**IN THE FIRST-TIER TRIBUNAL** **Appeal No: EA/2014/0179**
**GENERAL REGULATORY CHAMBER**
**(INFORMATION RIGHTS)**

**BETWEEN**

**HAYDN NEWTON**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**Tribunal**

**Brian Kennedy QC**
**Michael Hake**
**Suzanne Cosgrave**

**Hearing: 15 April 2015.**
**Location: Leeds.**
**Decision: Appeal Refused.**

**Subject Matter: Disclosure of information the Freedom of Information Act 2000 ("FOIA") and reliance by the Public Authority, the Sheffield City Council ("the Council"), on Section 14(1) in the fact that they regard the requests as vaxatious.**

**Introduction:**

1. **This decision relates to an appeal brought under section 57 of the FOIA. The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("the DN") dated 24 June 2014 (reference FS50529749), which is a matter of public record.**

2. **An oral hearing took place on 15 April 2015 the Appellant only in attendance the Commissioner having given his reasons for opposing the Appeal in his Response dated 18 August 2014 to the Grounds of Appeal dated 16**

**July 2014. The Tribunal has been provided with a paginated (1- 270) and indexed Open Bundle ("OB").**

**Background:**

*3.* **On 11 November 2013 the Appellant wrote to the Council in the following terms:**

***"Please provide all up to date documentation which states, or will provide supporting evidence, to establish why a member of the council tax paying public has no right to make more than one complaint to Sheffield City Council, and have that complaint investigated under Sheffield City Council's Complaints procedure and have that complaint forwarded to the ombudsman office.***

***Excluding all FOIA (2000) Act documentation provided already.".***

***"Now as per Amy Carters e-mail on 2 March 2012 at 16.47, please supply the following under the FOIA (2000) Act. All documentation relating to the bowling green is run by volunteers and a crown green bowling association. Excluding all FOIA (2000) Act documentation provided already.***

**4. During the course of the Commissioner's investigation, the Appellant made the Commissioner aware of another request made on the same date which was as follows:**

**"How much financial assistance as Sheffield City Council given, donated or provided to every bowling club of which Sheffield City Council own, from January 2012 to September 2013 inclusive.*"***

**5. On 14 November 2013 the Council responded refusing to provide the requested information stating that it considered the first two requests per vexatious for the purposes of section 14 FOIA.**

**6. The Appellant requested an internal review on 21 November 2013 and the Council responded on 11 December 2013, maintaining its position.**

**7. On 24 December 2013 the Appellant complained to the Commissioner and the Commissioner investigated that complaint.**

**8. The Commissioner considered that the scope of his investigation covered all three of the Appellant's requests. During his investigation, the Council confirmed that it also wished to apply section 14 (1) FOIA to the third of the Appellant's requests, as well as the first two.**

**9. Accordingly, the Commissioner considered whether the Council was correct to apply section 14(1) FOIA to the Appellant's three requests of 11 November 2013. He concluded that the Council had correctly relied on**

**section 14 in relation to the requests of the Council was therefore not required to respond to those requests.**

**The Legal Framework:**

**10. Section 14(1) FOIA provides that section 1(1) does not oblige a public authority to comply with a request for information if the request is "vexatious".**

**11. FOIA does not define the term vexatious. However, the Upper Tribunal has considered the meaning of the term vexatious at section 14 FOIA in detail in its decision in The Information Commissioner V Devon County Council & Dransfield GIA/3037/2011. Its overall analysis of what may constitute a vexatious request under section 14 FOIA is found at paragraphs 24 to 39 of that judgment.**

***12.*** **The Commissioner in his submissions reminds the tribunal of a number of citations in the Dransfield case. However the Court of Appeal has reviewed Dransfield: - Neutral Citation Number: [2015] EWCA Civ. 454 at Para 68:** *" In my Judgment, the UT was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. Parliament has chosen a strong word, which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available. "*

**The Commissioner's Investigation and DN:**

**13. The Commissioner carried out a careful and detailed analysis in his DN and concluded that all three of the Appellant's information requests were vexatious for the purpose of section 14 FOIA, See paragraphs 11 – 24 of the DN [pages 3 to 6 OB]. He later summarized these helpfully for this Tribunal thus;**

- **when taken in its proper context and history, the requests were significantly burdensome in terms of both expense and distraction (see paragraphs 16 to 18 of the DN);**

- **the requests were lacking in serious purpose or value (see paragraphs 19 to 23 DN) and**

- **the requests would have the effect of harassing and causing distress to council staff (see paragraph 24 DN).**

14. **In reaching this conclusion, the Commissioner did, in our view, consider all relevant circumstances and, we find properly, balance the arguments put forward by the Council and the information provided by the Appellant. Ultimately, the Commissioner concluded that the Council was correct to apply section 14 FOIA to the requests in this case. This Tribunal have looked carefully and considered the reasoning within the DN (at paragraphs 11 – 24), we regard it as sound and agree and adopt that reasoning. This is after we have heard the evidence of the Appellant himself.**

**The Commissioner's Response to the Grounds of Appeal:**

15. **Generally, we accept the Commissioners submission that the Appellant has failed to identify either an error of Law or any incorrect exercise of his discretion.**

**The Evidence:**

**The Appellant gave evidence to the Tribunal in person and made his submissions over a number of hours at the oral haring. He confirmed the large number of requests he had made to the Council and identified the voluminous correspondence from himself and members of his family to the Council over a protracted period of time. The Tribunal took him from page 134 to page 164 of the HB through what is a summary of communications to the Council from the Appellant and members of his family. We explained to the Appellant that the Council argues that early communications on their own might seem like reasonable requests, but when taken together over a number of years, they did become a burden. These requests commenced in March 2009 continuing to January 2014. He did not dispute the details as we took him through each of them nor did he dispute that he had made threats to staff about going to the Information Commissioner and the South Yorkshire Police. He said, himself to us " … they (his requests/complaints) took on a life of their own". The DN sets out clearly the nature of the requests, which were reasonable at the outset, and dealt with, only to be raised repeatedly over a number of years in various guises, but fundamentally the same issues.**

16. **He took a considerable time outlining his grievances. He insisted that he had grievances as a result of the way the Council had treated him as time went on and that he was a victim but failed to demonstrate precisely how**

**this was so. He did speak of a court case after the Council had referred him to the Police. Criminal charges resulted but he claimed "*The magistrates threw it out, saying there was no case to answer".* He stated that: *"The Council seem to think they're God. They don't care about my rights.".* He claimed the South Yorkshire Police are investigating the Council as a result but gave no further details.**

17. **The Appellant confirmed that he was frustrated and criticised the manner in which the Council had dealt with him and he had expressed this frustration against the Council.**

**Reasons:**

18. **The Tribunal accepts and adopts the Commissioner's reasoning throughout the DN. In fact the Appellant does not argue to any significant degree that the Commissioner is flawed in his reasoning. Rather he seems to argue that the Commissioner has been misled. The Appellant argues, not against the reasoning in the DN per se, except to say that it cannot be right because the Council simply regard and treat him as a nuisance and that, in his view, is not a reason for refusing to deal with his requests. In fact the Commissioner has recognized this in his DN but explains why it is that the request has, in all the circumstances of this case and particularly the history, become vexatious.**

    **This Tribunal finds, in the papers before us and through the evidence of the Appellant that the requests from the Appellant had become a burden on the Council. There was unreasonable persistence and frequent overlapping of requests as we discovered when we took him through the summaries at pages 134 to 164 of the HB. We find that the culmination of the communications and requests from the Appellant and his family had reached such a stage on 11 November 2013 that the requests made at that time were likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to such serious purpose and value that the original requests did have.**

19. **The Tribunal in preparing its decision has noted the Court of Appeal judgment in Dransfield (referred to at paragraph 12 above) and in particular Para. 72 which says:** *"…. Before I leave this appeal I note that the UT held that the purpose of section 14 was "to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA" (UT, Dransfield, Judgment, para. 10). For my own part, I would wish to qualify that aim as one only to be realised if the high standard set by vexatiousness is satisfied***."**

    **We are satisfied that the history of requests in this case is such through their prolonged duration and ultimately, lack of serious purpose or value, that the requisite high standard of vexatiousness is satisfied and the resources of the public authority should be protected.**

***20.*** **For the reasons above and adopting a holistic approach, in all the circumstances, of this case we find that the Commissioner was correct in the reasoning he applied in his DN. Having listened carefully to the Appellant he does not persuade us that the Commissioner was wrong in his conclusion that the requests were vexatious. We find the Commissioner was correct and the DN should stand. Accordingly we refuse the appeal.**

**Brian Kennedy QC** **5th June 2015.**