION COMMISSIONER

Respondent

Decided on the papers, 08 December 2022

DECISION

1. The appeal is dismissed.

REASONS

Mode of hearing

2. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.
3. The Tribunal considered an agreed open bundle of evidence comprising 176 pages and additional documents provided by the Appellant as submissions - 10

Appeal Reference: EA-2022-0145

Appellant: 

Date: 08 December 2022

documents in total. We have had regard to all the documents provided, even if we do not mention all of them specifically.

Background

4. On 23 July 2020 the Appellant wrote to Lydd Town Council asking for “a copy of the council’s current and in date Covid-19 Risk Assessment for the Rype Play Park”. It appears that this request was complied with (see page A16 of the Bundle). On 26 January 2021 the Appellant wrote to the Council and asked for:

A copy of the Council’s revised and in-date Covid-19 Risk Assessment for the Rype Play Park

A copy of the register identifying when the Play Park was cleaned, dating back to 4th July 2020

5. It is the request made on 26 January 2021 which is the subject of this appeal and the exact terms of the request are found in the Bundle at page B105.
6. The Council responded on 04 February 2021, attaching some of the information and stating that other information was not available “due to a member of staff shielding” (see page B106 of the Bundle). After the Information Commissioner’s Office became involved, the Council sent the Appellant the inspection sheets which had been requested and not previously disclosed to him.

Decision, appeal and response

7. On 09 May 2022 the Information Commissioner’s Office issued Decision Notice reference IC-98164-F7D4. The decision was that Lydd Town Council (“the Council”) had complied with its obligations under regulation 5(1) of the Environmental Information Regulations 2004 (SI 2004/3391) (now referred to as “the EIR”). The Commissioner did not require Lydd Town Council to take any steps.
8. The Appellant lodged an appeal with this Tribunal which was received on 09 June 2022; this was 3 days late and a Tribunal Registrar decided to accept the appeal out of time. The Grounds of Appeal (see pages A8-A9 of the Bundle) challenges “items” 12-15 of the Decision (we take this to mean those paragraph numbers). It seems to us fair to summarise the Grounds of Appeal as:

8.1 The information which has been provided are “copies of copies”.

8.2 The Appellant lives near the play park in question; he did not see any cleaning taking place and therefore, he does not believe the contents of the documents that have been provided.

Appeal Reference: EA-2022-0145

Appellant: 

Date: 08 December 2022

-
- 8.3 The documents do not refer to Covid cleansing of the play park equipment.
 - 8.4 He feels misled by the Council because “despite the investigator stating that the Council has now provided all the information it holds in respect of the request we know cleaning was not witnessed as having taken place.”.
 - 9. The outcome that the Appellant seeks is:
 - 9.1 The Council to clarify why they claim, on legal documents (Risk Assessment) and letter signed by the council’s executive officer (04 February 2020), that they carried out Covid cleansing on this play park, with the seriousness towards public safety of this period of time, they claim they did, but are unable to evidence so.
 - 10. The Information Commissioner’s Response to the appeal is found at pages A87 to A100 and can be summarised as follows:
 - 10.1 Further questions have been asked of the Council about the Appellant’s queries.
 - 10.2 The Appellant’s concern about “copies of copies” are merely suspicion or supposition. The incompleteness of documentation is understandable, given the various restrictions about working which were in force during the period for which information was requested.
 - 10.3 The cleaning may have taken place when the Appellant was not observing the area.

The Law

- 11. Regulation 5(1) of the EIR (so far as is relevant to this appeal) provides:
 - 5(1) a public authority that holds environmental information shall make it available on request.
- 12. The Freedom of Information Act 2000 provides:
 - 57 (1) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice.
 -
 - 58 (1) If on an appeal under section 57 the Tribunal considers –
 - (a) that the notice against which the appeal is brought is not in accordance with the law, or

3 of 6

Appeal Reference: EA-2022-0145

Appellant: [REDACTED]

Date: 08 December 2022

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

13. This appeal is brought by the Appellant; it is for him to persuade us that the Decision Notice is wrong in law. Proof of any factual matters is to the balance of probabilities. The Tribunal will place the appropriate weight on the decision made by the Information Commissioner's Office as it is that entity which Parliament has chosen to regulate the compliance of public authorities with their duties under the EIR.

Discussion and conclusion

14. The purpose of the EIR is to allow the public to see information affecting the environment which is held by public authorities. The EIR is not about the veracity of that information or the contents of that information. Therefore, this Tribunal's sole concern in this appeal is whether the Council probably has, or probably has not provided the information requested by the Appellant on 26 January 2021.
15. When investigating the Appellant's complaint, the ICO asked appropriate questions of the Council and ensured that the information held within the second part of the request (originally not provided) was provided to the Appellant. When they received the Appeal, the ICO asked further questions of the Council and have, within their response, given suggestions as to why the information does not contain all that the Appellant believes it should. This is perhaps going further than the EIR requires, but was helpful as it could have reassured the Appellant that all the information which the Council holds has now been provided to him.
16. Looking specifically at the grounds of appeal as we have identified them, we find as follows:
 - 16.1 The information which has been provided are "copies of copies":
 - 16.1.1. This does not indicate that there may be further information held by the Council. The format of the information is not a matter on which we consider we should be involved as the Tribunal whose task as set out in sections 57 and 58 of FOIA is to determine whether the Decision Notice is, or is not, wrong in law.

4 of 6

Appeal Reference: EA-2022-0145

Appellant: [REDACTED]

Date: 08 December 2022

-
- 16.2 The Appellant lives near the play park in question; he did not see any cleaning taking place and therefore, he does not believe the contents of the documents that have been provided:
- 16.2.1. The content of the information is not for this Tribunal. This Tribunal's task is to determine whether the Decision Notice was wrong in its conclusion that the information sought has been provided.
- 16.3 The documents do not refer to Covid cleansing of the play park equipment:
- 16.3.1. As it is the Appellant's case that there was no Covid cleansing of the play park equipment, it is unclear why he also believes that the Council would hold information showing that there was Covid cleansing.
- 16.4 He feels misled by the Council because "despite the investigator stating that the Council has now provided all the information it holds in respect of the request we know cleaning was not witnessed as having taken place":
- 16.4.1. This is not an issue which can be resolved by use of the EIR.
17. As an investigative Tribunal we need to look further than just at the Grounds of Appeal, and we have done so. The question for this Tribunal is whether the Decision Notice was wrong in law. The Decision Notice did not consider any exceptions under the EIR as the Council's position was that they were not withholding any information from the Appellant. Therefore, the only matter on which the Decision Notice could be wrong would be in its conclusion that the Council had complied with the EIR, in other words, that they have provided to the Appellant all the information they hold in respect of his requests of 26 January 2021.
18. On considering all the information provided in the bundle and in the Appellant's reply documents, we conclude that it is more likely than not that the Council has now provided to the Appellant all the information it holds in respect of the requests made on 26 January 2021. The Decision Notice quite properly recorded the initial non-compliance (i.e. not providing some information as it was not immediately available due to a person shielding); however by the time the Decision Notice was issued, the Appellant had been provided all the information that the Council held and that means that the Council had met their EIR obligations.
19. For all the above reasons, the appeal is dismissed.

Appeal Reference: EA-2022-0145

Appellant: [REDACTED]
Date: 08 December 2022

Signed *DJ Worth*

District Judge Worth, assigned to sit as a Tribunal
Judge in the First-tier Tribunal General Regulatory
Chamber

Date: 08 December 2022

Promulgated : 12 December 2022



NCN: [2022] UKFTT 00488 (GRC)

Case Reference: EA/ 2022/0226 GDPR

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Heard: by determination on the papers

Heard on: 21 December 2022

Decision given on: 29 December 2022

Before:
Judge Alison McKenna

[REDACTED]

Appellant

- and -

THE INFORMATION COMMISSIONER

Respondent

**DECISION
on Strike Out Application**

1. The Appellant's Notice of Appeal dated 19 August 2022 is struck out for want of jurisdiction.

REASONS

2. On 14 September 2022, the Information Commissioner, applied for a strike out under rule 8 (2)(a) on the basis that the Tribunal has no jurisdiction to determine the appeal. This was because: (i) it has wrongly been categorised as a Data Protection appeal when it actually relates to FOIA; (ii) the s. 14 FOIA matter to which it refers is already the subject of another appeal; (iii) whilst the Appellant complains of being subjected to a 'blanket ban' by the public authority, this has not been the subject of a Decision Notice and so cannot be appealed.

3. In its reply dated 27 September 2022, the Appellant accepts that the s. 14 FOIA appeal is ongoing. As regards the 'blanket ban', he feels that the Information Commissioner should be taking action on his behalf. The Information Commissioner offered him some advice on this matter by email dated 30 September 2022, but there has clearly been no determination as yet which engages the jurisdiction of this Tribunal.
4. I am grateful to the parties for their assistance to the Tribunal in getting to the bottom of this matter. In all the circumstances, I have concluded that the Tribunal has no jurisdiction to determine this appeal and so it must be struck out under rule 8 (2) (a). I direct accordingly.

(Signed)

Dated: 21 December 2022

Judge Alison McKenna

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Neutral citation number: [2023] UKFTT 00419 (GRC)

Case Reference: EA/2022/0187
EA/2022/0188
EA/2022/0189
EA/2022/0190
EA/2022/0218
EA/2022/0219

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Decided without a hearing on: 4 May 2023
Decision given on: 16 May 2023**

Before

**TRIBUNAL JUDGE HAZEL OLIVER
TRIBUNAL MEMBER STEPHEN SHAW
TRIBUNAL MEMBER EMMA YATES**

Between



and

INFORMATION COMMISSIONER

Appellant

Respondent

Decision: The appeal is Dismissed

REASONS

Background to Appeal

1. This appeal is against two decisions of the Information Commissioner (the "Commissioner") dated 21 June 2022 (the "First Decision Notice", covering requests one to four) and 5 August 2022 (the "Second Decision Notice", covering requests five and six). The appeal relates to the application of the Freedom of Information Act 2000 ("FOIA"). It concerns various sets of information requested from Lydd Town Council (the "Council").

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2. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

The Requests

3. **Request One** of 11 June 2021:

"...I am submitting this Freedom of Information request to Lydd Town Council with regards to Romney Marsh Forum's Agendas & Minutes when in meetings with Lydd Town Council.

This request is for copies of the

Agendas and Minutes of meetings held by LTC within the last 3 years with the Romney Marsh Forum.

Note: This request follows information received from the Information Commissioner's Office (ICO) and must not be confused with our FOI request dated 10th May 2021....(original emphasis)"

4. The Council responded on 24 June 2021 by explaining that the Council as a body does not meet with Romney Marsh Forum and the meetings of the forum are not in the public domain.

5. **Request Two** of 27 July 2021:

*"...I am submitting this Freedom of Information request to Lydd Town Council with regards to the process of **Delegated Authority**.*

*We have witnessed a series of **Planning and Environment Committee Meetings** held by Lydd Town Council within this Covid pandemic period.*

15th April 2020

8th June 2020

6th July 2020

5th August 2020

2nd September 2020

*The above meetings were all held quote: **Delegated Authority via Email due to COVID-19***

21st June, 2021

5th July, 2021

*The above meetings were all held quote: **Under Delegated Authority in line with Covid restrictions and Government guidelines.***

*(1) In most cases, these 2020 meetings only had 2 councillors present which are in breach of your **Standing Orders (Item: 4dviii)** i.e. 3 councillors to be present to form the legal quorum.*

*(2) Also, during this period, (April 2020) as a council, government stated you must apply **The Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales) Regulations 2020***

Section 5 (5) Quote: 'The provision made in this regulation applies notwithstanding any prohibition or other restriction contained in the standing orders or any other rules of the authority governing the meeting and any such prohibition or restriction has no effect'. **This legislation over rules all Delegated Authorities.**

(3) Question to Damian Collins MP regarding above legislation: Does this mean, all set procedures with regards to Local Authority Meetings before this piece of legislation (4th April 2020) are now inoperable until May 2021 (i.e. Delegated Authority etc)

MP's response: I would say that the provisions of the regulations in question apply regardless of any contradictory internal rules of the local authorities and police and crime panels to which it relates.

(4) **The Openness of Local Government Bodies Regulations 2014**, places a requirement on councils to publish reports on decisions taken under authority delegated.

It's plausible to think that from April 2020, LTC have been operating unlawfully, therefore this request is for copy(s) of:

All Reports/Minutes where it is recorded where these Delegated Authorities were agreed by Full Council....(original emphasis)"

6. **Request Three** of 28 July 2021:

"...I am submitting this Freedom of Information request to Lydd Town Council with regards to the Lydd Town Council's **Annual Statutory Meeting** held on Monday 26th April 2021.

This meeting's Agenda stated:

Item 11: DATES OF FORTHCOMING MEETINGS 2021-22 (enclosure)

To receive the list of meeting dates for the forthcoming year

Residents viewed this 'virtual' meeting, there was no reference to this change of practice in the meeting itself, no discussion, no resolution proposal to full council, no proposer or seconded to support the resolution, but is recorded in the draft minutes as having been resolved.

The 'draft' minutes for this meeting shows:

Item 82. DATES OF FORTH COMING MEETINGS 2021-22

Showing a tabled matrix of your plan of forthcoming Bi- Monthly Council meetings throughout the 2021/2022 year.

Stating:

RESOLVED: That the schedule of meetings is as set out. Proposed by Cllr Snell and seconded by Cllr Hills.

Therefore, this request is for copy(s) of:

All Reports/Minutes evidencing when/how this change of practice of holding Bi-Monthly meetings was officially agreed at the above meeting attended by full council...(original emphasis)"

7. **Request Four** of 20 September 2021:

"...We are submitting this Freedom of Information request to Lydd Town Council with regards to the unverified figures stated by a Lydd Town Councillor on Social Media regarding installations costs for a CCTV system in Lydd.

Quote [REDACTED] "The Ashford monitoring is run by the council with other agencies. The cost is fantastic. The Current Lydd set-up is obsolete and never was fit for purpose. A completely new set-up would cost over 100,000 pounds and the life expectancy would be ten years =10,000 per year. This was quoted on social media by a Lydd councillor, therefore in the public domain.

We request copy(s):

The break down cost of the £100k as quoted and the monthly ongoing running costs...(original emphasis)"

8. The Council wrote to the Appellant on 21 September 2021 in response to Request Four (and another request made on the same date) and refused to answer on the grounds of vexatiousness. The Council also stated that requests from [REDACTED] the purported [REDACTED] and communications from [REDACTED] or those sending requests on the Appellant's behalf would now be considered "vexatious, designed to cause a disproportionate and unjustified level of distress, disruption and irritation"...and "we regard them as being a manifestly unjustified, inappropriate and improper use of a formal procedure to obtain information that either is not subject to disclosure, or that would be publicly available in any event."

9. The Appellant complained to the Commissioner about Requests One to Four. The Commissioner issued the First Decision Notice on 21 June 2022 in which he upheld the Council's reliance on section 14 to refuse to comply with Requests One to Four.

10. **Request Five** of 11 April 2022:

"I am submitting this Freedom of Information request to Lydd Town Council with regards to Lydd Town Council's Auditors documentation approved at LTC Meeting held on 7th March 2022.

This request is for a copy of the:

- 1. The Internal Auditor's Terms of Reference for 2022-23*
- 2. The Internal Audit Plan 2022-23*
- 3. The Statement of Internal Control 2022-23*
- 4. The Risk Management Document 2022-23*

I request the above information to be provided to me as an electronic copy.

If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as confidential if such an agreement has not been signed."

11. **Request Six** of 11 April 2022:

"I am submitting this Freedom of Information request to Lydd Town Council with regards to Lydd Town Council's Annual Governance and Accountability Return (AGAR) for the year ended 31st March 2021 by PKF Littlejohn (Auditors)

This request is for a copy of:

The Report and Certificate from PKF Littlejohn that was received, considered, noted and agreed by Council at the LTC Meeting of the 6th September 2021.

I request the above information to be provided to me as an electronic copy.

If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as confidential if such an agreement has not been signed."

12. The Council did not respond to these requests.

13. The Appellant complained to the Commissioner about Requests Five and Six. The Commissioner issued the Second Decision Notice on 5 August 2022 in which he upheld the Council's reliance on section 14 to refuse to comply with Requests Five and Six.

Reasons for Commissioner's decision

14. The reasons for the Commissioner's decision for finding that the Council was entitled to rely on section 14(1) FOIA were the same in both cases:

- a. The Council considers the requests to be vexatious and designed to cause a disproportionate and unjustifiable level of distress, disruption and irritation. It also considers the requests to be inappropriate and an improper use of a formal procedure.
- b. The Council states that the complainant is part of [REDACTED] who have submitted a large number of requests. It has spent a considerable amount of time handling the Group's requests which has placed a strain on the Council's time and resources.
- c. The Commissioner is aware that the Council has received a large number of requests from [REDACTED] as the Commissioner has received multiple complaints from members of the Group about the Council's handling of requests.
- d. The Commissioner recognises that the Council is a small public authority and accepts the Council's argument that complying with the requests would place severe pressure on the Council's limited resources.
- e. In relation to Requests Five and Six, the Commissioner is also satisfied that, having provided a suitable refusal notice previously, it was appropriate for the Council to rely on section 17(6) to not respond.

The Appeal and Responses

15. The Appellant appealed both Decision Notices. Taken together, his grounds of appeal are:

- a. His requests have all been dealt with through a blanket statement that they were all vexatious, without supporting evidence. The requests all cover different topics. He has received advice from an ICO caseworker that a public authority cannot place a blanket ban on an individual from making future requests under FOIA.
 - b. It was not too onerous a task to deal with each request. They do not ask for information that is not readily accessible, and the Council has three qualified officers.
 - c. The only requests from [REDACTED] come from him, and he/the group are not responsible for other requests. His own membership of the group should be irrelevant, as the Commissioner should look at the validity of the request content, not who sent it.
 - d. He has specific reasons for each of the requests in the public interest, as explained in his appeal documents.
16. The Commissioner's responses maintains that the Decision Notices are correct. The first response provides considerable background detail on the history of various FOIA requests from the Appellant and other dealings between the Appellant and the Council. In summary, the Commissioner's position is as follows:
- a. There is some serious purpose or value to the requests, but it is necessary to consider whether this is sufficient to justify the impact on the relevant public authority when viewed in the context and history of the requester's previous dealings with the public authority – which includes not only earlier information requests but also the general course of dealings between the two parties.
 - b. The burden included the aggregated burden of dealing with all previous requests and communications dating back to 2017. This fell to the Clerk and part-time assistant, with an array of other responsibilities made more onerous by the Covid-19 pandemic. One request is likely to lead to further requests. A table shows 23 requests from the Appellant between May 2017 and 20 September 2021.
 - c. The Commissioner takes the view that the Appellant and former [REDACTED] were acting in concert with FOIA requests.
 - d. The Appellant has made a number of negative and inflammatory comments that would inevitably lead the Clerk to feel some level of distress especially when combined with the burden of dealing with the volume of requests and correspondence.
 - e. The Commissioner did indicate in a letter from an ICO caseworker to the Appellant that there can be no blanket ban on an individual making information requests, but in this case found the Council was entitled not to issue a further refusal notice for Requests Five and Six.
 - f. Although FOIA is generally Appellant and motive blind, one of the exceptions is section 14 FOIA where the identity of the requester is a key factor in considering whether their requests are vexatious.
17. The Appellant has submitted replies which reiterate the point about being told by an ICO caseworker that there cannot be a blanket ban on future requests. He says that the requests he

made were simple, on different topics and in the public interest. He refers to a statement from the Commissioner that they are "committing to delivering more systemic enforcement action against public authorities that clearly and consistently fail to meet their FOI obligations", and says that his rights are being denied.

Applicable law

18. The relevant provisions of FOIA are as follows.

1 General right of access to information held by public authorities.

- (1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

14 Vexatious or repeated requests.

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

17 Refusal of request

- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the Appellant a notice stating that fact.
- (6) Subsection (5) does not apply where—
 - (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the Appellant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

58 Determination of appeals

- (1) If on an appeal under section 57 the Tribunal considers—
 - (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
 the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

19. There is no further guidance on the meaning of "vexatious" in the legislation. The leading guidance is contained in the Upper Tribunal ("UT") decision in *Information Commissioner v Dransfield* [2012] UKUT 440 (AAC), as upheld and clarified in the Court of Appeal ("CA") in *Dransfield v Information Commissioner and another & Craven v Information Commissioner and another* [2015] EWCA Civ 454 (CA).

20. As noted by Arden LJ in her judgment in the CA in **Dransfield**, the hurdle of showing a request is vexatious is a high one: "...the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious." (para 68).

21. Judge Wikeley's decision in the UT **Dransfield** sets out more detailed guidance that was not challenged in the CA. The ultimate question is, "is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?" (para 43). It is important to adopt a "holistic and broad" approach, emphasising "manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests." (para 45). Arden LJ in the CA also emphasised that a "rounded approach" is required (para 69), and all evidence which may shed light on whether a request is vexatious should be considered.

22. The UT set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious:

- a. **The burden imposed on the public authority by the request.** This may be inextricably linked with the previous course of dealings between the parties. "...the context and history of the previous request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor." (para 29).
- b. **The motive of the requester.** Although FOIA is motive-blind, "what may seem like an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority." (para 34).
- c. **The value or serious purpose.** Lack of objective value cannot provide a basis for refusal on its own, but is part of the balancing exercise – "does the request have a value or serious purpose in terms of the objective public interest in the information sought?" (para 38).
- d. **Any harassment of, or distress caused to, the public authority's staff.** This is not necessary in order for a request to be vexatious, but "vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive." (para 39).

23. Overall, the purpose of section 14 is to "protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA" (UT para 10), subject always to the high standard of vexatiousness being met.

Issues and evidence

24. The issues are:

- a. Was the Council entitled to rely on section 14(1) FOIA to refuse to reply to the six requests?
 - b. Was the Council entitled to rely on section 17(6) FOIA to refuse to provide any refusal notice to the Appellant in relation to Requests Five and Six?
25. By way of evidence we had the following:
- a. An agreed bundle of open documents, which we have read and taken into account.
 - b. Final submissions from the Appellant of 26 January 2023, which we have read and taken into account.
 - c. A closed bundle of documents containing unredacted versions of some of the documents in the open bundle, and some documents relating to a different requester. Although the Registrar had made directions based on this being the withheld information, in fact the redactions appear to have been made to protect the personal data of third parties. It is not clear that all of this material should have been put in the closed bundle. We have not relied on the redacted information or the information relating to another requester in making our decision.

Discussion and Conclusions

26. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues.

Was the Council entitled to rely on section 14(1) FOIA to refuse to reply to the six requests?

27. ***"Blanket" refusal to reply.*** The Appellant's main complaint is that the Council has a blanket policy of refusing to reply to his requests, as set out in their letter to him of 21 September 2021. The relevant paragraph of this letter is as follows: *"Dealing with your manifold applications to date has been a considerable burden on the authority, being grossly oppressive in terms of the strain on time and resources. Thus, in future, no matter how legitimate the subject matter or valid the intentions of the requester, the Council will no longer respond to your requests."*

28. The Appellant refers to advice from the Commissioner on this point. A fuller version of the text of this advice is set out in the Commissioner's response to the second appeal as follows:

"With regards to your concern about the letter that you have received from Lydd Town Council, a public authority cannot place a blanket ban on an individual from making future requests under FOIA. However, a public authority does not need to respond to future requests from an individual if:

- it has already refused a previous request for being vexatious (which we refer to as the "refusal notice"), and*
- it would be unreasonable to issue another refusal notice..."*

29. This is an accurate explanation of the effect of section 17(6) FOIA (although it does not make it clear that the future requests must also be vexatious in order for there to be no refusal notice). The Appellant is right that a public authority cannot place a ban on ever responding to future requests from a particular individual. If this is what the Council meant in its letter of 21 September 2021, it goes too far. Each request must be considered on its own merits in order to decide whether it is

vexatious under section 14. However, if new requests do fall within section 14, it can be unreasonable to expect a public authority to keep issuing further refusal notices. For example, as referred to in the Council's letter, if future requests involve continuation of a considerable burden and are oppressive. This is why section 17(6) allows a public authority to stop replying to continued vexatious requests.

30. The Appellant also makes the point that his requests are on different topics. A chain of requests on the same topic can be vexatious. However, it is not necessary for requests to be on the same topic. The Upper Tribunal in *Dransfield* found that there is no need for requests to relate to one underlying grievance, or for requests to be on more than the same broad subject. In this case, the Appellant's requests are all directed at the broad topic of governance of the Council and how the Council has managed specific issues within its remit. There is a theme of checking and challenging the Council's decision-making processes, within the context of a wider set of FOIA requests, questions and complaints from the Appellant.

31. We have considered in turn the suggested list of factors in *Dransfield* and the overall circumstances of the case.

32. ***The burden imposed on the public authority by the request.*** This is a key factor that was relied on by the Council. The Commissioner's first response sets out an extensive history of communications between the Appellant and the Council, and these requests must be considered in that context. There are numerous written questions, letters of concerns and letters of complaint in addition to FOIA requests. The Commissioner provided a table (page A80 open bundle) which listed a total of 23 separate FOIA requests from the Appellant, starting in May 2017 and ending on 20 September 2021. Thirteen of these were sent in 2021. The Commissioner's second response records that another request was sent on 21 September 2021, followed by requests Five and Six in April 2022. This is a considerable volume of FOIA requests from one person. The frequency increased significantly from 2021, with multiple requests being sent on the same day a number of times.

33. The Appellant says that the requests are all simple and easy to answer, and ask for information that is readily accessible. He questions how they can be vexatious. It may be the case that individually each request is relatively easy to answer. However, as noted by the Commissioner, we can also consider the aggregated burden of dealing with this volume of requests. We have particularly taken into account the total of fourteen requests sent by the Appellant in 2021.

34. The Appellant has referred to there being a Town Clerk, Assistant Town Clerk and Finance Officer who could deal with the requests. We note that the Council had no freedom of information officer, and that dealing with requests would not have been within the remit of the finance officer. This is a small team. It also appears from information provided to the Commissioner by the Council that the Town Clerk works Monday to Thursday and is the only person who responds to FOIA requests (page D234-5 open bundle). The assistant in part-time (16 hours per week, page D238 open bundle). This small team has to cover all other responsibilities of running the Council. From March 2020 onwards, these responsibilities would have been added to by the significant challenges arising from the Covid-19 pandemic. We therefore find that dealing with this volume of FOIA requests from the Appellant would have been a significant burden on this small team, and the Town Clerk in particular.

35. Although the Commissioner has also taken into account FOIA requests from another individual, on the basis that he and the Appellant were acting in concert, we have not done so. This

is not necessary, because the requests from the Appellant alone create a significant burden on the Council.

36. **The motive of the requester.** The Appellant says that his own membership of the [REDACTED] should be irrelevant, and the Commissioner should look at the validity of the request content, not who sent it. The Appellant is right that the validity of a FOIA request does not usually depend on the identity of the requester or the motive behind the request. However, section 14 is an exception to this principle. The motive of the requester can be relevant to whether a request is vexatious in the wider context of the course of dealings between the individual and the relevant public authority. In this case, the dealings between the Appellant and the Council suggest that many of the FOIA requests are being used as part of a campaign to question and undermine the Council.

37. **The value or serious purpose.** The Appellant has provided some reasons for these six requests. Individually, each request may be about information that is in the public interest. This is certainly not a case where requests are essentially about an individual's personal situation. We do note, however, that at least some of the requests appear to be for information that was already available to the public or would become available shortly (such as Requests Five and Six, as noted in the Commissioner's second response). This limits the public interest. We also note that the serious purpose behind the requests may be limited if the underlying motive is to undermine the Council. In any event, a series of requests can be vexatious even if each request is of value and has a serious purpose. This value and purpose can be outweighed by other factors, such as burden and lack of proportionality.

38. **Any harassment of, or distress caused to, the public authority's staff.** We do not find that the Appellant has used the extreme types of language and behaviour referred to in the *Dransfield* test. As noted by the Commissioner, he has used some negative and critical language in his correspondence. Taken together with the volume of requests, we accept that this would have caused some distress to the Town Clerk. This individual had the burden of dealing with all the FOIA requests and other correspondence from the Claimant. We can see that the workload (on top of all other work and the effects of Covid-19), combined with the feeling of being targeted by the Appellant's criticisms, would have caused distress as well as disruption.

39. **The overall circumstances of the case.** As set out in the *Dransfield* decisions, we are to take a rounded and holistic approach. We have taken into account the underlying purpose of section 14 to protect the resources of the public authority from being squandered on disproportionate use of FOIA. Having considered all the circumstances, we find that these Requests were a disproportionate use of the freedom of information regime. They were a manifestly unjustified, inappropriate or improper use of FOIA. It appears that the Appellant has been using an increasing number of FOIA requests as part of a wider campaign to question and undermine the Council and its decision-making, and this is a pattern of behaviour that is likely to continue. The volume of requests, and the effect on the small team dealing with them, is a significant diversion from the main work of the Council – delivering local services. This is not in the public interest.

40. The FOIA regime is one way in which public authorities can be held to account. The Appellant complains that his rights are being denied. In a sense he is correct – the effect of section 14 is to allow public authorities to refuse to reply to FOIA requests, even if the requests themselves are legitimate ones. However, there is no absolute right to have FOIA requests answered. This is why there are various exceptions to the right, including section 14. It is a question of balance. There are other methods of accountability as well, such as attending Council meetings and interrogating minutes once they are published. A public authority needs to retain its ability to carry out its main

work effectively. There comes a point where the effect of constant FOIA requests is so significant that those requests can be denied. We find that this point was reached in this case.

41. We therefore find that the Council was entitled to rely on section 14(1) FOIA to refuse to reply to each of the six requests. The requests had become vexatious by the time of Request One on 11 June 2021 (the eighth request that year), and this continued to be the case with the following five further requests.

Was the Council entitled to rely on section 17(6) FOIA to refuse to provide any refusal notice to the Appellant in relation to Requests Five and Six?

42. As explained above, section 17(6) FOIA allows a public authority to provide no response to further vexatious requests. We have found that Requests Five and Six could be refused on the grounds of vexatiousness under section 14. They were part of a repeated pattern of disproportionate FOIA requests. The issue is whether it was unreasonable to expect the Council to serve a further refusal notice. In all the circumstances, we find that was unreasonable to expect the Council to do so. The Council had provided a refusal notice previously and had told the Appellant that they would not be responding to further requests because of the burden of doing so.

43. We note that this does not mean that the Council can automatically refuse to reply to all FOIA requests from the Appellant. The Council will still need to consider each request to decide if it falls within section 14 FOIA and, if so, whether it is unreasonable to expect them to provide a refusal notice for that particular request.

Other matters

44. As dealt with in the Commissioner's first response, the Appellant had also raised some complaints about the Council's and the Commissioner's handling of this matter in his first appeal.

45. Firstly, he has asked for an explanation of how his requests have caused a disproportionate and unjustifiable level of distress, disruption and irritation, and how his requests are inappropriate. There is no obligation to provide an explanation or evidence when relying on section 14 FOIA (although it would be good practice to do so). We note that the Council did provide some explanation in its letter of 21 September 2021. This Tribunal cannot require the Council to provide any further explanation or evidence.

46. Secondly, he complains that there was no investigation of each individual request by the Commissioner. This appeal is against the outcome of the Decision Notices, not the way the Commissioner has reached his decision. We have conducted our own review of the facts and reached our own decision on the issues. The Appellant also says that he found the Decision Notices very disappointing. We do note that the conclusions of both Decision Notices are very short. They do not refer to the relevant legal tests in any detail or set out the history of the requests (such as by way of the table showing 23 requests provided in the Commissioner's first response). This gave the Appellant a limited opportunity to understand the Commissioner's reasoning. We hope that this decision provides the Appellant with more useful detail on how section 14 FOIA applies to his case.

47. We dismiss the appeal for the reasons given above.

Signed Judge Hazel Oliver

Date: 13 May 2023