



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2016/0259**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50624048  
Dated: 22 September 2016**

**Appellant: David Perrin**

**Respondent: The Information Commissioner**

**Heard on the papers: Field House, London EC4**

**Date of Hearing: 10 March 2017**

**Before  
Chris Hughes  
Judge**

**and**

**Michael Hake and Narendra Makanji**

**Tribunal Members**

**Date of Decision: 17 March 2017**

**Subject matter:**

Freedom of Information Act 2000

**Cases:**

Information Commissioner v Devon CC and Dransfield [2015] EWCA Civ 454

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 22 September 2016 and dismisses the appeal.

### **REASONS FOR DECISION**

#### **Introduction**

1. The Appellant's first request for information from his employer, the East of England Ambulance Service NHS Trust (the "Trust") was on 23 December 2012. Over the next years he had extensive correspondence arising from a number of requests for information under FOIA. On 22 July 2015 he wrote to the Trust:-

*"In relation to the "misconduct", "bullying" and "collusion" that was highlighted at various hearings / tribunals in the previous request I made, I would like to know:*

- 1. What was the total cost to the Trust / taxpayer of providing legal advice and representation at the tribunal hearings in September 2006 and May 2007 relating to the conduct of Mr Leaman and [Individual 2] and any subsequent compensation paid to the plaintiff(s).*
- 2. Does the Trust currently use any companies that employ Mr Leaman after he left last year?"*

2. The request related to Employment Tribunal proceedings against a predecessor body of the Trust, the Essex Ambulance Service NHS Trust ("Essex"). The Trust initially relied on s12(1) FOIA (cost of finding the information) in respect of the first request and answered the second request. Following review it supplied some information, but explained the cost of retrieval from off-site storage would exceed the cost limit. The Appellant complained to the Respondent (the "ICO"). During the course of his investigation the Trust changed its position and concluded that the appellant's request was vexatious under s14(1) FOIA. The ICO in his investigation considered whether the Trust's reliance on s14(1) was justified.

#### **Background**

3. The 2012 request referred to a disciplinary investigation of which the Appellant was the subject in 2005 (which led to a referral to the regulator, the Health Professions Council (HPC) which in 2008 dismissed the case). In 2011/2 the Trust undertook investigations into the conduct of the investigation. The Appellant sought details of

that subsequent investigation – the costs of investigations, terms of reference, the involvement of a manager in the conduct of disciplinary proceedings in the Trust, the costs of Essex in defending a claim in the ET by an employee who alleged victimisation by two managers who were subsequently disciplined by the HPC. The Trust response relied on exemptions contained in s.43 FOIA (prejudice to commercial interests) and s.40 (data protection). On 25 January 2013 he wrote:-

*“I believe the public have a right to know exactly how much money this Trust is paying out to investigate potential wrong doing by its staff and senior managers particularly when they haven’t even offered the apology I was recommended I should receive”*

4. He made an information request about an Employment Tribunal claim against Essex which received an answer in 2013 (bundle page 188 email Appellant to Trust of 26 August 2015):-

*“You already told me in February 2013 “that the costs incurred to the end of the employment tribunal hearing on 15 September 2006 were £17,981.50”*

5. On 22 February the Appellant sought the names of all persons involved in handling his FOIA request:-

*“Please would you list the names of all those members of staff from the EEAST who have been involved in any discussions surrounding the release of this information?”*

6. On review of the original 7 part request the Trust disclosed information in response to 6 of the 7 parts. Correspondence continued about the terms of reference for Deloitte (an accountancy firm which carried out an investigation), the extent of the work the firm carried out and how the terms of reference were arrived at and how they were varied.

7. The Appellant made a further detailed request for information on 5 September 2013, the information was supplied to him by a senior officer outwith FOIA before the request was processed. The Appellant was then instructed to make all his requests for information through normal administrative channels. On 2 December 2013 he made a 7 part request for information relating to the conduct of the Deloitte investigation. The Trust replied on 15 January 2014 providing the recorded information that it held. On 16 January the Appellant sought further information on all points of the response. The Trust responded, the Appellant made further requests arising from that response, the Trust responded on 6 June 2014.

8. On 19 June the Appellant replied with a detailed critique and requests for further clarification including:-

*“A Why did you supply false information on 15<sup>th</sup> January 2014 and please name the individual who was responsible for that?”*

....

*C On which dates were laptops belonging to [name redacted] and [name redacted] supposedly “destroyed”*

...

*H – how many members of staff interviewed as part of this investigation have been given tax payer funded redundancy packages so far?”*

9. The pattern of responses, internal reviews and further requests on closely related subjects continued for nearly three years from December 2012. The Appellant on 19 September 2014 asked:-

*“I would like to know what the total cost to the Trust (tax payer) of the misconduct of the Assistant Chief Ambulance Officer, Paul Leaman and a [name redacted] were.*

*You have already revealed that legal costs alone relating to an Employment Tribunal were £17,981.50...”*

#### The ICO decision

10. In her decision notice the ICO considered the application of s.14(1) by the Trust. She (noted in paragraph 9) that the Appellant’s concerns arose from his dispute with the Trust’s senior managers and those of the predecessor Essex Ambulance Service NHS Trust and he considered that Mr Leaman had been more favourably treated in such proceedings than he had. She considered the circumstances and in her decision briefly reviewed the extensive history of FOIA requests (in paragraphs 16-23). She reviewed the Trust’s contentions that the appellant continued to reopen issues which had been resolved, the requests related to events which were over ten years old and the managers concerned had long since left, the information was available in the public domain. The trust had increasing difficulty addressing the appellant’s concerns because “organisational memory has been lost and relevant senior managers no longer work for the Trust. The ICO concluded that the requests were vexatious (in 29-31):-

*“The Commissioner considers that the purpose and value of the request has diminished over time. The Trust has undertaken an independent investigation into the*

*complainant's original complaint and, beyond the complainant's own interests, there does not appear to be any wider public interest in the matter that is the subject of the request. The impact on the Trust of complying with this request would therefore be disproportionate to its value. In the Commissioner's view, the Trust is therefore correct to have finally applied section 14(1) to the request, on 10 August 2016.*

11. In his notice of appeal the Appellant argued that the Trust's lack of transparency was inconsistent with its public statements. He explained that he was concerned about the culture within the Trust, and that his case had nothing to do with Mr Leaman. However he set out in considerable detail various matters of his grievance against the Trust and its managers. He criticised the Trust for relying on different exemptions from disclosure under FOIA, delay in responding to him. He argued that there was a public interest in establishing how much Mr Leaman's misconduct had cost. He further argued that the requests were separate and unrelated to previous requests.
12. The ICO maintained the position set out in her decision notice and resisted the appeal. She noted that in essence he was repeatedly asking the same questions about how the Trust had handled misconduct by a former employee 10 years before. Repeated responses and reviews had not satisfied the Appellant and it was unlikely that further provision of information would produce a resolution. The resources expended by the Trust on his queries were disproportionate and had diverted staff from important public functions. It would have been open to him to consider another approach to redress his grievances – perhaps an Employment Tribunal. Despite extensive efforts to satisfy him he had been unreasonable – sarcastic and alleging bad faith in his correspondence. She concluded that the requests were vexatious, manifestly unjustified an inappropriate and improper use of FOIA.
13. In response (bundle pages 91-95) the Appellant reiterated his view that there was inconsistency between the formal position of the Trust and the actual situation. He stated:-

*"I have not been to an Employment Tribunal regarding my own experiences. I am however, still awaiting the specific apologies and compensation I was told I would be getting back in 2013"*

#### Consideration

14. The tribunal reminded itself that the issue it had to decide was laid down by s58 of FOIA and was whether the decision notice was not in accordance with the law and that in considering this, the tribunal considered the factual background in the light of

the decision in *Dransfield*. The tribunal recognised the importance of the information rights provided in FOIA in ensuring accountability of public bodies. The tribunal reminded itself that it is a significant step to conclude that a request is vexatious however this may be necessary in order to preserve the use of scarce resources of a public body from essentially fruitless endeavour. In considering this question it is appropriate to look at issues in the round and consider the circumstances of the request.

15. The Appellant is aggrieved by how he was treated by a predecessor body of the Trust some 12 years ago. He has pursued this with his new employer and they have spent many thousands of pounds on a forensic investigation to establish what happened during the conduct of the investigation of his case. He has compared his treatment with that of a senior officer who was disciplined by the HPC but not by his employer. His requests have been repetitive, going over the same ground (with slight variations) he has pursued the same issues obsessively (dn paragraph 25) and has been unable to accept answers he has received. In addition to using FOIA he has directly approached individuals to seek information. His requests have cast doubt on the integrity of the staff he is dealing with and are likely to have had a demoralising effect on them (paragraph 8 above). The burden of his numerous requests has been substantial and despite the provision of much information there is no indication that the requests will cease. Although the Appellant argues to the contrary the tribunal is not satisfied that there is any serious purpose flowing from these requests, there is no public interest to be served by answering them, they are manifestly unreasonable.

16. The tribunal is satisfied that the ICO's decision is correct in law and dismisses the appeal.

17. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 17 March 2017