



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0161

Decided without a hearing

**Before
CHRIS RYAN
JUDGE
ANNE CHAFER
MICHAEL HAKE
TRIBUNAL MEMBERS**

Between

NEIL GILLIATT

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

Subject matter:

Freedom of Information Act 2000 - Vexatious or repeated requests s.14

Cases:

Information Commissioner v Devon County Council and Dransfield (UKUT 444 (AAA))

GENERAL REGULATORY CHAMBER

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

REASONS FOR DECISION

Introduction

1. This Appeal arises from a Decision Notice (FS50622653) issued by the Information Commissioner on 28 June 2017 ("the Decision Notice"), in which she ruled that the Chief Constable of Humberside Police ("HP") had been entitled to rely on section 14(1) of the Freedom of Information Act 2000 ("FOIA") when refusing a request for information which the Appellant had submitted on 16 January 2016. ("the Request"). For the reasons set out below we refuse the Appeal.

The Request and the Decision Notice

2. The Request was in these terms:

"1. I would like disclosing for the period commencing 2010 to date the number of times the following expression has appeared in a witness statement of an officer serving with Humberside police 'YOU CAN'T MAKE ME' (with or without apostrophe)

"2. Where occurrences have been found, I would also like disclosing the name of the officer who included the expression in the statement."

3. The Information Commissioner, having investigated the Appellant's complaint as to HP's treatment of the Request, recorded in the Decision Notice that FOIA section 14 releases a public authority from its obligation to disclose information when requested to do so if the request is "vexatious". She then identified the decision of the Upper Tribunal in *Information Commissioner v Devon County Council and Dransfield* (UKUT 444 (AAA)) as binding authority (approved by the Court of Appeal¹) on the principles to be followed when applying the term "vexatious" to the facts surrounding information requests. She quoted the short definition set out by the Upper Tribunal ("*manifestly unjustified, inappropriate or improper use of a formal process*") and adopted a broad approach to the Appellant's case, which included an acknowledgment of the four

¹ *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454.

issues that the Upper Tribunal identified as being of potential or likely relevance. These were:

“(1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.”

4. The Information Commissioner reviewed the evidence and arguments presented by the Appellant and HP, including information about the history of dealings between the parties and the extent to which it could be said that the Request had been used to re-open issues that had already been dealt with by the Courts. This included an acknowledgement that HP had received 76 requests that it knew emanated from the Appellant, directly or indirectly. The Information Commissioner concluded that dealing with the Request would impose a burden on HP and that the information requested had little value or benefit to the public. The burden on HP arose, she said, from the need to sift through a substantial volume of information (i.e. the files on every investigation conducted by HP between 2010 and 2016) in order to isolate and extract the requested information. The Information Commissioner concluded (paragraph 48) as follows:

“On the basis of the evidence provided and taking into account the findings of the UT in Dransfield that an holistic and broad approach should be taken in respect of section 14(1), the Commissioner considers that the present request is a manifestly unjustified and improper use of the FOIA and is therefore vexatious for the purpose of section 14(1)”

The Appeal to this Tribunal

5. The Appellant filed the Appeal on 27 July 2017. He elected to have his appeal determined on the papers, without a hearing. We are satisfied that this was an appropriate procedure to adopt in the circumstances. Our decision is therefore based on the written submissions filed by the parties and a very substantial bundle of agreed documents.
6. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.
7. The Appellant’s Grounds of Appeal, filed with his Notice of Appeal, ran to 17 pages. They explained, in very considerable detail, the Appellant’s reasons for believing that he had been the victim of a miscarriage of justice at the hands of HP and that subsequently HP had not dealt effectively with his complaint arising out of it. The Appellant argued that this gave value and serious purpose to the Request and that the Information Commissioner had acted ultra vires in reaching the conclusion that she had.

8. The Grounds of Appeal do not seriously challenge the Information Commissioner's findings of fact, to the effect that complying with the Request would impose a considerable burden on HP. The evidence that the Information Commissioner took into consideration in reaching that conclusion seem to us to fully support the conclusion she reached.
9. The lengthy exposition of historical background set out in the Grounds of Appeal does not seem to us to support the Appellant's case that disclosure would serve a useful purpose. Rather it supports the Information Commissioner's argument that it would do no more than enable the Appellant to feed an apparent desire to challenge, by any means available to him, those who had been involved in the criminal proceedings brought against him, and his subsequent complaint about the conduct of those proceedings.
10. In our view, the Grounds of Appeal disclose no sustainable basis for arguing that the Decision Notice was not in accordance with the law and the Appeal should accordingly be dismissed.
11. Our decision is unanimous

Signed

Judge of the First-tier Tribunal
Date: 15 November 2017