IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2013/0178

ON APPEAL FROM:

The Information Commissioner's
Decision Notices No: FS50480313
Dated: 25 July 2013

Appellant:	**Dr W R Williams**
First Respondent:	**Information Commissioner**
Date and place of hearing:	**on the papers**
Date of decision:	**13 December 2013**

Before

Anisa Dhanji
Judge

and

John Randall and Pieter de Waal
Panel Members

Subject matter

Freedom of Information Act 2000, section 14(1) - whether requests were vexatious

Case law

IC v Devon County Council and Dransfield [2012] UKUT 440 (AAC)

IN THE FIRST-TIER TRIBUNAL **EA/2013/0178**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

DECISION

This appeal is dismissed.

Signed **Date: 13 December 2013**

Judge

IN THE FIRST-TIER TRIBUNAL **Case No. EA/2013/0178**
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REASONS FOR DECISION

Introduction

1. This is an appeal by Dr W R Williams (the "Appellant"), against a Decision Notice issued by the Information Commissioner (the "Commissioner"), on 25 July 2013.

2. The Appellant requested access, under the Freedom of Information Act 2000 ("FOIA"), to certain information concerning the way in which vehicles used by the South West Police ("SWP") had been deployed. SWP refused the requests. The Commissioner upheld the refusal and the Appellant has appealed to the First-tier Tribunal challenging the Commissioner's decision.

Background to the Requests for Information

3. In January 2009, the Appellant complained that SWP had been harassing him over a period of 10 years. He alleged that he was being constantly followed by them, randomly stopped, that tracking devices had been fitted to his last 5 cars, a tap had been placed on his telephone line, and that a CCTV camera had been fitted opposite his home. He alleged that a particular officer was ultimately responsible. SWP found no evidence to support these allegations. The Appellant appealed to the Independent Police Complaints Commissioner ("IPCC"). The complaint was dismissed.

4. In 2010, the Appellant made further allegations that he was being targeted by police vehicles. Again, SWP found no evidence to support his complaint. His subsequent appeal to the IPCC was again dismissed.

5. Between January 2011 and June 2012, the Appellant made about 20 requests for information to SWP. We have not seen those requests but it is not in dispute that they related primarily to the activities of police drivers and/or vehicles, and other issues connected with his allegation of police harassment.

6. This appeal concerns two specific requests for information, made on 23 and 30 June 2012, respectively. The request made on 23 June 2012 was on the following terms:

> *"How many undercover police cars entered Somerset Road (West), Barry, on the above dates [Wednesday June 6th, Thursday June 7th and Friday June 8th] between 6.30am and 11.00pm?*
> *How many undercover police cars travelled along the A470 (northbound) from junction 32 of the M4 entry to the Glyn Taff exit on the above dates between 7.20am and 7.40pm?*

How many undercover police cars travelled along the A470 (southbound) from Glynn Taf entry to junction 32 of the M4 exit on the above dates between 4.30pm and 4.45pm?
How many undercover police cars travelled along Coldbrook Road, Barry, on Monday 11 June between 7.10am and 7.15am?"

7. The request made on 30 June 2012 was for the following information:

> *"1. For the vehicles listed below [there followed a list of 18 vehicle registration numbers of supposed sightings of police vehicles], please identify the drivers and vehicle registration plates (if unidentified).*
> *2. Please define the nature of the response for emergency vehicles.*
> *3. Please list the number of undercover police officers within a half mile (800 metres) of the marked vehicles for the observations identified by an asterisk.*
> *4. Were the two emergency police motorbikes (Wednesday 27th June) driven by the same officers on 28th June 2011 at 5.55pm in Tynewydd Road, Barry (also on emergency call)?"*

8. On 11 July 2012 SWP refused the requests on the basis that they were vexatious under section 14 of FOIA. In particular, it said:

> *"We have taken account of the wider context and history, not just of this request but of other correspondence and matters raised via our Professional Standards Department. Whilst in isolation this request … may not appear to be vexatious we have considered that it is the latest in a long series of overlapping requests and other correspondence and as such it forms part of a pattern of behaviour that makes it vexatious.*
>
> *We have received 20 requests from you over the past 2 years as well as one request for an internal review. Responses have been provided for 18 of these requests and one... is currently awaiting a public interest test before a decision is made on how to respond. Since receipt of [your request of 23 June] you have submitted a further request which will not be responded to. All of these requests appear to be linked to your allegation of police harassment – a matter which has been investigated and addressed.*
> *…*
> *Whilst there may have initially appeared to be a serious and proper purpose to your requests, these requests have now become obsessive. These requests centre on re-opening issues that have already been debated, considered and responded to through formal channels i.e. that you allege you are subject to police harassment. These matters have been investigated by our Professional Standards Department and the Independent Police Complaints Committee (IPCC) who have dealt with your appeals. You have been served with a document which*

identifies to you that South Wales Police are not conducting any surveillance directed towards you."

9. On 23 July 2012, the Appellant requested an internal review. He said that he accepted that SWP were not carrying out any authorised surveillance on him, but nevertheless, he was being subjected to harassment by police officers and that this was a matter of professional misconduct. SWP upheld the refusal of both requests and the Appellant then complained to the Commissioner under section 50 of FOIA.

The Complaint to the Commissioner

10. The Commissioner undertook enquiries, during the course of which SWP provided the Commissioner with an explanation as to why it considered the Appellant's requests to be vexatious. It also provided further information relating to the investigation carried out by it and the IPCC into his allegations. The Appellant argued that his requests were not vexatious. They were only persistent in an effort to provide evidence of professional misconduct of certain police officers employed by SWP.

11. The Commissioner assessed whether SWP had correctly applied section 14(1) by reference to the principles set out by the Upper Tribunal in IC v Devon County Council and Dransfield. He looked particularly at whether the requests were likely to cause a disproportionate or unjustified level of disruption, irritation or distress, the purpose and value of the requests, and the balance between that purpose and the impact of the requests on the public authority. For the reasons set out in his Decision Notice, the Commissioner found that the requests were vexatious.

The Appeal to the Tribunal

12. The Appellant has appealed against the Decision Notice. Both parties have requested that this appeal be determined on the papers without an oral hearing. Having regard to the nature of the issues raised, and the nature of the evidence, we are satisfied that the appeal can properly be determined without an oral hearing.

13. We have considered all the documents received even if not specifically referred to in this determination. The documents are contained in the agreed bundle. No separate documents or other submissions were received except for a DVD from the Appellant containing video clips and photographs (with an accompanying explanatory note), which we have viewed and considered.

The Tribunal's Jurisdiction

14. 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 Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, 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. 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, as in this case, the Tribunal will often receive evidence that was not before the Commissioner.

The Statutory Framework

15. Under section 1 of FOIA, any person who makes 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 is exempt under Part II of FOIA, or if certain other provisions apply. In the present case, SWP has invoked 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). 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.

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. Section 14(1) is concerned with whether the request is vexatious, and not whether the applicant is vexatious.

18. Specifically, 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.*

Issues

19. The only issue in this appeal is whether the requests were vexatious. If they were not vexatious, then the information must be disclosed, since no other exemptions have been relied upon.

Findings and Reasons

20. In assessing whether the requests were vexatious, we need to consider what that term means in the context of FOIA. FOIA does not define "vexatious". However, in IC v Devon County Council and Dransfield, the Upper Tribunal ("UT") has offered detailed guidance on how the term should be understood. We have summarised this guidance below. However, as Judge Wikeley stressed, in that case, this should not be regarded as being

prescriptive; all of the circumstances of any particular case, must be taken into account.

- "Vexatious" is a word that takes its meaning and flavour from its context. In the context of section 14, "vexatious" carries its ordinary and natural meaning, within the particular statutory context of FOIA. The dictionary definition of "vexatious" as *"causing, tending or disposing to cause … annoyance, irritation, dissatisfaction or disappointment can only take us so far"*. As a starting point, a request which is annoying or irritating to the recipient may well be vexatious, but it depends on the circumstances. (paragraph 24).

- "Vexatious" connotes *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. Such misuse may be evidenced in different ways.

- The Commissioner's Guidance on Vexatious Requests [in effect at the time] that *"the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause provides a useful starting point so long as the emphasis is on the issue of justification (or not)"* (paragraph 26).

- The purpose of section 14 is to protect public authorities and their employees in their everyday business. Thus, consideration of the effect of a request on them is entirely justified. A single abusive and offensive request may well cause distress, and so be vexatious. A torrent of individually benign requests may well cause disruption. However, it may be more difficult to construe a request which merely causes irritation, without more, as vexatious under section 14 (paragraph 26).

- An important aspect of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (paragraph 26).

- A common theme underpinning section 14(1) as it applies on the basis of a past course of dealings between a public authority and a particular requester, is a lack of proportionality.

21. Judge Wikeley went on to say that the question of whether a request is truly vexatious may be determined by considering four broad issues or themes:

    - the burden on the public authority and its staff;
    - the motive of the requester;
    - the value or serious purpose of the request; and
    - any harassment or distress caused to the staff.

22. In paragraphs 29 to 45, he set out further guidance about each of these four themes, which we will consider further below, in relation to the facts of the present case.

23. Before we do so, there are two general points raised by the Appellant which we will address. The Appellant has argued that the principles set out in Dransfied should not apply to his appeal since that case was decided after his requests that are in issue in this appeal were made and refused. That argument is, however, misconceived. We do not say that with any criticism; we are aware that the Appellant is unrepresented. However, Dransfield is binding authority on the correct approach to section 14(1). The Commissioner was bound to follow it, as are we. It is not that the law has changed and is being applied retrospectively. Rather, the decision reflects the law as it is and was, albeit perhaps not correctly understood before that decision.

24. Second, he says that he has made a request to Devon & Cornwall Police in relation to the ownership of 14 vehicle registration plates and that they have refused the request citing the exemptions in FOIA. He suggests that this somehow undermines the legitimacy of SWP's reliance on section 14(1). That argument, too, is misconceived. As the Commissioner rightly says, that is a separate request with a different context and history, to a different public authority. How that public authority chooses to deal with the request has no bearing on whether the requests in the present case are vexatious.

Burden

25. SWP does not say that dealing with these two requests would place a significant burden on it. We are satisfied, as was the Commissioner, that it would not.

26. However, the two requests need to be seen in context. On this, the guidance in Dransfield (paragraph 29) is as follows:

> *"First the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular 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."*

27. Judge Wikeley emphasised that the number of previous requests alone may not suffice to support a finding that a further request is vexatious, but that *"the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious"* (paragraph 30).

28. We bear in mind that the Appellant has made 18 previous requests for information over an 18 month period, and that 13 of these were in relation to police drivers and/or police vehicles resulting in 54 searches being carried out. The Appellant has clearly been, on his own admission, persistent. SWP says that there has been an escalation in the number of requests, the frequency of the requests, and the number of sightings to which each request relates. It also says that if it had not refused these requests, there would have been further requests on an on-going basis.

29. We note that the Appellant's allegations relate not to a specific time in the past, but rather, he alleges that the harassment is on-going We are satisfied, on this basis, given the history, and frequency of his requests, and his motives in making them, that his determination is such that there would likely be on-going requests. Taken together, we find that this would likely place an undue burden on SWP.

Motive, value and purpose

30. For convenience, we have considered these two themes together because on the facts of the present case, as indeed in Dransfield, the issues are closely intertwined.

31. Judge Wikeley noted in Dransfield (paragraph 34), that the motive of the requester may well be a relevant and indeed a significant factor in assessing whether a request is vexatious and therefore *"the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request"*.

32. Clearly, there is a balancing exercise to be undertaken. On the one hand, it is important that public authorities should not be exposed to the irresponsible use of FOIA. On the other hand, a single request may quite legitimately prompt a further request for more information and a series of requests may well be reasonable when viewed both individually and in context as a group. In other circumstances, a series of requests may suggest that later requests have become disproportionate to whatever the original inquiry was.

33. The Appellant considers that his persistence is justified on the basis of the long-standing and unresolved problem they seek to address. He believes he is experiencing harassment resulting from networking between plainclothes and uniformed officers in their respective cars. He says he has become an almost daily target of police activity. His requests are intended to gather evidence to present to the Commissioner of SWP (by which we presume he means the Chief Constable). He is not satisfied with the standard of the investigation of the Professional Standards Board and the IPCC. He accepts that he is not being investigated by SWP, but considers that his allegation of professional misconduct is justified.

34. SWP says that this persistence has been at a level that is unreasonable and obsessive, and that having exhausted both internal and external complaints processes, the Appellant is now resorting to submitting requests for information under FOIA.

35. We do not find that the Appellant is pursuing what he describes, in his grounds of appeal, as a "productive line of enquiry" about the use of police vehicles. We agree with the Commissioner's findings that the Appellant appears intent, through these continuing requests, to reopen issues that have already been investigated and responded to through formal complaint channels. The evidence before us is that the Appellant has never been stopped by any of SWP's vehicles, nor been directly approached by any of its officers. He has been given formal documentation stating that he is not under surveillance. Although we note that the Appellant now accepts that

he is not under investigation and is arguing that SWP's actions amount to professional misconduct, the allegations are so closely interlinked as to be effectively the same complaint in a slightly different guise.

36. The Appellant also argues that his requests have a serious public interest purpose. He says, for example, that "recent developments in policing make use of plain clothes police in unmarked cars and mobile phone technology that facilitate networking and communication within vigilante groups. These individuals cannot be identified and there are no measures in place to protect the public from their unprofessional conduct". He says that there is nothing to prevent plain clothes police officers from harassing members of the public and getting away with it.

37. There is no evidence before us to indicate that the Appellant's allegations are objectively well-founded, whatever his subjective beliefs may be. His complaints have been investigated and dismissed. There is also no evidence before us to suggest that the information he has been provided in relation to his approximately 18 requests (before the two in issue in this appeal), support his allegations of harassment or misconduct. While it is not, of course, this Tribunal's role to investigate any such allegations, we make these observations because they are relevant to the question of the purpose and motive behind the Appellant's requests. We have also given careful consideration to the Appellant's evidence of the video clips and photographs. This shows various police vehicles on different roads at different locations on different days/times. By itself, it does not amount to evidence that the Appellant is being followed or harassed.

38. Although we recognise that he is not doing so intentionally, we find that the Appellant is using the FOIA legislation in a manner that is unreasonable in the circumstances and amounts to an abuse of its purpose.

39. For all these reasons, we find that the requests are disproportionate to any legitimate motive or purpose.

Harassing or causing distress to the staff

40. Judge Wikeley noted that although a finding of vexatiousness does not depend on there having been harassment of or distress to the public authority's staff, 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…"*

41. As the Commissioner noted, the tone of the requests in issue in this appeal were neither abusive, nor aggressive, and the Appellant has not targeted his requests towards any particular employee or office holder. Nevertheless, we find it likely that the continuing allegations of harassment and misconduct which have been investigated and found to be wholly unfounded, will have had an adverse effect on the SWP staff in terms of causing irritation and distress.

Decision

42. For all the reasons set out above, we are satisfied that the Appellant's requests were properly characterised by SWP to be vexatious. Accordingly, we uphold the Commissioner's Decision Notice.

43. This appeal is dismissed. Our decision is unanimous.

Signed

Anisa Dhanji
Judge

Date: 13 December 2013