IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No: EA/2009/0105

ON APPEAL

Information Commissioner's
Decision Notice No: FS50251368
Dated: 26 November 2009

Appellant: DR JOEL ALMEIDA

Respondent: INFORMATION COMMISSIONER

Additional Party: ARTS COUNCIL ENGLAND

On the papers Central London Civil Justice Centre, Regents Crescent

Date of Hearing: 18 March 2010

Date of decision: 4 April 2010

Before

Robin Callender Smith
Judge

and

John Randall
Andrew Whetnall

Submissions from:

Appellant: Dr Joel Almeida
Respondent: Michele Vosnick, on behalf of the Information Commissioner
Additional Party: Aileen McColgan, Counsel instructed by Arts Council England

Subject matter:

FOIA

Vexatious or repeated requests s 14

Cases:

Stuart v Information Commissioner and DWP (EA/2008/0040); Welsh v Information Commissioner (EA/2007/0088); Gowers v Information Commissioner and London Borough of Camden (EA/2007/0014); Coggins v Information Commissioner and Norfolk County Council (EA/2007/0130); Betts v Information Commissioner (EEA/2007/0088); Adair v Information Commissioner (EA/2009/0043); (Ahilathirunayagam v Information Commissioner and London Metropolitan University (EA/2006/0070) and Hossack v Information Commissioner (EA/2007/0024).

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The body that is now called Arts Council England ("the Additional Party") made an offer of a grant to the Appellant in relation to "ending the marginalisation of konnakol" on 2 October 2007.

2. Konnakol originates from South India and is a musical framework for vocalising and composing rhythms.

3. As part of that grant to the Appellant a condition was imposed that there should be two public performances of the new work.

4. The Appellant objected to this condition on the basis that the condition was unlawful discrimination under the Race Relations Act 1976.

5. The Additional Party offered to remove the condition requiring two confirmed public performances. The Appellant was not satisfied with this outcome and he complained to the Lottery Forum Independent Complaints Reviewer (ICR) on 9 April 2008. The ICR investigated the complaint and produced a report which partially upheld aspects of the Appellant's complaints and make recommendations for the Additional Party to action.

6. In relation to the complaint of unfair discrimination the report stated it was beyond the scope of the ICR to arrive at a definitive conclusion but that the Appellant had not made out a case that he had been unfairly treated on the grounds of his race. The Appellant has subsequently commenced legal proceedings against the Additional Party claiming a breach of the Race Relations Act 1976 and that complaint is ongoing at the time of the determination of this appeal.

7. The Appellant had also made a complaint to the National Audit Office (NAO) about the Additional Party and during 2008 and 2009 the Appellant made a number of requests for information from the Additional Party in relation to that matter.

The request for information

8. On 9 September 2008 the Additional Party's then Director of Legal Services wrote to the Appellant advising him that ACE would not respond to any further correspondence from him regarding "this matter" (the complaint about the grant). The reason given was the inordinate and overwhelming volume of correspondence which had been received, much of which covered the same ground as had been considered in the Independent Complaints Reviewer's Report. The Appellant had issued a Race Relations Act questionnaire. The Additional Party had been in the process of responding to that questionnaire. The Additional Party considered that further Correspondence from the Appellant was vexatious and that there was no obligation to respond to it characterising its "repetitive and circular" nature as vexatious as a matter of law.

9. On 22 December 2008 the Appellant made a request for information in relation to 5 specific requests for information related to the grant and the alleged contravention of the Race Relations Act.

10. On 19 January 2009 the Additional Party responded to the Appellant stating that the request was refused under section 14 FOIA. The Appellant requested an internal review of that decision on 28 April 2009. On 14 May 2009 the Appellant chased up his requested internal review and the Additional Party responded that it would not continue to respond to any further communication for reasons already set out on 19 September 2008.

11. The Appellant continued to seek further information from the Additional Party and a request for information under FOIA was made by the Appellant on 15 September 2009 covering ground dealt with in his request to 22 December 2008.

The complaint to the Information Commissioner

12. The Appellant complained to the Information Commissioner (IC) on 4 June 2009. The IC was specifically asked to consider four aspects about the handling of the Appellant's information request.

    (i) There was no evidence ACE took the request seriously. There were no reasons in the refusal notice about why the request was vexatious.

    (ii) The Appellant stated he could prove that he had gone out of his way to assist ACE. He had previously only asked whether documents

existed.

(iii) The information requested was embarrassing for ACE and that was the basis for its refusal.

(iv) The information would have been provided to any other request. It had only been refused because the Appellant was the requester.

The Information Commissioner's Decision

13. The IC served his decision notice on 26 November 2009 and made the following findings:

(i) Request number 1, if held, would be the Appellant's own personal data and should have been considered under section 7 Data Protection Act 1998 as a Subject Access Request. This part of the request was not considered further in respect of the complaint about the application of section 14 FOIA and the Decision Notice only considers requests 2 to 5 of the original request.

(ii) In assessing all the circumstances of the case, the request would impose a significant burden in terms of expense and distraction on the Additional Party.

(iii) The IC was not convinced the request was designed to cause annoyance and disruption. The IC was satisfied the Appellant's genuine intent was to prove or obtain evidence that disproved that the Additional Party complied with the Race Relations Act.

(iv) Taking into account the context of the request and the fact that the complaint had been investigated by two independent bodies, the request implied the Appellant was attempting to reopen issues that had already been dealt with by the appropriate bodies. That had the effect of harassing the Additional Party.

(v) The nature of the request fell within the definition of obsessive. There was evidence that the matters related to the information which had been considered by independent bodies and further information which had been provided where necessary for the legal proceedings.

(vi) The request had a serious purpose but did not have any value in the

circumstances. The issues raised had been previously considered and it was disproportionate in the circumstances to continue in this case.

(vii) In the circumstances of this case, a reasonable public authority would find the request vexatious and, as a result, had not breached section 17 (5) FOIA relating to the refusal notice dated 19 January 2009.

The appeal to the Tribunal

14. The Appellant appealed to the Tribunal on 1 December 2009. He stated that the Decision Notice against which he was appealing was not in accordance with the law.

15. His actions taken in relation to the Race Relations Act 1976 (RRA) formed the context of his 22 December 2008 request for information to the Additional Party. Those lawful actions were "protected acts" under the RRA section 2 (1) when read together with section 19 B. The Race Relations Act permitted neither the Commissioner nor anyone else to hold those acts against him, in any context. The Commissioner in producing the Decision Notice had held those acts against him.

16. To the extent that the notice involved an exercise of discretion by the Information Commissioner, he should have exercised his discretion differently because:

(i) The facts refuted the Commissioner's assertion that his request of 22 December 2008 was attempting to reopen issues that had already been dealt with in the appropriate channels.

(ii) Contrary to the Commissioner's assertion that his request would have inflicted a significant burden of time, expense and distraction, his 22 December 2008 request for information was made in the hope of averting legal proceedings under the Race Relations Act and was part of proper and required pre-action conduct under the Civil Procedure Rules.

(iii) Compliance with the Race Relations Act and the promotion of racial equality was very much part of the core functions of the Additional Party and was not a distraction.

(iv) Contrary to the Commissioner's assertion about 100 e-mails, there

were only five requests for information from the Appellant to the Additional party in the whole preceding year, of which the Additional Party filled (sic) 3. Conjecture about whether the Appellant's request would have led to further requests were unwarranted speculation on the part of the Commissioner.

(v) Contrary to the Commissioner's view, stating merely whether or not specified documents exist, as requested by points 4 and 5 of the Appellant's request, little expense was involved. It was the least to be expected even with a refusal notice.

(vi) Points 4 and 5 of the request were not about what the Additional Party ought to do. It was about what the Additional Party actually did or did not do.

(vii) The Additional Party's refusal failed to comply with section 17 (1) (c) and the Commissioners citation of cases against the Appellant such as J Welsh v Information Commissioner differed from his circumstances in important material respects.

The questions for the Tribunal

17. Whether the Decision Notice issued by the IC was or was not in accordance with the law as the request for information was made in the context of a complaint under the Race Relations Act 1976? The Appellant's assertion is that under section 2 (1) of the Race Relations Act 1976, the IC held those acts against the Appellant in producing the Decision Notice.

18. Whether the IC used his discretion correctly in relation to his conclusions about the Additional Party's application of section 14 FOIA and issues of vexatiousness relating to the Appellant's request?

Evidence

19. The Tribunal considered the detailed bundle of evidence of e-mails mainly generated by the Appellant together with relevant responses from the Additional Party. It is not proposed to set out this evidence in detail. It is

covered at pages 67-72, 85-101, 118-253, 271-298 and 339-381 in the appeal bundle.

20. The e-mails cover the issue of the condition that was imposed in respect of the grant offer -- and subsequently withdrawn -- with the Appellant continuing with correspondence regarding it, and other allegations relating to the grant offer, in subsequent correspondence.

The Appellant's final submissions in the appeal

21. The Appellant believed the Additional Party appeared to have double counted pieces of correspondence and e-mails and, that in doing so, further correspondence was generated from the Appellant which would otherwise not have been caused.

22. The Appellant believed he was defending his right to proper pre-action conduct in conformity with the Civil Procedure Rules.

23. Such pre-action conduct in relation to the Civil Procedure Rules had a life independent of FOIA . FOIA was not intended to be used as a block to further information in a dispute under the Race Relations Act. There was nothing in the FOIA Code of Practice that suggested this was the case.

Conclusion and remedy

22. The Race Discrimination point raised by the Appellant -- on the basis that his request was made in the context of the complaint against the Additional Party under the Race Relations Act 1976 and as such was a "Protected Act" as defined by the RRA -- is an allegation that the IC held the actions against the Appellant when the Decision Notice was issued.

23. The Tribunal has no difficulty in finding that this point is misconceived. It is, in effect, a complaint regarding the IC's conduct in the investigation. The Appellant wrote to the IC on 30 November 2009 stating: *"The Commissioner did not afford me any opportunity to challenge the misrepresentation of fact in ACE's [the Additional Party's] account. I respectfully submit that this was [a] biased, unfair and faulty procedure, to the detriment as given later."*

24. The Tribunal stated clearly in its decision in the case of *Stuart v IC and DWP* that the : *".... Tribunal is not required to determine the issues of reasonableness or unfairness on the part of the Commissioner, as it has the ability to hear fresh evidence. The Tribunal is not conducting a judicial review, but exercising its powers under section 58 FOIA....Mr Stuart is complaining about the conduct of the investigation and not the Decision Notice itself, consequently, the Tribunal has no jurisdiction."*

25. The Tribunal has had the same opportunity as the IC to consider the background to the request, and the correspondence between the Appellant and the Additional Party, which is set out in detail in the appeal bundle.

26. There is no evidence on the face of all the papers seen by the Tribunal that the IC has discriminated in any way against the Appellant during the course of the investigation or in reaching his decision.

It is instructive to consider the closing portion of the Independent Complaints Reviewer's report written by Barbara Stow on 5 August 2008. (from paragraph 99 to paragraph 102):

99. As indicated in these conclusions, I consider Dr Joel had justified grounds for complaint and that his complaints were not all answered satisfactorily through ACE's internal complaints procedure.

100. By way of remedy, Dr Joel asks ACE to amend the purpose of his grant in their records of the grant to the activity title that he specified and to compensate him by a sum equating to an increase in the hourly rate allowed in the grant for the composition of the concerto.

*101. I understand that it is usual for assessors to use an applicant's statement of purpose and **I recommend** that ACE accedes to the request to amend the record if that can be done **and** that ACE also reconsiders the classification of the activity and decides whether that should be modified.*

*102. ACE's avoidable delays were disruptive to Dr Joel's timetable, making it more difficult for him to complete the activity, and they meant he was put to more trouble than would usually be the case for a complainant. **I recommend** that in recognition of this ACE make a payment of £500."*

27. The Tribunal is satisfied that the request constituted a significant burden in terms of expense and distraction. Even when the Additional Party agreed to withdraw the original condition, the Appellant continued with correspondence in relation to it and other allegations relating to the grant offer and subsequent correspondence. The substantive issue had already been independently investigated twice by outside bodies.

28. A considerable amount of time had already been spent dealing with previous requests from the Appellant and dealing with further requests would be a significant distraction from the core functions of ACE's purposes as a public body.

29. The Tribunal is satisfied from the material it has considered that the request -- given the background -- indicated a degree of obsessiveness. It is also satisfied that the purpose of the request was not malicious.

30. For all these reasons the Tribunal is satisfied that the Appellant has failed to show that – on the balance of probabilities – the IC's Decision Notice was wrong.

31. Our decision is unanimous.

33. 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.

34. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure 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 Tribunal for permission to appeal within 28 days of receipt of this decision.

35. 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 at www.informationtribunal.gov.uk.

Signed,

Robin Callender Smith

Tribunal Judge 7th April 2010

Case no: EA/2009/0151

IN THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)

RULING on an APPLICATION for PERMISSION to APPEAL
By

Robin Callender Smith
First Tier Judge

1. This is an application dated 5 May 2010 by Dr Joel Almeida for permission to appeal part of the decision of the First Tier Tribunal (Information Rights) ("FTT") dated 7 April 2010. That decision dismissed the appeal of Dr Almeida and upheld the IC's Decision Notice FS 50251368 dated 26 November 2009.
2. The right to appeal against a decision of the FTT is restricted to those cases which raise a point of law. The FTT accepts that this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended ("the Rules").

3. **GROUNDS OF APPEAL**

    1. The Tribunal never dealt with the Appellant's case that a central fact and feature was that the Appellant's letter of 22 Dec 08 did not invoke the FOIA, nor were any subsequent requests made under the FOIA. Rather the Appellant's letter sought information as part of proper pre-action conduct in conformity with the CPR and in reliance on rights under the RRA. The Appellant respectfully contends that the Tribunal asked the wrong questions in law. The above critical issue, expressly relied on in the Appellant's submissions to the Tribunal, which in the Appellant's respectful submission cried out for evaluation and analysis, simply found no reflection at all in the Tribunal's reasoning and decision.

    2. It is doubtful whether Parliament intended that the FOIA be invoked by an alleged tortfeasor, when a requester of information did not invoke the FOIA, for the purpose of making the legal consequences of a responsibly alleged tort more agreeable to the tortfeasor.

    3. The decision is not compliant with the requirements of, and is inconsistent with the principles of, the following law:
        a. FOIA - wrongly and wrongfully used to stigmatise proper pre-action conduct under CPR (civil procedure rules) and in reliance on rights under the RRA (Race Relations Act),
            i. FOIA s 1 confers rights on requesters of information. If a requester does not invoke these rights, but relies on other legislation and the CPR, the FOIA is not engaged at all. It follows that in these circumstances the requestee is not entitled in law to invoke the FOIA, or any part of it, as a device to stigmatise or

otherwise penalise the requester; or to deny information requested in compliance with the CPR principles on pre-action conduct, within a dispute under legislation other than the FOIA.

ii. The FOIA does not confer on any public authority the right to victimise a person requesting information in reliance on rights under the RRA, especially not for the purpose of intimidating or otherwise discouraging the said person's attempts to enforce rights under the RRA through pre-action conduct in compliance with the principles of the CPR or through a subsequent trial in compliance with Human Rights Act Schedule 1 Article 6. Any implicit or explicit suggestion that it is disproportionate or obsessive for the Appellant to persist in enforcing his rights under the RRA is contrary to RRA s 2(1).

iii. Further, FOIA Part I confers rights on the requester and duties on a public authority under ss 1 and 16. FOIA s 14 at most confers exemption from the duties under s 1, but not from the duties under s 16 and the Code of Practice which explicitly mentions the RRA. The IC (Information Commissioner) failed to consider whether the Part I duties including as given in s 16 and the Code of Practice had been met by the Additional Party. In particular, whether the need to consider the RRA had been complied with. Therefore the IC's decision notice is inconsistent with FOIA s 16 and the Code of Practice, and wrong in law.

b. RRA s 2(1)

i. RRA s 2(1) determination by Tribunal "on the face of the papers". The Reasons do not state which tests were applied to the facts of this particular case. Did the IC treat the Appellant less favourably than the IC would treat others partly by reason that the IC believed that the Appellant was going to continue pursuit of rights under the RRA? The IC wrote: "disproportionate to continue". Therefore only one answer is possible. That the IC's Decision Notice is contrary to RRA s 2(1).

Further, the Tribunal took into account an irrelevant fact. That the Appellant had also made a "request for review" including point 1 of that document, which was and was intended to be no more than a service level complaint. That is the purpose of a "request for review" and it is common ground between the Appellant and the IC that point 1 properly makes a service level complaint. The Appellant's substantive allegations about the IC and RRA s 2(1) were given in point 2.

ii. When the history of the matter - as in this case - is that the requester has done something under or in relation to defending his rights under the RRA, then it is unlawful under RRA s 2(1) for the requester to be treated less favourably, such as by application of FOIA s 14(1) - by reason of that history or similar anticipated future conduct - than a person who was not believed to have done or was not believed to intend doing any such thing.

c. "Issues raised [that is, contraventions of the RRA cited in the 22 Dec 08 request] have already been considered before and it is disproportionate in the circumstances to continue in this instance". By this the IC sought to disparage and stigmatise the

Appellant's pursuit of rights under the RRA, even though these rights had yet to be determined by an independent and impartial tribunal established by law.

"Even when the Additional Party agreed to withdraw the original condition, the Appellant continued with correspondence in relation to it". This was because the Appellant was seeking just recompense AND defending the right to re-instatement of a purpose of grant which would protect him against clawback of the grant - hearing bundle pp 384-5.

i. The stigmatisation of the Appellant's exercise of RRA rights is not in keeping with the intent of Article 6 of the ECHR and RRA s 2(1), nor with the CERD right to just recompense (Convention on the Elimination of All Forms of Racial Discrimination ('CERD'), in force since 1969, to which the United Kingdom is party and to which Directive 2000/43/EC recites that it was intended to give effect). CERD sets out "obligations of Member States to eliminate racial discrimination in all its forms and to the obligation in Article 6 (CERD) to provide effective protection and remedies, including just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

ii. The exchange of information as part of proper pre-action conduct in reliance on rights under the RRA and in compliance with the principles of the CPR does not end with the statutory RRA questionnaire. It is wrong in law to hold that it does. The Appellant would have been exposed to costs sanctions if he had not engaged in proper pre-action conduct, such as the 26 Nov 08 letter and the 22 Dec 08 request for information.

d. More generally, it is wrong in law for the IC or the Tribunal to find against a person who has responsibly alleged a tort on the grounds that the consequences of the tort such as pre-action conduct or litigation are disagreeable to the alleged tortfeasor, and therefore should not be persisted with beyond a date determined by the IC or the Tribunal. It is not within the jurisdiction of the IC or the Tribunal to determine such a date, nor is the disagreeability of legal consequences relevant. Such determination by the IC or Tribunal is contrary to the Human Rights Act, Schedule 1 Article 6, and otherwise too plainly wrong.

4. Lacking in natural justice

a. The Tribunal did not inform the parties that it intended to take into account a matter not addressed in the appeal papers. The Tribunal was bound to inform every party including the Appellant of any "evidence" which the Tribunal proposed to take into consideration, whether such "evidence" was proffered by a party, or was arrived at by the Tribunal without the assistance of any party. Affected parties should have an effective opportunity to make representations before a decision is made.

i. The Appellant being grateful for the effort spent by the Tribunal in arriving at a decision is nevertheless constrained, with deep regret and with all due respect, to draw attention to the following circumstances. The Tribunal, having - at the Directions Hearing -turned down the Appellant’s request for an oral hearing, subsequently in its decision (at para 11) asserted the following as fact:

"The Appellant continued to seek further information from the Additional Party and a request for information under FOIA was made by the Appellant on 15 September 2009 covering ground dealt with in his request to 22 December 2008."

This assertion is a fiction, simply not open to anyone on the evidence, not even approximately or remotely true, and not alleged even by the other parties.

ii. The Appellant respectfully submits that the devising of facts by a Tribunal is irregular procedure.

iii. Further, the hearing did not admit oral representations or cross-examination, despite the Appellant having sought an oral hearing.

5. Adopted a view of the facts simply not open on the evidence

Essential findings of fact were without foundation and therefore perverse. As the findings were perverse, the inferences drawn from them become unsustainable, and the basis for the Tribunal's findings falls to the ground.

a. The Appellant made no requests for information under the FOIA whatsoever subsequent to 22 Dec 08, concerning the NAO's investigation of the Additional Party, or concerning anything at all to do with matters investigated by the NAO, or concerning any other matters whatsoever. Any finding to the contrary is simply not open on the evidence.

b. Additional Party's allegation of "continued requests throughout 2008 and 2009": REFUTED by inspection of the bundle. In the face of misrepresentation, including double counting of emails by the Additional Party in its submission to the Tribunal, the Tribunal inexplicably chose to swallow the baseless allegations which are refuted by the hearing bundle. Moreover, the oral hearing sought by the Appellant was refused. As a result, the Tribunal has unfortunately mistaken material falsehoods for fact.

c. The National Audit Office (NAO) received no complaint whatsoever about the Appellant's grant. It did not investigate the substantive RRA issue, of the Appellant's civil rights, being pursued in the Appellant's 22 Dec 08 request and now in the court. Any finding otherwise is completely false and simply not open on the evidence.

d. The Lottery Forum is not independent of the Additional Party. Any finding otherwise is simply not open on the evidence, since the Lottery Forum includes the Chief Executive of the Additional Party. Therefore in legal terms a Complaints Reviewer appointed by the Lottery Forum is not independent of the Additional Party.

6. Reasons are not sufficient to show that the Tribunal has dealt with some central issues remitted to it and what its conclusions are on those issues.

a. The Appellant's main Submission for Hearing appears to have been disregarded, in substantial part.

No reasons given for departing from precedent in that a wholly proper and justified reason for seeking information was considered insufficient to refute the application of FOIA s 14(1).

On 22 Dec 08 the Appellant was pursuing authoritative determination of his civil rights under the RRA, and fair compensation - for the impact of discrimination as stated in pp 387 ff of the hearing

bundle. Neither was available to him on 22 Dec 08 without pre-action conduct, and eventual litigation if necessary. His letter of 22 Dec 08 and related course of conduct had the purpose of establishing, exercising or defending A's civil rights, whilst duly attempting to avert litigation. A's Letter of 22 Dec 08 and A's overall pursuit of his rights under the RRA was a warranted course of action with a justified and proper cause, therefore it could not have engaged FOIA s 14.
No reason given why this was insufficient to overturn the IC's decision notice.

b. The Appellant was and is seeking to defend civil rights under the RRA, the Additional Party is under a statutory duty to defend and even promote those civil rights. This is no distraction from the core functions of the Additional Party. The Appellant's 26 Nov 08 letter and the 8 Sep 08 letter in the hearing bundle (p 26-44 and p 369-376) make this clear.

7. The Tribunal failed to state why it chose some principles emerging from case law whilst apparently disregarding others which seem highly relevant. Precedent is being set without due attention to the details.

If FOIA was engaged at all: The key question is whether the request (taking into account its context and history) is likely to cause distress, disruption or irritation without any proper or justified cause. This principle is accepted by the IC, in the Awareness Guidance. Yet the Appellant's 22 Dec 08 request which had a proper and justified cause (pre-action conduct in reliance on rights under the RRA) was stigmatised by the application of FOIA s. 14(1). This appears to set a new precedent, without dealing with the Appellant's objection.

8. Perverse inferences / decision does not follow logically from the evidence

a. No reasons for pronouncement regarding IC's contravention (or not) of the RRA

Tribunal stated "No evidence on the face of all the papers seen by the Tribunal that the IC has discriminated in any way against the Appellant during the course of the investigation or in reaching his decision." There is no indication at all of what tests were applied by the Tribunal, or even which section of the RRA was considered. The Appellant is left in dark about what evidence refuted the claims that the IC held the history of the matter against the Appellant, or that the IC considered it disproportionate for the Appellant to persist with his pre-action conduct and (as it turned out) eventual claim under the RRA. The Appellant contends that the IC's decision notice in itself is contrary to RRA s 2(1) and therefore wrong, given the "disproportionate to continue" comment.

b. Civil Procedure Rules (CPR) principle: to reduce the eventual burden on the parties to a dispute, and on all concerned, by encouraging early exchange of information. Burden ATTRIBUTABLE to the Appellant's 22 Dec 08 request for information is therefore NEGATIVE. Not just small, but actually negative. That is, with the request of 22 Dec 08 fulfilled, the burden and distraction to the Additional Party (and all others concerned) would be SMALLER than without the request. It is utterly unreasonable for anyone to hold otherwise. The CPR holds costs sanctions against those parties in a dispute who depart from these principles.

c. The Tribunal cites the Complaints Reviewer's finding in favour of Appellant as part of the Conclusions leading to its decision

i. The finding in favour of the Appellant does not lead logically to the Tribunal's decision against the Appellant, especially given that the Appellant was seeking to escape the "substarvation rate" of payment (hearing bundle p 394, para 27).

d. The Tribunal states that it had the same opportunity as the IC to consider the background to the request. However, it had an opportunity to consider MORE evidence than was available to the IC. The material facts on which the Tribunal based its decision are not stated by the Tribunal with sufficient specificity for the Appellant to know why the evidence was not sufficient to oust the IC's Decision Notice.

e. The IC's decision notice stated: "In the context of the hours spent dealing with the previous requests and the resulting distraction from thepublic authority's core charitable purpose" - but the Appellant has been alleging that the Additional Party has been neglecting its core purpose as given in the Royal Charter, to the disparate detriment of minority ethnic groups - as the record shows (hearing bundle pp 45-52 and 387, 393-4). RRA s 71 and RRA Code of Practice make the promotion of race equality central to all aspects of the Additional Party's work. Far from being a diversion from the core purposes, the Appellant was defending the Additional Party's core purpose of promoting equal opportunity and eliminating discrimination, in keeping with the non-discriminatory Royal Charter, meeting statutory duties under the RRA.

f. Request of 22 Dec 08 formed a significant burden: Utterly unreasonable inference since the burden of producing the request was borne by the Appellant and the Additional Party declined to provide the information.

9. Overlooking the restrictive effect of context upon an ordinary word such as "obsessiveness" is a constructional, and therefore legal error

a. Was the Appellant exercising rights under Article 6 of the Human Rights Act Schedule 1, to seek vindication of his rights under the RRA? If so, can such exercise of rights legitimately be stigmatised as obsessive? The Appellant contends that such stigmatisation is unlawful under RRA s 2(1).

b. Obsessiveness: Appellant had not been fully recompensed. Whether £500 was sufficient and just recompense for the impact of the alleged tort as given on pp 390-1 (para 20) of the hearing bundle. The Appellant contends that £500 was derisory relative to the impact of discrimination.

c. The Additional Party's refusal to re-instate "Ending the marginalisation of konnakol" as the "purpose of grant" exposed the Appellant to the risk of the grant being clawed back, as the Appellants letter of 12 Feb 09 states (hearing bundle p 384-5).

d. In the circumstances, it was entirely reasonable for the Appellant to persist in exercising his rights under the RRA.

10. Irrelevant considerations taken into account

Request for review point 1 taken into account although it is no more than a service level complaint. The Tribunal was not asked to consider the issue of reasonableness or unfairness. It has simply evaded the real issues regarding RRA s 2(1) by seizing upon an irrelevance in the form of point 1 of

the service level complaint (also known as the "request for review") submitted to the IC. This is distinct from the appeal to the Tribunal.

4. **REASONS FOR REFUSAL**

1. The Appellant has failed to identify a recognisable or substantive point of law in the many points raised in his Notice of Appeal (set out above).
2. In particular, he argues that it was not permissible for section 14 (1) of the Freedom of Information Act 2000 (FOIA) to be applied to his requests for information.
3. He claims that his requests were seeking information as part of proper pre-action activity in line with the Civil Procedure Rules and in reliance of his rights under the Race Relations Act.
4. He states that the Tribunal adopted a view of the facts in the appeal which were without foundation and perverse.
5. He states that he was seeking to defend his Civil Rights under the Race Relations Act and that – in seeking to exercise his Article 6 Human Rights Act Schedule 1 rights - this activity should not have been stigmatised as obsessive.
6. In summary, it was entirely reasonable for the Appellant to persist in exercising his rights under the Race Relations Act.
7. The thrust of Appellant's points in relation to this appeal do not address matters within the remit of the Upper Tribunal on any point of law.

5. It follows that the appeal has no prospect of success and that permission to appeal is refused.

6. Under rule 21(3) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended Dr Almeida has one month from the date this Ruling was sent to it to lodge the appeal with:

Upper Tribunal (Administrative Appeals Chamber)
**[insert address]

7. Any application for the appeal to be stayed should be made to the Administrative Appeals Chamber of the Upper Tribunal [insert address].

Robin Callender Smith

Judge
First-tier Tribunal (Information Rights)
13 May 2010