



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference:	EA/2010/0152
Appellant:	Alan Dransfield
Respondent:	The Information Commissioner
Second Respondent:	Devon County Council
Judge:	NJ Warren
Member:	Dr H Fitzhugh
Member:	M Jones
Hearing Date:	24 March 2014
Decision Date:	2 April 2014

DECISION NOTICE

1. On 10 February 2009 Mr Dransfield sent a request under the Freedom of Information Act (FOIA) to Devon County Council (Devon). He asked for a copy of the operations maintenance manual for Isca College of Arts in Exeter.
2. Devon originally refused the request because of the cost of complying with it. Mr Dransfield complained to the Information Commissioner (ICO). It was during the course of the ICO investigation that Devon also raised the question of whether the request should be refused under Section 14 FOIA on the ground that it was vexatious. On 25 August 2010 the ICO issued a decision agreeing with this latest submission from Devon. Mr Dransfield has appealed against the decision notice to the Tribunal. The issue before us is whether the request should have been refused by Devon under Section 14.
3. The hearing of the appeal did not take place until 24 March 2014. We need not recite here the several reasons accounting for this delay. At the hearing Mr

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Dransfield addressed us; Ms Kamm appeared on behalf of Devon; the ICO did not trouble to attend.

4. Mr Dransfield first raised three preliminary procedural points.
5. First, he asked us to adjourn the hearing and to direct that the ICO should attend. He said that he had numerous questions to put to the ICO about how they had handled their investigation.
6. The Tribunal is always assisted by the attendance of a representative of the ICO. In failing to turn up the ICO risks the appearance of discourtesy to the public authority and/or the citizen involved in the proceedings. There will be occasions when the Tribunal directs such attendance but in our judgment this is not one of them as we would not be assisted by cross-examination concerning the investigation. Having regard to Rule 2 GRC Procedural Rules we refuse to adjourn on this ground.
7. Mr Dransfield's second point was that adjournment would be necessary in any event because I was under a duty to recuse myself from the case.
8. Two principal reasons were advanced for this. The first was that Mr Dransfield had made "very serious allegations" against me. Those allegations were:-
 - (a) That I intended the case to proceed in accordance with the guidance given by the Upper Tribunal in another case involving Mr Dransfield, whereas that case should not be discussed because he had made an application for permission to appeal to the Court of Appeal.
 - (b) Since the Upper Tribunal decision some 200 cases had been decided by the ICO in accordance with it, whereas, because of his proposed appeal, it was not a lawful authority.
 - (c) I had refused to postpone the case even though Devon were relying on the Upper Tribunal authority alone. This amounted to misconduct.
9. The second reason why I should recuse myself was bias. This was evidenced by:-
 - (a) My refusal to postpone the hearing to allow the ICO to appear.

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- (b) My refusal to postpone the hearing for an investigation of seven “ghost documents”. Mr Dransfield uses this term to refer to FOIA requests and correspondence, claimed by Devon to have existed, but of which they cannot now provide copies.
- (c) I am part of a wider conspiracy involving the ICO, the Crown Prosecution Service, the Ministry of Justice, Devon, Stockport Borough Council, Wirral Borough Council, Carmarthen County Council and 200 other public authorities to push through the refusal of FOIA requests on the ground that they are vexatious.
10. I doubt whether the first set of reasons do amount to misconduct. Even so, allegations of misconduct are not sufficient to permit a judge to recuse him or herself from the duty of hearing cases which have been allocated to him or her.
11. As to bias, I do not accept that the refusals to postpone the hearing indicate bias; nor would they indicate the appearance of bias to a fair minded and informed observer. The allegation of a conspiracy involving me is untrue. It would therefore be wrong for me to recuse myself from hearing the case on the ground of bias or apparent bias.
12. Mr Dransfield’s third request was for the hearing to be recorded. We refused this request. It is not the usual practice for GRC hearings to be recorded; the recording can be of very little use to parties any way because of the cost of asking for a transcript.
13. Turning to the main issue in this case, Mr Dransfield told us that he had been concerned for roughly ten years about the safety of schools built under PFI. There were six of these in Exeter and Isca College is one of them. He remains particularly concerned about protection against lightning strike, the grounding and bonding of the electrics and glazing. A few years ago he visited all six of the schools to ask for a copy of their public liability insurance certificate which they are required by law to display in a prominent area. Five of the schools did not display such a certificate. In the sixth, the certificate was behind a fir tree. He stood on a chair to look at it and discovered that it was a year out of date. At this point, he

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says, the head teacher approached him and asked him what he was doing. Mr Dransfield drew attention to fire protection certificates for the schools being issued only in 2008.

14. He told us that he had tried to stimulate action from various public authorities. He approached Devon with the result that in 2005 they barred him from sending any emails to them. He then went to the Local Government Ombudsman claiming that Devon had abused their powers but that office took no action. He said that he had unsuccessfully tried to raise the issue with his MP, whom he described as useless and lazy. He took his concerns to the Health and Safety Executive. They did not wish to know. They also have barred him from emailing their office.
15. Mr Dransfield contested Devon's claim that he had made 28 requests for information in five years. He said he would put the figure at nine or twelve requests in that period concerning PFI schools. We asked him how many FOIA requests he had made to Devon in connection with other issues and he replied "I would rather not say". We are content to proceed on the basis that there had been about a dozen requests, other than the present one.
16. Something should also be said here about the tone adopted by Mr Dransfield in his correspondence with Devon. We accept the correctness of the quotations in paragraph 20(4) of Miss Kamm's submission dated 8 March 2013. These all predate the request in this case. Devon employees were accused of concocting false information; covering up serious crimes; obtaining fire certificates by fraud; theft of public funds; disseminating false information and colluding to pervert the course of justice for personal and political gain.
17. On the material before us, we have no hesitation in considering these assertions to be wrong headed and fanciful. This does not mean that it is easy for public employees in receipt of such allegations to shrug them off. On the contrary, statements like these can be wounding, worrying and disturbing. There is nothing in the concept of information rights to justify them.
18. In deciding whether Mr Dransfield's request on 10 February 2009 was vexatious we must be guided by the Upper Tribunal decision in the well-known case in which

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Mr Dransfield was also the Appellant. Viewing the material before us as a whole, we agree with the ICO and with Devon that the request was vexatious.

19. Mr Dransfield claims a serious purpose behind his request but we doubt that this is a fair description given that Devon, the Health and Safety Executive, and the Local Government Ombudsman have all declined to intervene. In our judgment, answering the request will have no value. No doubt the operations manual will describe in great detail works required to maintain the college; equally, we have no doubt that it would inspire Mr Dransfield to make even more requests under FOIA. This brings us to the continuing burden on Devon of answering Mr Dransfield's requests. We attach particular importance, as we have said, to the harassment caused by the tone of his correspondence. In our judgment, the stage has been reached at which, although the simple answering of the request is not a burden of any consequence, Devon is entitled to invoke the protection of Section 14 FOIA and say "enough is enough".
20. During the course of the hearing Mr Dransfield referred to the "ghost documents". Certainly, the original list produced by Devon contained some errors and indicated the existence of some correspondence, the originals of which are no longer held. We are grateful to Devon for investigating the list again. There is no need for us to go into this issue in any detail, however, because we have proceeded on Mr Dransfield's own estimate of the number of requests he has made and have not taken into account any of those which he describes as "ghost documents".
21. For these reasons the appeal is dismissed.

NJ Warren

Chamber President

Dated 2 April 2014