



ON APPEAL FROM:

**The Information Commissioner's Decision Notice No:
FS50566952**

Dated: 11th. March, 2015

Appeal No. EA/2015/0072

Appellant: G

Respondent: The Information Commissioner ("the ICO")

**Before
David Farrer Q.C.
Judge**

and

**Michael Hake
and
Jean Nelson**

Tribunal Members

Date of Decision: 14th. August, 2015

G appeared in person with a McKenzie Friend.

The ICO did not appear but made written submissions.

Subject matter:

FOIA s. 14(1)

Whether the Appellant's requests dated 20th. October, 2014 were vexatious

Reported Case

Dransfield v Devon County Council and the ICO
[2015] EWCA Civ.454; [2012] UKUT 440 AAC

Abbreviations :
tion,

**OFSTED - The Office for Standards in Education,
Children's Services and Skills**

HMCI - OFsted's Chief Inspector

HMI The OFsted Inspectorate

The ICO The Information Commissioner

The DN The ICO's Decision Notice

FOIA - The Freedom of Information Act, 2000.

The DPA - The Data Protection Act, 1998

**The 2009 Rules - The Tribunal Procedure (First -
tier Tribunal) (General
Regulatory Chamber) Rules
2009 SI 2009/1976**

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal finds that the request was vexatious. It therefore dismisses the appeal.

Dated this 14th. day of August, 2015

David Farrer Q.C.

Judge

[Signed on original]

REASONS FOR DECISION

The Request

1. The Tribunal has decided that the interests of the minor referred to in this Decision as H, who is now 16, require that all parties save the ICO should be anonymised. In particular, H's relationship with the Appellant would inevitably cause her to be identified, if the Appellant's name were published. There would also be a risk of identification if the school or possibly even the local authority, were named. Accordingly, the Tribunal directs, pursuant to

Regulation 14(1) of the 2009 Rules, that there shall be no disclosure or publication of any matter likely to lead members of the public to identify H. This Decision is drafted and published in accordance with that prohibition.

2. OFSTED was created by s. 112 of The Education and Inspections Act, 2006. Its functions are set out in s. 116 and Schedule 11 and those of HMCI in s.118 and Schedule 12. His task is to advise the Secretary of State on a wide range of educational issues and his powers are very wide. His office replaced that of the Chief Inspector of Schools and he took over the duty to inspect enacted in s.5 of the Education Act, 2005 as later amended. His role as adviser is related to a programme of inspection of schools by HMI, either on a periodic basis or as events dictate. S.5A of the 2005 Act requires him, hence HMI, to have regard to a range of specified factors when conducting inspections, including the behaviour and safety of pupils. Neither he nor OFSTED is empowered to act as an ombudsman determining disputes between individual parents and schools or local education authorities.

3. OFSTED, HMCI and HMI have, therefore, a strategic role, exercised primarily through inspection. Such inspection may result in intervention in the running of a school or in wider changes. In conducting inspections, HMCI is required to take account of the views of interested parties, including registered parents (Education Act, 2005 s.7). That plainly includes views expressed before an inspection. Individual complaints may lead to intervention in the management of a school following inspection and report, if appropriate.

4.This appeal arises from the fears of a mother, G that her daughter, H was being bullied at school over a substantial period when she was about 13 - 15 years old. G was convinced that the school was not dealing properly with such bullying and that H's education was suffering to a significant degree, quite apart from the misery which any child experiences from such treatment. She believed that important information on the subject was being concealed and that H was not protected from contact with the bullies.

5.G engaged in a lengthy and robust dialogue with the school and then the local authority ("the council"), leading to H's transfer to a different school in September, 2014. She remains, however, profoundly unhappy at the reaction of both bodies to her complaints and mistrustful of them. She considers that her experiences have a wider relevance to the treatment of other pupils at the school and perhaps within the jurisdiction of the council. She asserts that those representing both school and council have lied to her and wrongly disregarded what G and H have told them. In January, 2014 the Department of Education upheld G's complaint that the school had not complied with its complaints policy in handling her complaint.

6.It is unnecessary for the Tribunal to examine the details of the many factual disputes involved because the public authority to which the relevant request was addressed was OFSTED. To G's dealings with OFSTED we now turn.

7.G first contacted OFSTED in relation to this matter in September, 2013 when her complaint about the school and the council was considered by OFSTED's Complaints about Schools team. It received material from school and council in response to G's complaint. In January, 2014 G was informed that her

complaint qualified for investigation by OFSTED. The outcome of that investigation was a decision to take account of the complaint and the response to it at the next HMI inspection.

8.G was deeply dissatisfied at that outcome. She described it as “illogical, irrational and perverse” and claimed that OFSTED “could not be trusted to use its own procedures” (see G’s email to OFSTED dated 7th. January, 2015). According to OFSTED, she and H’s advocate thereafter sent over one hundred items of correspondence relating to H and to the failings of the school and the council to various members of staff, including HMCI, mainly by email, before the request for information which gives rise to this appeal. That figure is apparently substantially accepted. Some letters were very long and complex according to OFSTED’s letter of internal review. G made a FOIA request for information and a subject access request under s.7 of the DPA. G’s and H’s personal data relating to the investigation were disclosed. Certain redactions were later removed.

9.A review by senior HMI of OFSTED’s initial investigation of G’s complaint found that the investigation had been satisfactory and that one of the two alternative available measures within OFSTED’s powers had been taken.

10. A review by HMI in June, 2014 dismissed G’s complaint as to OFSTED’s handling of her complaint against the school.

11. G corresponded further as to her original complaint and other perceived failings of the school and the council with HMCI’s office and other OFSTED teams.

The Request

12. On 16th. October, 2014, the Complaints Support Manager sent G the following email -

“Dear “G”,

I have been asked to reply to your e-mail of 10 September 2014 addressed to Her Majesties Chief Inspector.

Ofsted is accountable to the Education Select Committee who can be contacted at:

- - -

Your correspondence has been reviewed by several senior managers during the period you have been corresponding with us. We have responded to you outlining what we are able to do within the statutory framework and indicating that we have taken appropriate action. Your advocate, Ms (M), has also written to us separately around the same time you wrote this e-mail and we are currently considering the points she has made. A full response will be provided to her to answer those points shortly. I can confirm that we have given your correspondence appropriate consideration at all times.

Regards - - - “

13. On 20th. October, 2014 G made this request -

Dear “T”,

You have said:

“I can confirm that we have given your correspondence appropriate consideration at all times”

Would you please demonstrate the veracity of your statement by providing the details of exactly, who, how, when, etc my correspondence was given 'appropriate consideration'. (Tribunal's emphasis)

This information, in effect the metadata for the processing of this ongoing case, would include but not necessarily be limited to:

- *internal meetings, memos, and any communications*
- *any documents generated, and details of distribution*
- *details of any sharing of any of the material I have sent - advice received from any third parties- etc.*

Given that this material is already held, and that you have made your statement, then the above required information should be readily available, accessible, and capable of being sent by return.

Yours sincerely

“G”

14. OFSTED replied out of time on 15th. December, 2014 refusing the request on the ground that it was vexatious. Its letter summarily reviewed the previous correspondence and related it to the ICO’s guidance on FOIA s.14. G requested an internal review in an email of 6th. January, 2015 containing a firm refutation of OFSTED’s reasoning. OFSTED confirmed its position in a detailed letter dated 5th. February, 2015 setting out its case very clearly and relating it to the guidance provided by Judge Wikeley in *Dransfield v Devon County Council and the ICO [2012] UKUT 440 AAC*.

15. G complained to the ICO. on 6th. January, 2015.

The DN

16. The DN, dated 11th. March, 2015, upheld OFSTED’s reliance on s.14. Referring to the Dransfield features of vexatiousness, the ICO concluded that G was attempting to reopen issues which had been definitively resolved, that her “campaign” was obsessive and would not cease if her request was

satisfied and that she was abusing her right to access to information so as to vent her anger on OFSTED for its unfavourable decision.

17. G appealed.

G's case on appeal

18. G submitted detailed grounds of appeal, a Reply and three subsequent sets of supplementary submissions, "A","B" and "C". "C" was lodged without permission by email subsequent to the hearing. The ICO had no opportunity to respond. This was plainly a breach of proper procedure but the Tribunal does not propose to reopen proceedings because "C" was no more than a repetition of points already argued which, G considered, had not been effectively made at the hearing.

19. G argued her case orally at the hearing, supplemented by submissions from her McKenzie friend , M, who was also H's advocate.

20. She vigorously denied any relationship between the Dransfield tests and the request of 20th. October, 2014 or any preceding communications with OFSTED.

21. She developed at some length in written submissions and further in oral argument her denunciations of the school and the council, asserting that they had lied about her dealings with them and had concealed important facts from her and from OFSTED. As already indicated, this was of very limited relevance to this appeal which was concerned with OFSTED's contention that her request, viewed in the light of the material previous history, was vexatious within s.14.

22. As to OFSTED, G submitted that it had failed to fulfil its duties to safeguard H and other pupils, failed to consider the evidence that she provided and ignored her legitimate claims for action against the school and the council. She had been driven to make the request by its clear refusal to assess fairly the evidence of misconduct by the school and the council which she had provided.

23. OFSTED, not G, was guilty of intransigence. OfSTED had colluded with the DfE to close G's case. Its proposal for a meeting to discuss G's concerns was a ruse to evade its FOIA responsibilities. It had fixed the agenda, sought to exclude H from attendance and improperly refused to provide the requested information unless the meeting was held.

24. The DN was invalidated by a blind acceptance of OFSTED's claims. So far from being obsessive or angry, she had exhibited "diligence, patience, robustness, persistence and calmness throughout".

25. OFSTED's reliance on s.14 could not be divorced from the earlier misconduct of school and council which OFSTED chose to ignore.

24 OFSTED misstated its duties to the individual child and the limits to its functions.

The case for the ICO

25. The ICO's submissions were confined to the Response, which supported the DN and rejected complaints as to the DN which were set out in the Grounds of Appeal.

The Tribunal's reasons for its decision

26. The question is whether the request, not the requester, was vexatious. The Tribunal is not concerned with the accuracy of the detailed findings of the ICO but whether the DN came to the wrong decision.

27. The Court of Appeal in *Dransfield* substantially upheld the UT's approach to the assessment of vexatiousness. It agreed that past history could be relevant and that such relevance was not limited to previous requests directed precisely to the same subject matter.

28. Section 14 requires the Tribunal to judge whether, on a balance of probabilities, the request is proved to be vexatious in the sense discussed in *Dransfield*, bearing in mind that the hurdle to be cleared is a high one (see Court of Appeal judgment in *Dransfield* at paragraph 68). The essence of the test is whether the request has “no reasonable foundation” (*ibid.*).

29. The Tribunal has no doubt that that test is met in this case.

30. Examining the terms of the request without reference to previous events, two facts emerge plainly -

- (i) The burden of responding would be quite disproportionate, given the nature and the open - ended scope of the information sought; G acknowledged at the hearing that she had no notion of how much information her request involved.
- (ii) The requested information would be of no value to the public at large and none to G, save to give her some emotional satisfaction, as she conceded at the hearing in answer to the Tribunal, though largely retracting her answer in submission “C”.

31. Looking at the request in the context of G’s previous dealings with OFSTED,

(iii) it was part of a futile attempt to make OFSTED reopen an investigation which had been unequivocally concluded, as she had been told repeatedly, and to induce it to act beyond its powers, as a referee in her dispute with the school and the council.

(iv) Provision of the information would merely lead to further requests.

We now address each of these findings in a little more detail.

32. As to (i), the very wording of the request betrays the wide and uncertain range of information requested. “Would include but not necessarily be limited to - - -“ extends the scope to any information, memorandum, internal or external communication which could possibly reflect the handling of a wave of complaints and purported corrections spanning over a year of correspondence. No limit is placed on the class of document. Duplicated communications fall within the request. Routine memos recording receipt of correspondence are caught. The undeniable statement that such material was held by OFSTED does not begin to justify the assertion that “it should (therefore) be readily available, accessible” let alone “capable of being sent by return”. If such a conclusion necessarily followed, no public authority which held information could ever claim that its retrieval would impose any kind of burden at all.

33. Turning to (ii), it is unclear what practical value the “metadata” of processing her correspondence (as G accurately described the requested information) could possibly have for G in her efforts to make her case against the school and the council. It is even less obvious what value such metadata

could have for the public at large, specifically parents of pupils in the council area. In answer to a question from the Tribunal at the hearing G acknowledged that her purpose was limited to providing herself with “closure” on the issue. She added “Truth, justice, that’s all I want”. The Tribunal greatly doubts that any response from OFSTED would indeed have closed this correspondence but, more pertinent to this issue was G’s acceptance that she was seeking a personal emotional release. That would not justify the burden placed on OFSTED. The value of information is its value to the public, which includes any relevant section of the public. That value is to be assessed objectively, not through the prism of the requester’s priorities or emotional needs, however keenly felt. If that were not so, the requester’s feelings or reasoning, however misguided, would dictate the value of the information. As noted earlier, G retracted the above analysis in her post-hearing submissions but the Tribunal is satisfied that her oral answer reflects her true motivation.

34. As summarised in (iii), we find that the continuing demands on OFSTED, culminating in this oppressive request was a futile abuse of FOIA. As demonstrated in paragraphs 2 and 3 above, OFSTED and HMCI perform advisory and supervisory functions based on inspection of schools, consequent reports and, if necessary, interventions. Such functions include the investigation of credible complaints and representations from parents relating to a particular school but their results can only be fed into the next inspection as a factor to be considered or treated as a reason for bringing forward that inspection. It is perfectly plain that OFSTED had decided by June, 2014 to refer G’s concerns to the next inspection and that this had been made clear to her repeatedly. The issue was determined and would not be reopened. Despite the fact that H was now at a different school, G was flogging

a dead horse and must have known it. Her request was an abuse of her right to seek information under FOIA.

35. Factor (iv), is closely linked to (iii). G intended to keep this interrogation going indefinitely. As she stated at the hearing, “I shall keep on at them (OFSTED) until they have dealt with it correctly.” In the context of her submissions that evidently meant “until they admit they have colluded with the school and/ or the council, have lied to me, concealed evidence from me and utterly disregarded everything that I have sent them by way of argument or evidence.” That is a recipe for an infinite correspondence.

36. For these reasons we find that this request was clearly vexatious. We make no finding as to the use of allegedly hostile and aggressive language.

37. We emphasise that the Tribunal fully understands the acute concerns of a parent who fears that her child is a victim of bullying at school. Unfortunately, in her dealings with OFSTED, G did not pursue those concerns in a reasonable manner.

38. This is a unanimous decision.

David Farrer Q.C.

Tribunal Judge

14th. August, 2015