



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

EA/2009/0093

**ON APPEAL FROM: The Information Commissioner's Decision
No FS50142022, dated 29 September 2009**

Appellant: Alison Ward

Respondent: Information Commissioner

**Additional Party: The Governing Body of Sir William Borlase's Grammer
School**

Determined on the papers on: 21 & 30 April 2010

Date of decision: 25 May 2010

Before

**Anisa Dhanji
Judge**

and

**Anne Chafer and Michael Hake
Panel Members**

Subject matter

FOIA, section 14(1) – whether requests were vexatious

Cases

Adair (EA/2009/0043)

Carpenter (EA/2008/0046)

Betts (EA/2007/0109)

Gowers (EA/2007/0114)

Coggins (EA/2007/0130)

Welsh (EA/2007/0088)

Billings (EA/2007/0076)

Hossak (EA/2007/0024)

Brown (EA/2006/0088)

Brodie MacClue (EA/2007/0029)

Ahilathirunayagam (EA/2006/0070)

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

EA/2009/0093

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the Information Commissioner's Decision Notice dated 29 September 2009 and dismisses the appeal.

Signed

Date: 25 May 2010

Anisa Dhanji

Judge

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

EA/2010/0083

REASONS FOR DECISION

Introduction

1. This is an appeal by Mrs Alison Ward (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), on 29 September 2009.

The Request for Information

2. Between March 1995 and September 2006, the Appellant made a number of requests for information to the Governing Body of Sir William Borlase’s Grammer School (“SWBG”).
3. The Appellant’s son was a pupil at Sir William Borlase’s Grammer School (the “School”) from September 1992 to July 1996. On 17 December 1996, the Appellant made a complaint about the alleged failure of SWBG to address certain issues regarding her son, and the alleged failure of SWBG to implement policies for dealing with, amongst other things, bullying at the School. We will refer to this as the “underlying complaint” (borrowing from the Commissioner’s use of the term “underlying issue”). The requests for information which are the subject of this appeal were made in relation to the underlying complaint.

The Complaint to the Commissioner

4. On 27 April 2006, the Appellant complained to the Commissioner that SWBG had failed to provide the information she had requested under the Freedom of Information Act 2000 (“FOIA”). The Commissioner contacted SWBG to investigate the complaint.
5. In response, SWBG provided the Commissioner with a detailed chronology of the Appellant’s requests between the period March 1995 and September 2006. SWBG said that it considered her requests to be vexatious under section 14(1) of FOIA. It further said that it had previously provided the Appellant with all relevant information that it held.
6. The Commissioner reviewed the history of the Appellant’s dealings with SWBG in connection with the underlying complaint, her requests for information, and SWBG’s responses to those requests. The Commissioner took into account the Tribunal’s case law in relation to section 14(1), and the Commissioner’s own Awareness Guidance on the application of section 14(1). He concluded that that the requests were vexatious and that SWBG had correctly applied section 14(1).
7. However, the Commissioner found SWBG to be in breach of section 17(5) of FOIA because it had failed to inform the Appellant within 20 days of the

request, that it was relying on section 14. The Commissioner did not require any steps to be taken in respect of this breach.

The Appeal to the Tribunal

8. By a Notice of Appeal dated 25 October 2009, the Appellant appealed to the Tribunal against the Decision Notice.
9. Although this appeal started as an appeal to the Information Tribunal, by virtue of The Transfer of Tribunal Functions Order 2010 (and in particular articles 2 and 3 and paragraph 2 of Schedule 5), we are now constituted as a First-Tier Tribunal.
10. The procedural aspects of this appeal have been governed by the Information Tribunal (Enforcement Appeals) Rules 2005 (the “2005 Rules”), and the appeal has been determined without a hearing, pursuant to Rule 16 of those Rules. Having regard to the nature of the issues raised, and the nature of the evidence, the Tribunal was satisfied that the appeal could be properly determined without an oral hearing.
11. SWBG was joined as a party to these proceedings pursuant to Rule 7(2) of the 2005 Rules. However, its Reply to the Notice of Appeal has comprised only a single page stating that it relies on the Commissioner’s Reply. It has submitted no evidence, nor made any further submissions.

The Tribunal’s Jurisdiction

12. The scope of the Tribunal’s jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the notice is not in accordance with the law, or to the extent the notice involved an exercise of discretion by the Commissioner, the Tribunal considers that he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
13. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, the Tribunal will often receive evidence that was not before the Commissioner.
14. The Appellant’s Grounds of Appeal raise a number of matters, including matters relating to the underlying complaint that are outside the jurisdiction of the Tribunal. The Tribunal can only consider matters relating to the Appellant’s right of access to information held by SWBG, and in particular, whether SWBG was entitled to refuse the Appellant’s requests under section 14 of FOIA. No other exemptions have been claimed. Accordingly, the Grounds of Appeal have been read as being confined to such matters.

Legislative Framework

General

15. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
16. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA, or if certain other provisions apply. In the present case, SWBG relies on section 14. This does not provide an exemption as such. Its effect is simply to render inapplicable the general right of access to information contained in section 1(1).

Section 14

17. Section 14 sets out two grounds on which a public authority may refuse a request. The first is where the request is vexatious. The second is where the request is identical or substantially similar to a previous request that the public authority has already complied with.
18. Section 14 provides as follows:
 - (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.*
19. Where section 14 applies, the public authority does not have to provide the information requested, nor indeed is it required to inform the requester if it holds the information.

Issues for the Tribunal

20. The only issue to be determined in this appeal is whether SWBG was entitled, to refuse the Appellant's requests under section 14(1). For the reasons set out at paragraphs 66 to 69, we have not considered whether section 14(2) is also engaged.

Evidence and Findings

Section 14(1) – Principles

21. The first question we need to consider is what is meant by a request being vexatious. FOIA does not define "vexatious". However, the Tribunal has had a number of opportunities now, in other cases, to consider what the term means. Although previous decisions of the Tribunal are not binding on us, we have found the following cases, in particular, to be helpful: **Adair** (EA/2009/0043), **Carpenter** (EA/2008/0046), **Betts** (EA/2007/0109), **Gowers** (EA/2007/0114), **Coggins** (EA/2007/0130), **Welsh** (EA/2007/0088), **Billings**

(EA/2007/0076), **Hossak** (EA/2007/0024), **Brown** (EA/2006/0088), **Brodie MacClue** (EA/2007/0029), and **Ahilathirunayagam** (EA/2006/0070).

22. We have set out below some of the key principles that emerge from these cases:
- Section 14(1) is concerned with whether the request is vexatious in terms of the effect of the request on the public authority, and not whether the applicant is vexatious;
 - In the absence of a definition of “vexatious” in FOIA, it must be assumed that Parliament intended the term to be given its ordinary meaning. By its ordinary meaning, the term refers to activity that “is likely to cause distress or irritation, literally to vex a person to whom it is directed”;
 - The focus of the question is on the likely effect of the activity or behaviour. Is the request likely to vex?
 - For the request to be vexatious, there must be no proper or justified cause for it;
 - It is not only the request itself that must be examined, but also its context and history. A request which, when taken in isolation, is quite benign, may show its vexatious quality only when viewed in context. That context may include other requests made by the applicant to that public authority (whether complied with or refused), the number and subject matter of the requests, as well as the history of other dealings between the applicant and the public authority. The effect a request will have may be determined as much, or indeed more, by that context as by the request itself. This is in marked contrast to other types of FOIA appeals where the Tribunal is said to be strictly applicant and motive blind;
 - The standard for establishing that a request is vexatious should not be set too high.
23. We would add to this that just as the bar should not be set too high, it should equally not be set too low. The judgement that section 14(1) calls for is balancing the need to protect public authorities from genuinely vexatious requests on the one hand, without unfairly impairing the rights of individuals to access information under FOIA.
24. Although every case turns on its own facts, in the cases referred to above, the Tribunal regarded the following considerations as relevant to a finding that a request is vexatious:
- where the request forms part of an extended campaign to expose alleged improper or illegal behaviour in the context of evidence tending to indicate that the campaign is not well founded or has no reasonable prospect of success;

- where the request involves information which has already been provided to the applicant;
 - where the nature and extent of the applicant's correspondence with the authority suggests an obsessive approach to disclosure;
 - where the tone adopted in the correspondence is tendentious and/or haranguing and demonstrates that the requester's purpose is to argue and not really to obtain information that the requester does not already have;
 - where the correspondence could reasonably be expected to have a negative effect on the health and well-being of the employees of the public authority;
 - where the request, viewed as a whole, appears to be intended simply to reopen issues which have been disputed several times before, and is, in effect, the pursuit of a complaint by alternative means; and
 - where responding to the request would likely entail substantial and disproportionate financial and administrative burdens for the public authority (although where complying with the request itself imposes a significant burden on the public authority, the appropriate safeguard is section 12, not section 14).
25. The Commissioner's Awareness Guidance 22 ("AG 22") on "Vexatious and Repeated Requests" suggests a general approach to determining whether a request is vexatious. It focuses on five questions:
- Could the request fairly be seen as obsessive?
 - Is the request harassing the authority or causing distress to staff?
 - Would complying with the request impose a significant burden?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
26. Although AG22 is not binding on public authorities, nor of course on the Tribunal, the considerations it identifies are a useful guide to public authorities when navigating the concept of a "vexatious" request. However, we would caution against an overly-structured approach to the application of these considerations. Every case must be viewed on its own facts.

Background to the Requests for Information

27. As with many other cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a long history of difficult encounters between the parties. The requests for information are rooted in the underlying complaint which the Appellant first set out in her letter to SWBG on 17 December 1996. Extensive further correspondence followed, but the Appellant was clearly unhappy with the responses from SWBG. In

April 1997, SWBG referred the complaint to the Local Education Authority. However, the Appellant continued to write to SWBG about the matter and continued to make requests for information. This continued until January 2003. There then appears to have been a break in the correspondence until March 2005 when the Appellant made further requests for information. This continued until the complaint to the Commissioner and indeed beyond.

28. The Appellant says that her reason for making further requests for information is to obtain additional evidence to support other steps she wishes to take in relation to the underlying complaint, including writing to the Secretary of State to seek a Serious Case Review.

The Requests Made Before FOIA

29. We turn now to the requests themselves. Many requests made by the Appellant pre-date FOIA. These requests are still relevant, however, because they provide the context for the later requests. As in **Ahilathirunayagam**, it is appropriate for the Tribunal to take these pre-FOIA requests into account when looking at whether requests made under FOIA are vexatious.
30. The Appellant first wrote to SWBG about the underlying complaint on 17 December 1996. She requested a number of documents at that time. Further requests for information followed. We have set out below some of the information requested in the course of many letters:
- Confirmation that the anti-bullying policy provided in February 1997 is an accurate copy of the complete anti-bullying policy of the School in force during the time the Appellant's son was at the School (letter dated 21 April 1999);
 - Complaints procedure in force at the time of the correspondence between the parties between January to April 1997 (letter dated 1 May 1998);
 - Relevant copies of procedures following the report of an incident in July 1994, July 1995, and January 1997 (letter dated 1 May 1998);
 - A copy of the School's Ofsted Report of March 1997 (letter dated 1 May 1998);
 - Information on statements made in the School's prospectus for the years 1991 and 1993 (letter dated 1 May 1998);
 - Copies of SWBG's annual reports for the years from 1994 to 1997 (letter dated 1 May 1998);
 - Copy of the minutes of SWBG's meeting with parents on 3 November 1992 (letter dated 1 May 1998);
 - Copy of the School's present anti-bullying policy (letter dated 7 May 1998);
 - The present "Policy of Graded Response" (letter dated 15 June 1998);

- A full copy of the School's anti-bullying policy in force at the time of the School's Ofsted Inspection in March 1997 (letter dated 15 June 1998);
- The School's anti-bullying policy and SEN policy in force at the time the Appellant's son was a pupil at the School (letter dated 14 July 1998);
- Copies of SWBG's report on the School's SEN Policy for the years 1992 to 1997;
- The School's complaints procedure (letter dated 16 December 1998);
- The School's complaints procedure covering the years 1994 to 1999 (letter dated 28 September 1999);
- Information for the years 1996 to 1999 which "fully explains" the regulations for conducting and reporting the findings of an enquiry into complaints which the School must follow (letter dated 28 September 1999);
- A list of the Governors serving on SWBG's sub-committee dealing with complaints (letter dated 19 November 1999);
- Minutes of the meetings of SWBG between September 1992 and May 1998 (letter dated 29 January 2003); and
- Copies of SWBG's reports on progress on SEN for the academic years 1994 to 1996, and the policy summary included in the School's prospectus for 1995 to 1996 (letter dated 29 January 2003).

Requests For Information Made under FOIA

31. The Appellant's first request made after FOIA came into effect was dated 22 March 2005. The Appellant asked for a copy of the minutes of meetings of SWBG between 1 September 1995 and 30 December 2000. The information requested was provided on 24 June 2005 following payment of a fee by the Appellant.
32. On 30 June 2005, the Appellant requested the further information listed below (we have added the numbering for convenience):
 - (1) The School's SEN Policy from Sept 1992 to July 1996;
 - (2) The School's anti-bullying policy in place between Sept 1992 to July 1996;
 - (3) The Model Premature Retirement Policy;
 - (4) The Model Disciplinary Procedures for Staff other than head teachers - adopted at the Governing Body's meeting on 14 October 1996;
 - (5) Whether the School had a duty to consider or investigate new evidence in the case of allegations of abuse of a child who was at the School; and
 - (6) Whether at the time of SWBG's investigation into the Appellant's complaints, the School had a duty to report teachers suspected of involvement in abuse to the DFES.

33. On the same day, the Appellant sent a second letter requesting:
- (7) Copies of numbered items 11 – 29 missing from the minutes of 16th October 1995; and
 - (8) Information/documents which refer to the Appellant's complaint and the Chairman's investigation.
34. On 29 September 2005, the Appellant wrote to ask for a response to her previous requests.
35. On 19 January 2006, the Appellant wrote again referring to her unanswered letters dated 30 June 2005 and 29 September 2005.
36. On 27 January 2006 the Appellant wrote again referring to her unanswered letters dated 30 June 2005, 29 September 2005 and 19 January 2006, and requesting, in addition:
- (9) A copy of the procedures for investigating allegations of abuse; and
 - (10) A copy of the procedures for investigating allegations of misconduct.
37. On 9 March 2006, the Appellant wrote again referring to her unanswered letters dated 30 June 2005, 29 September 2005, 19 January 2006 and 27 January 2006. She repeated certain of her previous requests and included an additional request, namely for:
- (11) The SEN policy adopted at SWBG's meeting on 13 May 1996.
38. On 16 March 2006, the Appellant requested:
- (1) again and asking whether or not this was the same as (11).
 - (2) again and asking for confirmation if no policy existed at the time; and
 - (7), (8), (9) and (10) again.
39. On 20 April 2006 the Appellant wrote following advice from the Commissioner. She said she had been told that some of her requests were out of date and should be re-submitted. She reiterated her requests (1) and (2) and also requested:
- (12) The present complaints procedure;
 - (13) SWBG's report on the School's SEN policy for the years 1992 to 1997;
 - (14) The relevant procedures following an incident in July 1994, July 1995 and January 1997;
 - (15) The procedures following an incident in July 1995; and
 - (16) The anti-bullying policy in force at the time of the Ofsted inspection in 1997.
40. On 23 May 2006, the Appellant reiterated several of her previous requests.
41. On 7 September 2006, the Appellant again reiterated several of her previous requests.
42. On 22 September 2006, the Appellant referred to her requests dated 16 March 2006 and 20 April 2006. She also asked for the following:
- (17) Whether it was the case that the School had no SEN Policy from September 1992 to May 1996;

- (18) Whether it was the case that the School had no bullying policy in place between September 1992 and July 1996;
- (19) A copy of the minutes of SWBG's meeting at which any SEN Policy in place between September 1992 and May 1996 was agreed;
- (20) A copy of the minutes of SWBG's meeting at which any bullying policy in place any time between September 1992 and July 1996 was agreed; and
- (21) If any of the foregoing minutes had been destroyed, then she requested a copy of the minutes of SWBG's meeting in which such destruction had been agreed.
43. We have not set out here the requests made after 5 March 2007 which is when SWBG invoked section 14(1).

The Parties' Positions

44. We have summarised below the position of each party.
45. The Commissioner says that the requests are vexatious. He refers to the criteria in AG22 referred to above. He considered the Appellant's previous behaviour in terms of the requests she had made since February 1997 as set out in paragraphs 22 to 40 of the Decision Notice. He took into account the number of times the Appellant's underlying complaint had been investigated by SWBG and the Local Education Authority. He considered that the Appellant's repeated requests were indicative of a pattern of obsessive behaviour and had constituted a significant burden on SWBG. He referred to the Tribunal's decision in **Betts** where the Tribunal said that it was reasonable for a public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests, thus perpetuating the requests and adding to the burden on the public authority's resources.
46. He noted that the Appellant had said that she had asked for certain information on more than one occasion because some of the information sent to her by SWBG was contradictory. He also noted her assertion that some of the information was either inaccurate or produced to satisfy her information requests. However, he pointed out that the right under FOIA was to information held, not to information which is accurate.
47. SWBG asks the Tribunal to uphold the Commissioner's decision. It has not itself made any submissions to the Tribunal as to why it regards the Appellant's requests to be vexatious. It simply relies on the Commissioner's submissions. It has also not submitted any witness evidence as to the effect on its staff, if any, of the Appellant's requests.
48. Previously, however, and in particular in its letter dated 5 March 2007 to the Commissioner, SWBG expressed the following reasons for why the Appellant's requests are vexatious:

- The requests are a continuation of a previously demonstrated pattern of behaviour that had been treated as vexatious in another context;
 - The succession of requests/complaints have had the cumulative effect of harassing the School;
 - The Appellant's actions are manifestly obsessive and have had the effect of bringing her in confrontation with the School;
 - The Appellant's repetition of requests, already answered, has no serious purpose or value; and
 - The Appellant knows that SWBG does not hold the information she seeks.
49. The Appellant gives a number of reasons for why her requests are not vexatious, in particular:
- The underlying complaint concerns a serious issue which has never been fully or properly independently investigated; the investigations that have been undertaken have been inadequate;
 - Following a long grievance procedure cannot be said to be indicative of a pattern of obsessive behaviour;
 - It is not obsessive to seek clarification of earlier responses which were unclear, or where further requests; have been generated by SWBG's non-compliance;
 - It has been SWBG's failure to provide complete and accurate policy information that has necessitated the requests;
 - The requests cannot be considered to be vexatious just because they seek information which SWBG would prefer not to disclose; and
 - SWBG has given different reasons for why they have refused the requests.

Findings

50. We come now to the key question in this appeal. Were the Appellant's requests vexatious? Having given careful consideration to the requests, the history of prior dealings between the Appellant and SWBG, the submissions made by the parties, and to the considerations set out in paragraphs 22 to 25 above, in our view, the requests were vexatious. We make this finding for several reasons, as set out below.
51. First, it is clear that the requests formed part of the Appellant's wider grievance against SWBG and the School. The requests were inextricably linked to the Appellant's quest which began in 1996, to establish that SWBG had acted improperly in relation to the underlying complaint. Many, if not most, of the Appellant's letters related both to information requests and to the underlying complaint. We accept that the Appellant's requests arose from

serious concerns she had about how her son was treated. However, those concerns had already been investigated on a number of occasions. The requests continued for over a decade and were a vehicle to reopen issues which had been disputed several times before. In our view, those on-going requests went beyond the reasonable pursuit of information, and indeed beyond even persistence. They indicate an obsessive approach, rooted in the Appellant's grievances about the underlying complaint.

52. There are a number of particular characteristics of the Appellant's requests which we consider highlight their obsessive quality:
- (a) The Appellant made many of her requests repeatedly. To the extent that this was because SWBG had not replied to the requests, we do not consider the repetition to be vexatious. However, when requests were repeated, on several occasions the particulars of the request were varied making it difficult to know what the Appellant was seeking and making it less likely that her requests could be satisfied. For example, on 1 May 1998, the Appellant requested SWBG's annual reports for the years 1994-1997. When she repeated the request on 14 July 1998, this was extended to the years 1992-1997 without drawing any attention to the fact that the period had now changed. Likewise, on 16 December 1998, the Appellant requested a copy of the School's complaints procedure without reference to any specific period or date. On 28 September 1999, she requested the complaints procedure covering the years 1994 - 1999.
 - (b) Even when provided with the information requested, the Appellant seems to have been convinced that what she had been provided with was not accurate or not genuine, and that SWBG was trying to conceal information from her. For example, on 21 January 1998, having been provided with the SEN policies for 1992-1996, she then queried their accuracy. Likewise, in February 1997, in response to her request, the Appellant was provided with the School's anti-bullying policy. On 21 April 1998, she sought confirmation that this was an accurate copy of the policy. On 30 June 2005, she asserted that the anti-bullying policy she had been provided with was a "fake" document. On 22 September 2006, she made allegations about having been sent the wrong information about the School's anti-bullying policy. The Appellant has given no reasons for her suspicions.
 - (c) We also find that when the Appellant has been provided with information, that has tended to trigger further requests and correspondence making it unlikely that a response ending the exchange of correspondence could realistically have been provided.
53. We also consider that the requests, at least from 2005 onwards, had no serious purpose in that they were unlikely to further the Appellant's grievance against SWBG. The Appellant's requests continued notwithstanding that the underlying complaint had already been investigated several times, both internally and externally. They continued long after the incidents giving rise to the underlying complaint had taken place and various members of staff in employment at the time had retired or moved on. They also continued after

most, if not, all the information the Appellant was seeking had already been provided to her or as she had been informed, did not exist.

54. Finally, the volume of the requests has been very considerable. Although we would have expected SWBG to provide evidence as to the effect the requests had on it, clearly SWBG is a very small public authority and it is reasonable to expect that the requests entailed a substantial and disproportionate administrative burden and diverted resources from other functions.
55. No single one of the above factors would lead to a finding, by itself, that the requests were vexatious. However, the strength of the various factors taken together, and in view of the history and context of the requests, we are satisfied that the requests were vexatious.
56. There are two further points we would make. First, it is of course important that all requests from an applicant should not be dismissed as vexatious just because some are vexatious. However, we consider that to try to distinguish between the various requests in this case would be to ignore their overall character and history.
57. Second, we accept from the Appellant's witness statement and that of her son's that the events leading to the underlying complaint have been very distressing for them, and that they do not feel that they have achieved justice through the various investigations (listed in SWBG's letter dated 2 May 2007) which have been carried out. However, we make no findings in relation to that the underlying complaint. Such matters are entirely outside the scope of this Tribunal's jurisdiction.

Other Issues

58. There are certain other issues that have arisen in this appeal that we should address, although we do so only briefly since they do not go to the core issue in this appeal.

Refusal Notice

59. Under section 10 of FOIA, a public authority must comply with a request for information within 20 days of receipt. A public authority that is relying on an exemption to refuse a request, must also within 20 days, give the requester a notice stating this fact. The notice must specify the exemption and must state why the exemption applies.
60. Where a public authority relies on section 14, section 17(5) provides that within 20 days of receipt, it must give the requester a notice stating this fact. It would seem that in those circumstances, there is no requirement to give reasons.
61. We have set out at paragraphs 31 to 42 above, the requests made by the Appellant under FOIA. In the Decision Notice, the Commissioner found that SWBG was in breach of section 17(5) because it did not respond to the Appellant's requests until 31 March 2006. However, SWBG's letter of 31 March 2006 was not addressed to the Appellant, but to her son. In any event, that letter simply states that following legal advice, SWBG was not prepared

to enter into further correspondence. It did not state that SWBG was relying on section 14. Indeed the letter made no reference to FOIA at all, even though the Appellant's requests were clearly stated to be made under FOIA. There was also no information given as to which requests were being refused. This is not simply a case, therefore, where the public authority failed to respond within 20 days. Its failings clearly went further.

62. On 15 September 2006, SWBG sent a short letter to the Appellant stating that it no longer had any of the information she had requested except for the current complaints procedure which it enclosed. On 31 October 2006, SWBG wrote to the Appellant, stating that the School had no additional minutes of SWBG's meetings. Neither of these two letters constituted Refusal Notices (although the parties have at times referred to them as such). In neither letter did SWBG refer specifically to which request(s) it was refusing, nor did it refer to section 14.
63. It seems to us that SWBG completely failed to recognise that FOIA imposed a new legal regime governing how public authorities must deal with requests for information. This is notwithstanding that the Commissioner advised SWBG on 16 October 2006 and 16 February 2007, that if it was relying on any exemption, it should provide a Refusal Notice in compliance with section 17. It does not appear that a Refusal Notice was ever issued.
64. The result is that Appellant seems to have been informed only through the Decision Notice, over 4 years after her first request under FOIA, that SWBG was refusing her requests under section 14. Although SWBG wrote a detailed letter to the Commissioner on 5 March 2007 in which it invoked section 14 and gave its reasons for so doing, that letter appears to have been provided to the Appellant only through its inclusion in the bundle of documents prepared for the hearing. We note that SWBG sought permission in that letter to provide a copy of it to the Appellant, but was informed by the Commissioner on 22 March 2007 that that it was not necessary to do so because the Decision Notice would reflect the arguments of both parties. That Decision Notice, regrettably, was not issued for a further two and a half years which means that the Appellant was unaware for some considerable period of time of the basis on which her requests were being refused under FOIA. That is clearly unacceptable and is contrary to both the spirit and letter of FOIA.

Section 14(2)

65. In its letter dated 2 May 2007, SWBG says that it has sent the Appellant "every policy and copy of minutes" that it possesses. We take this to mean that SWBG says that it had provided the Appellant with all the information it holds.
66. In light of this, we have considered whether SWBG was entitled, in addition to section 14(1) or in the alternative, to rely on section 14(2). Although as noted above, SWBG did not issue a Refusal Notice specifying which exemptions it was relying on, in its letter to the Commissioner dated 5 March 2007, SWBG referred to both sections 14(1) and 14(2).

67. In its Decision Notice, the Commissioner noted at paragraph 13, that SWBG considered that the requests were covered by section 14(1) and 14(2). However, the Commissioner made its own decision squarely on the basis of section 14(1) without further reference to section 14(2). The Commissioner has provided no explanation for why section 14(2) was not considered.
68. Nevertheless, SWBG has not sought to rely on section 14(2) in this appeal, nor has it submitted any evidence on the basis of which the Tribunal could make a finding in relation to section 14(2). In these circumstances, we have determined this appeal only on the basis of section 14(1).

The Scope of the Decision Notice

69. When the Appellant made her complaint to the Commissioner on 27 April 2006, she did so on the basis that she had not received answers to her requests for information since 30 June 2005. More particularly, she said that she had not received responses to her requests dated 19 and 27 January 2006.
70. Before the date of her complaint to the Commissioner, the Appellant had made further requests in her letters dated 9 March 2006, 16 March 2006 and 20 April 2006.
71. In her letter dated 5 October 2006 to the Commissioner, the Appellant complained that she had not received a response to her letter dated 16 March 2006. The Commissioner informed her that he had written to SWBG and had highlighted that her request of 16 March 2006 was outstanding. In his letter dated 16 February 2007 to SWBG, the Commissioner referred to the Appellant's requests of 27 January 2006, 30 June 2006, 9 March 2006, 16 March 2006, 20 April 2006, and 23 May 2006 as being outstanding.
72. In his Decision Notice, however, the Commissioner dealt only with the Appellant's requests dated 30 June 2005, and 27 January 2006. He stated that her request of 16 March 2006 did not form part of her complaint to the Commissioner. He made no reference to her other requests.
73. In our view, the Appellant's communications to the Commissioner did expand her complaint beyond the requests initially mentioned, and the Commissioner's communications with the Appellant before the Decision Notice would likely have given rise to a legitimate expectation that the Commissioner was investigating and would deal with the Appellant's other outstanding requests referred to in paragraph 71, above.
74. Although the Appellant had previously complained that the scope of the Decision Notice was too narrow, in an e mail to the Tribunal on 16 February 2010, and in her written submissions to the Tribunal, the Appellant now says that in fact the Commissioner has construed the information in dispute too widely. She says she is only seeking the "School's procedure for dealing with complaints concerning issues of child abuse by teachers/staff in force at present in the School", and the "procedure for dealing with issues of staff misconduct". She says that the inaccuracy in recording her complaint is unfair to her.

75. The Appellant's current position appears likely to be motivated by a concern that if her complaint is seen as being too wide, that might more easily lead the Tribunal to conclude that the section 14(1) threshold is met. However, the precise scope of the requests does not determine the outcome of this appeal. In considering whether some of the requests were vexatious, we need to look (as we have done), not only at those requests, but at the context and history. All other requests are therefore also relevant.

Delay

76. The Appellant made her complaint to the Commissioner on 27 April 2006. The Commissioner did not issue his Decision Notice until 29 September 2009, a delay of about three and a half years. We are aware of the Commissioner's workload in this period, but must record our concern about such an excessive delay.

The Correct Identity of the Additional Party

77. Some of the request for information were sent by the Appellant to the headmaster of School, while others were sent to SWBG or the Chairman or Board members of SWBG.
78. Under Part IV of Schedule 1 of FOIA, it is clear that SWBG rather than the School is the public authority. However, we have not sought to distinguish between requests made to the School and requests made to SWBG. The parties have not themselves drawn a distinction between such requests and it would be artificial for us to do so.

Closed Information

79. The Tribunal has been provided with closed information comprising two letters from SWBG to the Commissioner, dated 5 March 2007 and 5 May 2007, respectively. Both letters are included in the open bundle with very limited redactions in relation to personal data of third parties. We are satisfied the redactions were properly made and do not impair the contents of the letters to the extent relevant to this appeal. In other words, we consider that the redactions have caused no prejudice to the Appellant.

Effect of the Tribunal's Findings

80. Our finding that the requests were vexatious means that we uphold the Commissioner's Decision Notice.
81. In determining this appeal, as already indicated, we have taken as the proper scope of this appeal, the Appellant's requests made under FOIA before 5 March 2007 (which is the point at which SWBG invoked section 14(1)). Any later or future requests made by the Appellant fall outside the scope of this determination and must be considered on its own facts.

Decision

82. For all the reasons set out above, this appeal is dismissed. This decision is unanimous.

83. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 an appeal against a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to the First-tier Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can found on the Tribunal's website.

Signed

Date: 25 May 2010

**Anisa Dhanji
Judge**