



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL
(INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000.**

EA/2017/0198

Between:

LONDON BOROUGH OF HAMMERSMITH AND FULHAM

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

ANDREW ASHE

Second Respondent

DECISION

INTRODUCTION:

[1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 8 August 2017 (reference FS50652762) which is a matter of public record.

[2] The Tribunal Judge and lay members sat to consider this case on 21 March 2018.

Factual Background to this Appeal:

[3] Full details of the background to this appeal, Mr Ashe’s request for information and the Commissioner’s decision are set out in the Decision Notice and not repeated here, other

than to state that, in brief, the appeal concerns the question of whether the London Borough of Hammersmith and Fulham (“LBHF”) was correct to conclude that Mr Ashe’s request was vexatious.

CHRONOLOGY

4 Aug 2016	Mr Ashe’s request for disclosure of emails containing a specified combination of words
3 Nov 2016	LBHF refuses request citing s14 (1)
29 Nov 2016	Mr Ashe requests review
3 Feb 2017	LBHF maintains reliance on s14 (1); Mr Ashe complains to the Commissioner
8 Aug 2017	Commissioner’s Decision Notice requiring LBHF to reconsider the request

RELEVANT LEGISLATION:

S14 Vexatious or repeated requests

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

COMMISSIONER’S DECISION NOTICE:

[4] The Commissioner reminded herself of the test laid down in *Information Commissioner v Devon CC & Dransfield (GIA/3037/2011)*, (herein referred to as “Dransfield”) that ‘vexatious’ is defined as “manifestly unjustified, inappropriate or improper use of a formal procedure”. She also laid out the four *Dransfield* considerations: (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. Taking special note of the issue of redactions and exemptions, the Commissioner referred to her own guidance and noted that the argument that preparation of information would prove a grossly oppressive burden will only apply in exceptional circumstances as the test is so high.

[5] LBHF advised that it has processed numerous requests from Mr Ashe relating to Parking Services, with particular reference to the use of CCTV and the issues of Parking Charge Notices (“PCNs”). Prior to June 2013 Mr Ashe said that the requests related to research into the use of CCTV in a public space for a BBC Panorama programme, and he had been advised that the BBC had passed the material he had gathered to a barrister who believed that it raised matters of substantial public interest. At the time the programme was broadcast the BBC had such a large amount of material, they were unable to include a particular item which interested them, concerning officers within Parking Services receiving performance related bonuses with regards to the issuing of PCNs.

[6] LBHF said that Mr Ashe claimed that he was contacted by the BBC again with queries about such bonuses and asked to see the results of the complainant’s request of 7 July 2016, which was for the same information as the present request but over different time scale. Mr Ashe has said that because this July request was refused and then there was a delay in dealing with the revised request, which is the subject of this notice the further programme broadcast by the BBC on 3 October 2016, had to go ahead without this information.

[7] LBHF stated that compliance with this request would place an unreasonable burden on the council. The search criteria had located 100 emails many of which also had attachments. LBHF provided Mr Ashe with examples of two emails, which had been reviewed and appeared irrelevant to the type of information sought, and informed him that such examples demonstrated the wide range of irrelevant material, which is revealed by the search criteria, specified in the request and would require some degree of processing. It asked Mr Ashe to consider revising his request and his search criteria so that it is not processing information he does not require. This offer was declined, as Mr Ashe had already narrowed the parameters of his request to cover a 6-month period as opposed to 12 in order to reduce the burden on the council.

[8] The council explained that it considers compliance based on the search terms specified would; *“force staff to process for disclosure 100 emails with attachments when the nature of the information Mr Ashe wishes to obtain is ‘obvious from previous dealings’*. It confirmed that in order to ensure that it does not disclose personal data or other exempt information LBHF would need to divert scarce resources. This, the Council argued, would impose unnecessary expense and disruption on the council, and it was reasonable to expect applicants to work with the council to reduce the burden. LBHF argued that Mr Ashe’s refusal

to modify the search to exclude irrelevant search results showed his intransigence, and would require disproportionate effort.

[9] LBHF described Mr Ashe's requests as 'persistent', but conceded that he was not unreasonably persistent as there is a clear public interest in information relating to the payment of performance-related bonuses with regards to issuing PCNs. It stated that it felt his intransigence stemmed from a suspicion that the council was seeking to suppress information, and described Mr Ashe's approach as "scattergun". It also felt that there was no obvious intent to obtain information, as Mr Ashe had not asked outright it for its position on PCNs, targets or bonuses. LBHF questioned whether Mr Ashe was seeking information from the council or whether he was using the FOIA to harass and annoy?

[10] The Commissioner accepted that preparing 100 emails for disclosure would be a burden, but that Mr Ashe's request is comparable to the average request received by public authorities, and far from the high threshold mentioned above. Redactions would be straightforward, and the Commissioner rejected the suggestion that Mr Ashe was in any way unreasonably persistent or obsessive.

[11] Contrary to LBHF's position, the Commissioner was satisfied that Mr Ashe's request was tightly drawn, and in no way over-broad or unfocussed. She noted that LBHF conceded that it knew exactly what he was looking for. He had already narrowed his request once, and he was reasonable in refusing to narrow it further. This, the Commissioner argues, is not intransigence, and that term is properly left for those applicants who refuse to engage with the authority at all and who take an unreasonably entrenched position. That clearly does not refer to Mr Ashe. There is a clear and accepted public interest in the object of the requests; there have already been two Panorama programmes using or wishing to use the requested material, and Mr Ashe himself had 3 of the 5 PCNs he received over the time period overturned at appeal. This equates to over 50% of the PCNs issued to him not standing up to scrutiny. The Commissioner stated, "*It does understandably make members of the public question the extent of this issue, whether it is more widespread and the actions of the council and other local authorities.*"

[12] The Commissioner ordered LBHF to reconsider the request and issue a fresh response within 35 working days. In doing so, she noted the considerable delay in the Council concluding their internal review, and warned against this being permitted to happen again.

APPELLANT'S GROUNDS OF APPEAL:

[13] LBHF moved two grounds of appeal:

- i. The Commissioner applied the wrong test for vexatiousness; and
- ii. The Commissioner mischaracterised aspects of the case and so reached the wrong conclusion on the public interest of the requested information.

[14] By way of clarification, LBHF stated that it believed Mr Ashe's requests relate to his underlying concerns that LBHF is using CCTV to detect parking offences, and that it operates a system of targets for issuing PCNs. LBHF defended its use of CCTV to detect parking offences, but denied having targets for the issuing of PCNs.

[15] In regards to Mr Ashe's request, LBHF estimate that 114 emails fall within the request, totalling in excess of 1,900 pages. It provided examples of emails that contain the requested keywords but bear no relevance to the purpose of the request, and asserted that there was **no** material relevant to Mr Ashe's actual interests.

Wrong Test

[16] LBHF argued that *Dransfield* focused on disproportionality between the burden and value of the request. The cost of compliance can be relevant, where considering and applying the relevant exemptions may impose a cost far in excess of the value to the public of release of the information. However, it was argued that the Commissioner overstretched the example given of "grossly oppressive" burdens into a test for vexatiousness, and placed "an impermissible gloss on the statutory language". The proper test is whether the burden can be balanced against the value of the request.

Public Interest Considerations

[17] The burden on LBHF was described as being greater than the Commissioner appreciated, and reference was made to *Salford City Council v ICO and Tiekey Accounts Ltd (EA/2012/0047)* wherein processing 2,700 pages was considered excessive. The assertion that any exempt material (other than readily redactable personal information) being unlikely to be included was wrong, as LBHF found examples of information relating to procurement exercises and confidential briefings for the conduct of public affairs contained within the relevant emails. The estimated timescale using the *Salford City* measurements was 158 hours to process for disclosure. Given that s12 limits chargeable costs to 18 hours, LBHF argued that this was clearly excessive.

[18] Mr Ashe's request is clearly worded and precise, but the set of information identified through it has nothing to do with the existence or otherwise of targets or bonuses for the issuing of PCNs. The wording of the request therefore had failed to identify information relevant to its purposes, and as such there is no public interest in releasing this material. The Commissioner, LBHF argued, had failed to appreciate Mr Ashe's "intransigence" in refusing to modify his request even after he was informed that his request would generate a large amount of useless information.

COMMISSIONER'S RESPONSE:

[19] Regarding Mr Ashe's supposed intransigence, the Commissioner provided an excerpt from an email sent from LBHF to Mr Ashe, in which LBHF advised him to reduce the time period for his request from twelve months to six as it "*is highly likely that this would enable us to comply with your request*". She accepted that, following the issuing of her Decision Notice, LBHF had contacted Mr Ashe and made a proposal that the context and purpose of his request be taken into account in processing the relevant materials. Mr Ashe refused.

Ground I – Wrong Test

[20] The Commissioner denied that she erred in law when considering the test to be applied. Her references to the exceptionality of the circumstances in which vexatiousness will be found, and the high test to be met, are taken from the Court of Appeal's judgment in *Dransfield*. She agrees with LBHF insofar as the costs of compliance need to be considered as part of an assessment of vexatiousness in the round. Nevertheless, the Commissioner remains of the view that the instant request is comparable to the average request, and the redaction exercise would not be overly burdensome.

Ground II – Public Interest Considerations

[21] The Commissioner informed the Tribunal that she was not informed by LBHF of the revised estimate of the number of emails (up from 100 emails to 114) and provided for the first time the number of pages and the time estimate for compliance. She lamented this late provision of information, particularly as she had previously indicated to LBHF that the case was 'borderline'.

[22] Nevertheless, the Commissioner found, in the new information, no reason to modify her decision. No details were provided as to how the estimate of 1,900 pages was arrived at, and so the accuracy of this statement cannot be appraised. Similarly no evidence was provided regarding the burdensome nature of the redaction exercise. While LBHF have asserted that there are no matches for the requested words in particular formats, it has not

been demonstrated that there is no material wherein the terms are discussed in the same context. Indeed, in the course of the Commissioner's investigation, LBHF informed her that a "*proportion of this material may contain information of interest to Mr Ashe*".

[23] LBHF's assertion that there is no system of inducements for employees is, the Commissioner argues, insufficient to displace the public interest in disclosure. The Commissioner pointed out the interest taken by BBC Panorama in the requested information, and noted that Mr Ashe had been told by LBHF in a letter dated 7 May 2013 that there was indeed a 'performance related bonus' paid to parking service officers.

REQUESTER'S RESPONSE:

Public Interest Concerns

[24] Mr Ashe took issue with LBHF's characterisation of the reasons for his requests. One of his previous requests was for CCTV footage to prove that a PCN had been issued incorrectly. Broadly, he described the purposes of his request as discovering whether LBHF was using CCTV in accordance with the Commissioner's guidance i.e. for a "pressing public need"; to determine whether PCNs were issued for safety or to improve traffic flow; and to gather evidence to challenge the incorrect PCNs he had received. He provided a witness statement from Mr Pip Clothier, managing director of the television production company that worked with BBC Panorama to produce the programmes. He explained how much work had gone into investigating these issues, and showed how valuable Mr Ashe's FOIA requests had been in exposing the Council's attempts at using parking enforcement to raise millions of pounds in revenue.

[25] Rather than being vexatious, Mr Ashe claimed that it was the authority that was acting inappropriately. He provided evidence that his rights under the Data Protection Act had been breached by LBHF sharing his information inappropriately with another council. He also accused LBHF of ignoring his requests or intentionally delaying their responses so as to frustrate Panorama investigations and disregard their duties under FOIA.

[26] Mr Ashe provided numerous emails released under previous FOIA requests that he argued evidenced the *mala fides* of LBHF in a culture of targets and a desire to increase the number of PCNs within LBHF Parking Services. He also claimed that the emails showed the PCNs were being used not to improve traffic flow (indeed, it was suggested that enforcement was having a negative effect in some instances) but to generate income, and that there was an agreement not to issue PCNs outside the Mayor's house or for LBHF staff. As for the

denial that inducements are offered, Mr Ashe questioned both when that stopped for employees and whether they are offered to contractors.

APPELLANT'S REPLY:

Ground I – Wrong Test

[27] The authority reiterated its contention that the Commissioner had applied the wrong test by elevating the example of 'grossly oppressive' into the criterion to be applied. However, in light of the Commissioner's response it appears to this Tribunal as though all parties were in agreement as to the relevant test, and further argument was unnecessary.

Ground II – Public Interest Concerns

Burden

[28] LBHF revised the estimated size of the requested information to 1,913 or four lever arch files, and provided a statement from Mr James Filus detailing how this figure was reached by estimating an average of 7.2 pages per attachment. It resiled from its previous contention that there was no relevant information, and advised that it had considered two-thirds of the requested material and disclosed two documents to Mr Ashe, which contained the search terms "in meaningful conjunction". Having done so, it claimed to be "reasonably confident" that nothing of relevance to the Council's parking policies remained in the documents.

[29] Mr Filus also detailed the exemptions that may apply to some of the information within the requested material, highlighting how particularly time consuming it would be to seek the opinion of a Qualified Person should the s.36 FOIA exemption apply. As such, LBHF rejected the Commissioner's assertion that this request was not broadly comparable with the average request received, and exceeds the limits laid out in the *Salford City* case.

Value

[30] It was accepted that LBHF operates a "balanced system of incentives for on-street parking operatives", but does not operate any form of performance-related pay inducements for CCTV operatives. Having 'misunderstood' the focus of Mr Ashe's initial request (believing it to relate to CCTV only), the Council rectified this mistake by disclosing two emails to Mr Ashe. There is no reason to believe that any further relevant information exists, because the Council has now disclosed information about the only relevant employees for whom it

operates an element of performance-related pay. Nevertheless, Mr Filus gave an undertaking that, by the time of the hearing of the case before the Tribunal, he would have viewed *all* the requested material and would be in a position to confirm that nothing of relevance remained to be disclosed.

[31] LBHF accepted that there is a significant public interest in knowing more about incentives for and transparency in parking enforcement. However, LBHF is of the view that, in light of the material already in the public domain through Mr Ashe's requests, it would be disproportionately burdensome to force the Council to consider "large volumes of irrelevant information" for little purpose other than to allay a vague suspicion that the Council was trying to conceal something. For this reason LBHF has labelled Mr Ashe intransigent because he refused to modify his request to their suggestion, when LBHF is of the opinion that he knew the information he requested was of little or no value.

COMMISSIONER'S SKELETON ARGUMENT:

[32] The Commissioner accepted that this was a finely balanced case, and that LBHF's position had been strengthened by the further information it provided in its Grounds of Appeal. Nonetheless, she maintained that this position would need to be tested by cross-examination at hearing before she would alter her conclusions.

Ground I – Wrong Test

[33] It is common ground that the determination of vexatiousness must be made 'in the round', and that 'grossly oppressive' is an example rather than a pre-requisite. However, the Commissioner reiterated that the threshold is still a high one. This Tribunal accept this assertion.

Ground II – Public Interest Concerns

[34] The Commissioner addressed each of the *Dransfield* concerns in turn.

Burden

[35] The Commissioner expressed reservations about the exact amount of information to be redacted. She highlighted in particular duplication of information along email chains and information that was already in the public domain. When factoring these into the time taken to redact information, that time was significantly reduced.

Motive

[36] Mr Ashe's motive in assisting investigative journalism is not vexatious.

Value

[37] The Commissioner found a clear and serious purpose and value behind the request, especially when LBHF has conceded that using PCNs and other traffic control measure to raise revenue is contrary to statutory guidance. The admission of financial incentives for enforcement officers to issue more than the average number of PCNs contradicts an email from Mr Filus to Mr Ashe on 4 September 2017, in which such practices were explicitly denied, whether for CCTV operatives or on-street operatives. This also contradicts LBHF's pleadings in which they stated both that they had assumed Mr Ashe was concerned only with CCTV operatives and that his request was separate to the issue of CCTV.

[38] However, the Commissioner accepts that, even within the best efforts of Mr Ashe's well-drawn request, there is a significant amount of irrelevant information. These factors must be balanced against the burdens of redaction, taking into account the amounts of information already in the public domain or duplicated as mentioned above.

Harassment or Distress

[39] There is no allegation that Mr Ashe has acted in a way likely to cause distress or harassment to staff; he stands accused of intransigence nevertheless. Mr Ashe's refusal to redraw his request came at a time when LBHF's searches revealed around 100 emails that could be reviewed within the 18-hour limit. The request has indeed subsequently proven to be larger and contain irrelevant information, but the Council's shifting and contradictory positions regarding any financial incentives for PCNs has given an understandable rise for concern that LBHF would be withholding information. That having been said, the Tribunal was urged to consider facilitating a "mutually agreeable compromise" between Mr Ashe and LBHF.

REQUESTER'S SKELETON ARGUMENT:

[40] Mr Ashe described a "cordial meeting" with LBHF on 19 March 2018, in which it was revealed that the Head of Parking has two email addresses and it appears that all emails to one account are forwarded automatically to the other. There are 21 duplicate emails of relevance in the accounts, so the actual number of emails falling under the request is 93. Mr Ashe also consented to the removal of seven further emails with extremely large attachments, but also confirmed that there are duplicates of emails both within and between the folders in which Mr Filus has filed the emails.

[41] The page count estimate has fluctuated again since Mr Filus stated it was around 1,913. A council representative informed Mr Ashe on 19 March 2018 that the estimate was between

4,500 and 5,000 pages. Mr Ashe rejected this, and using Mr Filus' methodology calculated the estimate to be around 650 pages. He emphasised that this does not take into account the duplications or the information that does not require redacting, giving the example of one email with an entire Act of Parliament attached. He also cast aspersions on the way Mr Filus selected emails to calculate the average page count, noting that they appear to be twenty *different* emails, rather than twenty *randomly selected* emails so as to exclude duplicates or forwarded emails in a chain. This clearly distorts the true number of unique pages to be redacted.

[42] Mr Filus responded to this in a second witness statement, in which he accepts that Mr Ashe acknowledged that he did not wish to be a burden to the council, but rather described his intentions as ensuring that no information that was in the public interest was discounted. Mr Filus described his initial calculation of total page number of 1,900 as "logical" but "a significant underestimate". However, during the course of the meeting Mr Ashe was satisfied to remove thousands of pages of material from the scope of considerations, leaving 1,230 to be considered. Mr Ashe stated that he would be prepared to work with the Council "regardless of the outcome of the hearing" but was not open to modifying his request. Mr Filus was of the view that Mr Ashe took a "very broad approach to what is in the public interest", whereas he believed some of the documents were only of "very modest public interest".

HEARING

[43] Mr Ashe gave evidence to the Tribunal. He reiterated that he did not wish to be a burden on the Council, but stated that he had reason to distrust them following his history of being issued with PCNs that were subsequently quashed, and of LBHF withholding information. He described how some information he had received from past FOIA requests was not of any public interest or relevance to his concerns, but that the overall endeavour to scrutinise LBHF's parking enforcement practices was of such importance that the BBC had approached him regarding his investigations. He took issue with Mr Filus' estimates of the size and number of documents to be considered, describing them as "completely unreliable", but stated that he had been and continued to be willing to work with LBHF to reduce the scope and burden of his request by being involved in the review process himself.

[44] Mr Filus also gave sworn evidence at hearing. He explained how he had come to his original estimate of 1,913, and how he and Mr Ashe were able to revise down the number of relevant emails from 114 to 88, but under cross-examination admitted that he had not considered how many of these were duplicates. He also confirmed the existence of the

Performance-Related Pay scheme that was established in and around 2013, but denied that there was any system of targets or bonuses. Whilst there was no instance of concerns about lower revenue, Mr Filus stated that finance officers could hypothetically raise concerns if the revenue from PCNs were to drop substantially, as that could impact on the Council's ability to act within its agreed budgets.

[45] Mr Filus broadly accepted that there was a public interest in some of these matters. However, he gave examples of "more direct ways" of obtaining the information i.e. through the website. He indicated that the Council receives many FOIA requests in relation to its Traffic Enforcement operations and publishes the responses in a disclosure log on its website. Mr Filus also explained, that in his view, some of Mr Ashe's concerns were not fair, especially the concerns that councillors received more lenient treatment.

APPELLANT'S CLOSING SUBMISSIONS:

[46] The Council accept that there was a legitimate public interest in knowing whether and how it operates targets and financial incentives for the issuing of PCNs. It insisted the scheme is "balanced", and exists only for on-street operatives and not CCTV operators. The 1,366 remaining pages falling within the request fell largely into three broad categories:

- i) documents relating to appraisal processes of individual employees;
- ii) documents relating to efforts by the Parking Service to meet the 'best team' standard;
- iii) documents relating to other Council projects, such as IT projects

The estimate provided for reviewing and redacting these pages was 114 hours. LBHF argued that there was little value in this, as it was confident that there was nothing of relevance to Mr Ashe's purposes wherein the terms in the request are used in meaningful conjunction.

[47] LBHF cited *Craven* and *Dransfield* to support the proposition that a request can be considered vexatious purely by reason of cost alone. Mr Ashe accepted in cross-examination that the remaining information not considered in his meetings with LBHF is more likely to be composed of shorter, individual documents. The Council did not seek to argue that this case was necessarily of above-average complexity, but rather that the considerations of potential exemptions (especially if the opinion of a Qualified Person or another stakeholder is required) would add significantly to the burden. Specific concerns were raised regarding a procurement document. LBHF did raise the issue of whether some requested information could fall to be disclosed under the Environmental Information Regulations, but stated that

the consideration of that issue would only add to the burden of dealing with this request, and would be the least effective and most costly way of informing the public about the issues of interest.

COMMISSIONER'S CLOSING SUBMISSIONS:

[48] The Commissioner emphasised again the high standard required for a finding of vexatiousness on the part of a request or requester, citing *Ashton v ICO and Cabinet Office EA/2016/0272* to support its contention that, where a “clear and substantial public interest” has been established, a request cannot be rejected on the basis of resources alone. Mr Ashe’s request was not a “shot in the dark”, but rather a targeted and precise request arising from an admitted Council aim to increase its revenue by £5m through PCNs.

[49] There was also doubt raised about the accuracy of the LBHF’s estimate of the pages to be considered. The problem of duplication across the beset in the identified documents had not been resolved satisfactorily, nor had the issue of email threads creating substantial overlap between seemingly separate documents. The Commissioner was not of the opinion that Mr Ashe would be able to refine his request in any meaningful way that would substantially reduce the amount of information caught within the scope of the request. Nor, the Commissioner reminded the Tribunal, does voluntary publication by public authorities displace any further obligations under FOIA, a point we entirely accept.

REQUESTER'S FINAL SUBMISSIONS:

[50] Mr Ashe again strongly refuted any assertions that either he, or his request was vexatious, intransigent or scattergun; stating that the Council, prior to the first Refusal Notice never made these claims in any correspondence with him. He pointed to his meetings with Mr Filus to discount irrelevant information as a counterpoint to his alleged ‘intransigence’. The refusal to allow LBHF to determine itself what was relevant to Mr Ashe’s request was not acceptable to Mr Ashe, given that on 4 September 2017 Mr Filus denied the existence of the financial incentives for issuing PCNs, something he has now accepted before the Tribunal. Mr Ashe also provided examples of how he claims LBHF has taken efforts to conceal this target- and incentive-system from him, BBC Panorama investigators and the general public.

[51] Mr Ashe also rejected Mr Filus’ continued reliance upon the figure of 1,366 pages, as this still contained the entire Act of Parliament referred to above, and duplicates across

folders and within email chains and forwarded emails. His estimate is unreliable as he sampled 20 different emails, rather than 20 random emails within the material. He also raised the issue of bailiffs' expenses vastly inflating what were initially small debts from PCNs, adding to the public interest in disclosing the information.

APPELLANT'S CLOSING SUBMISSION:

[52] The Council stated that while the request produced a relatively small amount of emails, some of those emails had bulky attachments. When considering each document, the Council stated that the FOIA officer would have to apply each of the various and broad public interest factors to assess how much disclosure of each document would advance public debate and understanding. The Tribunal are of the view that this applies to any FOIA request.

[53] Mr Ashe suggested that there was a public interest in knowing that the Council monitored the income revenue cycle from PCNs. Mr Filus explained that the Council forecasts PCN revenue, allocates the forecasted revenue for spending and monitors whether the actual revenue is above or below the forecast revenue. A passing reference to the PCN revenue cycle in a procurement document is unlikely to be of any public interest, in the Council's submission. Whilst there may be incidental public interest in the other material being released that is not relevant to Mr Ashe's purposes, the Council urged the Tribunal not to focus on that, as it would be "exceptionally inefficient".

[54] The Tribunal accept and take into consideration the record of the Appellant and First Respondents agreed Gist the of closed material hearing of 21 March 2017.

CONCLUSION:

[55] The Tribunal find, on the facts before us in this appeal, that it is particularly significant that a clear and substantial public interest in the subject matter of the request has been established. The subject of an increase of revenue through the use of PCN's is clearly such a matter. The Tribunal find on the facts that the request had serious motive, and had value and serious purpose.

[56]. The Council have indicated the alleged intransigence on the part of Mr Ashe stemmed from a suspicion that the council was seeking to suppress information, and they further described Mr Ashe's approach as "scattergun". They also felt that there was no obvious intent to obtain information, as Mr Ashe had not outright asked it for its position on PCNs, targets or bonuses. LBHF questioned whether Mr Ashe was seeking information from the council or whether he was using the FOIA to harass and annoy. Having heard the evidence,

the Tribunal reject these assertions and assumptions. The Tribunal do not accept this analysis.

[57] The Commissioner accepted that preparing 100 emails for disclosure would be a burden, but that Mr Ashe's request is comparable to the average request received by public authorities, and far from the high threshold engaged. Redactions would be straightforward, and the Commissioner rejected the suggestion that Mr Ashe was in any way unreasonably persistent or obsessive. The Tribunal questioned the council closely on this and on the evidence before us accept this (see the record of the Appellant and First Respondents agreed Gist of closed material hearing of 21 March 2017).

[58] The Tribunal are also satisfied that Mr Ashe's request was tightly drawn, and in no way over-broad or unfocussed. We too note that LBHF conceded that it knew exactly what he was looking for. Mr Ashe had already narrowed his request once, and we do not find it was unreasonable to refuse to narrow it further. We agree this is not intransigence, and that term is properly left for those applicants who refuse to engage with the authority at all and who take an unreasonably entrenched position. We agree that does not refer to Mr Ashe. As the Commissioner asserts; *"There is a clear and accepted public interest in the object of the requests; there have already been two Panorama programmes using or wishing to use the requested material, and Mr Ashe himself had 3 of the 5 PCNs he received over the time period overturned at appeal. This equates to over 50% of the PCNs issued to him not standing up to scrutiny. The Commissioner stated, "It does understandably make members of the public question the extent of this issue, whether it is more widespread and the actions of the council and other local authorities."*

[59] We find that the description of Intransigence, was inappropriate and somewhat of an afterthought. It was not noted prior to 4 September 2017 when Mr Filus denied the existence of the financial incentives for issuing PCN/s – something he later accepted.

[60] In short the Tribunal do not find the Commissioner has erred in Law in the DN. We unanimously accept and adopt the submissions that have been made before us on her behalf. We do not find the request to be vexatious for the reasons given by the Commissioner both in her DN and before us in the hearing of this appeal and accordingly we uphold the Decision Notice under appeal the herein.