



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

Appeal Reference: EA/2018/0126

**Heard at Norwich
On 5 February 2019 and 4 October 2019**

**Before
KAREN BOOTH
JUDGE**

**ANNE CHAFER and ANDREW WHETNALL
TRIBUNAL MEMBERS**

Between

FRANCES GASKIN

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

DECISION AND REASONS

DECISION

1. The decision notice issued by the Respondent on 29 May 2018 (Reference: FS50696791) is in accordance with the law and the appeal is dismissed.

REASONS

2. In this Decision: Norwich City Council is referred to as “the Council”; the Respondent is referred to as “the Commissioner”; the Freedom of Information Act 2000 is referred to as “FOIA”; the information request dated 25/7/17 is referred to as “request 1”; and the information request dated 17/8/17 is referred to as “request 2”.
3. A total of 5 bundles of evidence were produced for this appeal, referred to below as:
 - “Bundle 1” - (headed “Hearing bundle” (210 pages));
 - “Bundle 2” – (headed “Supplementary open bundle” (94 pages));
 - “Bundle 3” – (headed “Additional open documents” (73 pages));
 - “Bundle 4” – (headed “Additional open documents after hearing” (3 items)); and
 - “Bundle 5” – (headed “Additional open documents after hearing” (6 items)).

At the second hearing relating to this appeal, Ms Gaskin also produced 3 additional items of evidence; 2 emails dated 4/10/19 from Ms Gaskin to a W Parker and a letter dated 11/9/19 from Northamptonshire County Council to Ms Gaskin.

Unless stated otherwise, references below to page numbers are to the numbered pages in Bundle 1.

Background to the appeal

4. Ms G has been a frequent communicator with the Council about a number of local issues. She also has a longstanding personal dispute with the Council and its insurers relating to the alleged loss by the Council of some of her belongings, which has been the subject of a legal action for compensation.

The requests for information and the response

Request 1 (page 35)

5. On 25/7/17, Ms Gaskin sent an email in the following terms to the Council:

“Within your 18 hours FOI Time please avail the Insurance Contract to which Mr [name redacted] refers as existing between Zurich Insurance and City Hall by which it is fully indemnified for losses. Please highlight the section of it if such exists which refers to rules by which a claim against the council would be restricted

For instance ' we do not like the person"/ " we don't think they should get the sums " would not be such rules even if some exist
2 I have a reference number via a Ms. [name redacted] / [name redacted] that may assist but it isn't here today on my phone system but can be availed. Any relevant policy may be Accessed via this request e.g. if there is more than one."

On 26/7/17, she sent an identical request to the Council (page 36) but the last sentence was amended as follows (my emphasis):

"Any relevant policy may be Accessed via this request e.g. if there is more than one
(such as QLA OH 073-3333 Thank you as I can itemise today 26.07.17 from my mina emails at the public library)"

Request 2 (page 37)

6. On 17 August 2017, she sent a further email to the Council in the following terms:

"Dear Norwich City council foi team
Using the name Ms. S.f. Gaskin as a reference but otherwise not accessing any personal data at all please list all of the costs in chronological order of sums accrued by city hall a propos this person - January 2004- August 2006 and onwards Nov 2006 pending a housing review, what total costs accrued on all that housing provision at a council flat and then in B & B?

What costs accrued as there was the administration of that housing matter by staff at city hall in addition to any court costs, say by so many hours of staff time per housing application plus any extra work like meetings etc ? What court costs accrued as to Appealing the refusal of city hall to allocate housing at all [name redacted] senior solicitor attending 2006-2007 at court. ?

Total the costs accrued please for preventing belongings of Ms Gaskin being other than safeguarded such as specific attendance at court by Mr [name redacted] city hall senior solicitor to Oct 2006.

Total the costs accrued subsequently on the belongings matter and Insurance claim as to their being lost and destroyed such as fees to anyone like solicitors DacBeachcroft 2007-2017. And as to staff time every time an issue around the matters of Ms Gaskin arose in statutory housing matters.

Total the costs accrued at court Nov 2011 - 2012 by Mr. [name redacted] Acting at court as to small claims in data protection matters mostly

around the fact of four reports about the lost belongings which are also data of Ms Gaskin

Total the costs Mr. [name redacted] to DacBeachcroft as they acted on one of the small claims. Was there a way Mr [name redacted] then asks to "keep costs down ? (sic) DacBeachcroft had to go to court at least twice. Total all costs accruing therefore.

Also total the costs accrued 2012 for say a short year in again providing temporary housing accommodation at Barnards Yard and then at B&B in Great Yarmouth pending a Housing Application . State the cost of standard administrative time per any person in handling these Applications

PLANNING

State the costs accrued in issuing planning documents by post via FOI which city hall elected to do from October 2005 to August 2007 on an agreed regular basis rather than have Ms Gaskin go in to city hall to view a file 453F in person to select out copy added to that file, which had also been agreed.

State costs accrued in administrating the ongoing refusal to have Ms Gaskin attend at Planning Offices e.g. by way of LGO time in their several reviews of such failures to provide a Service

State the costs accrued 2016 in having the senior solicitor Mr [name redacted] attend a FOI Tribunal with another city hall staff member because city hall Mr [name redacted] misled the Information commissioner as if trees and paperwork did not and would not exist but which did. What costs had accrued due to the Information commissioner initial investigation albeit that Mr. [name redacted] short sightedly obstructed

State tje (sic) recent costs accrued 2017 in the ongoing Belongings losses insurance matter where Counsel turned up at court Instructed by DacBeachcroft. There appears to be a paperwork whitewash as if Zurich generated these costs whereas it is a city hall matter in refusing to sanction the insurance settlement.

State any other costs accrued generally as to Services to Ms Gaskin obstructed or not by city hall that the FOI team may well locate and to be called INCIDENTAL. Thank you
as to 18 hours of FOI time to complete this Request in 20 working days."

Council response and review decision

7. The Council responded on 18/9/17 (page 38), rejecting the requests in reliance on section 14(1) of FOIA (making reference to a related 13-year dispute

already determined through the courts in the Council's favour; her attempt to reopen matters that are legitimately closed and the absence of any broader public interest in the issues). At Ms Gaskin's request they reviewed their decision (page 40) but they did not change it

The complaint to the Information Commissioner

8. On 18/8/17 (page 44) Ms Gaskin submitted a complaint to the Commissioner. Her complaint referred to request 1, but also to another request which she had sent to the Council on 10/7/17 ("request 3") which related to development sites within the key sites for Norwich. On 15/3/18 (page 63) the Commissioner wrote to the Appellant confirming that her complaint about request 1 had been allocated for investigation. They asked Ms Gaskin to send a copy of request 2 if she wanted their investigation to encompass that request (which she did on 16/3/18 - page 74). We understand that request 3 was dealt with separately¹.
9. On 15/3/18 the Commissioner wrote to the Council about the complaint relating to requests 1 and 2 (page 66). On 16/4/18 (page 81) the Council sent a detailed response with a number of attachments. In the meantime, Ms Gaskin sent a number of emails/texts to the Commissioner/the Council (pages 72-80).
10. The Commissioner issued her decision on 29/5/18 (page 1) about requests 1 and 2. She decided: (a) that the Council had correctly applied section 14(1) of FOIA to both requests; and (b) that the Council had failed to provide a response to the first request within the 20 working day deadline and had, therefore, contravened section 10(1) of FOIA, but as both requests had been responded to prior to her decision no further steps were required to be taken by the Council.

The appeal to this Tribunal

Appeal grounds

11. On 22/6/18 the Appellant appealed to this Tribunal. Her grounds of appeal are set out on pages 13 and 14. They are confusingly written, and we found them difficult to decipher. However, some of the points that *appear* to emerge (as we understood them) were as follows.
 - The Council and the Commissioner had taken a "hotch potch" approach to the requests for information by dealing with them together. The Commissioner's investigating officer had consulted her regarding only one of the requests. Confusingly, she referred at times to 3 requests, but it is unclear whether she was referring to requests 1, 2 and 3 together or whether she regarded request 2 as two requests (split between audit costs and planning costs).
 - The second request (costs) had been marginalised. It was not covered by the Commissioner's decision. It had been "captured" alongside the

¹ The Commissioner's decision regarding request 3 was issued on 26/7/18 under reference FS50707871. That decision was the subject of a separate appeal (reference EA/2018/0191), which was running at the same time as this appeal and was being dealt with by a Judge alone. On 6/9/19, Ms Gaskin's this separate appeal was struck out and Ms Gaskin's subsequent set aside application was refused.

insurance policy request, when the latter could have been located very quickly.

- She referred on several occasions to the law entitling her to 18 hours of Council time at £25 per hour.
- She appeared to be saying that her past dealings with the Council on a variety of matters had wrongly and maliciously been considered when dealing with these requests.

Ms Gaskin's desired outcome was stated as follows (page 15): "*overturn the dn and replace with issued copy. The A is concerned to be advised that vexation DNs are reviewed only by that criteria and the fact of the non issued copy is not a remit for a panel at a hearing*".

Respondent's response to appeal

12. The Commissioner's Response to the appeal is at pages 18-30. The key points in support of the decision notice can be found in paragraphs 18 to 37.

Our task and the issues we had to decide

13. Our task is set out in section 58 of FOIA:

58 Determination of appeals

(1) If on an appeal under section 57 the Tribunal considers—

- (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
- the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

14. The only issue we had to decide was whether the Respondent had correctly concluded that the requests for information were vexatious within the meaning of section 14(1) of FOIA.

The first hearing - 5/2/2019

15. The Appellant requested an oral hearing, which she attended on 5/2/19. She was not represented. The Respondent elected not to attend the hearing.

16. The evidence before us at that stage consisted of: Bundle 1; two additional submissions that Ms Gaskin brought to the hearing – one typed (pages 5 of Bundle 2), one hand written (page 1 of Bundle 2); and the oral evidence given by Ms Gaskin at the hearing.

17. The hearing lasted from 11.15 until 15:40, with breaks.

18. Following the hearing we decided to adjourn, part-heard, as we considered, in the interests of fairness and justice, that we should seek further

submissions/evidence before we made our decision. Our reasons were as follows.

- At the hearing, Ms Gaskin denied the Council's assertion that her court action against the Council had been unsuccessful and the matter was closed – she asserted that those proceedings were continuing in the High Court.
- We wished to know how many FOIA and subject access requests (under the Data Protection Act 1998) Ms Gaskin had made to the Council in the 13-year period referred to in their letter of 16/4/18 (page 81).
- Ms Gaskin asserted at the hearing that request 2 was a subject access request and not a FOIA request. In her additional hand-written submission (subsequently included in Bundle 2 at page 1), she referred to Mr Bull having emailed staff “wondering when the ICO will notice that the FOI around costs IS the data of Ms Gaskin”. In her additional typed submission (subsequently included in Bundle 2 at page 5) she referred to him emailing FOI staff that “the costs data is of course the personal data of Ms Gaskin – but let's see if they take that up at the ICO” (referring to this as evidence of “malicious intent”). She was adamant that she had seen such an email but could not produce it.

19. The Directions at page 81 of Bundle 2 were issued on 19/2/19. The following responses were received.

- Commissioner responses (through Mr Martin, Solicitor for the Commissioner) at page 14 of Bundle 2 (saying that a search had been undertaken and the email allegedly sent by Mr Bull could not be found) and at page 38 (application to amend directions).
- Mr Bull's responses at page 15 of Bundle 2 (also saying that a search had been undertaken and that such an email could not be found) and at page 30 (dealing with the High Court proceedings, the information requests and correspondence received from and sent to Ms Gaskin between 2004 and 2017).
- Ms Gaskin's responses at page 16 of Bundle 2. She could not produce the missing email (see second paragraph on page 17). As regards the High Court proceedings, she simply said that the case was at the Queen's Bench Division (under reference QB/2018/0051). She attached a copy of an email (page 19 of Bundle 2) she sent on 30/1/19 to a Mr D Jenkins (who we assumed to be an officer at the High Court) headed “*Urgent QB 2018 0051 (C) More time than 01.02.19*”. This appears to indicate that she had been required to apply for an extension of time by 25/1/19 to provide further evidence but had missed that deadline (partly for health reasons). However, she also referred to another deadline of 1/2/19, which she indicated that she would also be unable to meet. She did not provide a copy of any response to that email.

20. We considered the Commissioner's application to amend the directions. On reflection, we agreed that it was inappropriate to have required the

Commissioner to set out, in relation to each of the 12 sets of information referred to in request 2, whether they were requests to which section 40(1) of FOIA applied. Our task was to decide whether the Commissioner had correctly concluded that section 14(1) applied to the requests (and not whether section 40(1) applied). Further directions were issued on 17/3/19 (page 86 of Bundle 2) treating the application to amend as the Commissioner's submission about request 2 and the time limit for the Council and Ms Gaskin to respond to that submission was extended.

21. Ms Gaskin applied for a "strike out" of the Commissioner's application to amend directions (page 41). In the further Directions issued on 27/3/19 (page 87 of Bundle 2). It was explained that there was no power to "strike out" the Commissioner's application. There was nothing in Ms Gaskin's application that persuaded us to amend or set aside the Directions of 17/3/19, but Ms Gaskin's deadline for responding to the submission was extended. The Council responded by saying that it had nothing to add to the Commissioner's submission.
22. By letter dated 29/7/19, the Tribunal office suggested to the Commissioner, the Council and Ms Gaskin that there should be a case management hearing in relation to this appeal (prior to a second oral hearing where the parties could attend and make their final submissions) and requested availability dates for such a hearing. Both the Commissioner and (through Mr Bull) the Council declined the opportunity to attend either a case management hearing or any substantive hearing (pages 71-73 of Bundle 3) and Ms Gaskin failed to respond to the request for her availability dates. The Tribunal office therefore fixed a date for the substantive hearing (4/10/19) and a Notice of Hearing was issued on 2/9/19.

The second hearing – 4/10/19

23. Ms Gaskin did not, as requested, confirm her attendance by 20/9/19. She did, however, attend on the day. As previously indicated, the Commissioner was not represented.
24. Ms Gaskin objected to the hearing proceeding as a substantive hearing. She was adamant that it should take the form of a case management hearing, as had previously been proposed. We decided that it would be fair to deal with that issue as a preliminary matter and we attempted to ascertain what Ms Gaskin considered could be achieved from a case management hearing and what directions she wanted the Tribunal to make. After spending almost an hour discussing this issue, we were no clearer as to what case management directions Ms Gaskin wanted.
25. Ms Gaskin made several references to a disclosure application (which was not in the evidence before us and which she did not produce at the hearing), but when we asked her what she was seeking disclosure of she was unable (or not prepared) to explain. She queried why the Council was not a party to the appeal given that there was outstanding information (she referred to the

“missing” Mr Bull email, but we had already raised that with Mr Bull and he had confirmed that the Council had been unable to trace such an email). She referred to a ruling of the Upper Tribunal about an Appellant’s entitlement to have a hearing, which was not of obvious relevance given that this was Ms Gaskin’s second hearing in relation to this appeal. She referred to the second appeal, which was not before us and which had been struck out.

26. We took a break to consider whether it would be fair and just to proceed with a substantive hearing in the face of Ms Gaskin’s objection to this. We considered that we had sufficient evidence to decide the appeal fairly and justly and that Ms Gaskin had not put forward any compelling reasons for a further adjournment. We therefore decided to proceed. The entire hearing lasted from 11am until just after 4 pm, with breaks.

What we decided and why

27. We considered all of the evidence before us and took into account the jurisprudence on the question of what may constitute a vexatious request (in particular, the decisions of the Upper Tribunal and the Court of Appeal in Dransfield ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454).

28. We considered the four broad issues or themes that the Upper Tribunal considered may be helpful when considering the question of whether a request is truly vexatious: the burden on the public authority and its staff; the motive of the requester; the value or serious purpose of the request; and any harassment or distress of and to staff. We noted that Judge Wikely agreed with the overall conclusion in an earlier case that “vexatious” connotes “manifestly unjustified, inappropriate or improper use of a formal procedure.

29. We also noted in particular the words of Lady Justice Arden in paragraph 68 of her Judgement: *“In my judgement, 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 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 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.”*

30. We reminded ourselves that section 14(1) can only apply where the *request* (not the requestor) is vexatious.

31. We concluded that both requests were vexatious.

Motive and value/serious purpose

Request 1

32. On the face of it, this request *potentially* had a reasonable foundation. Ms Gaskin has been in litigation with the Council and the insurance policy referred to in request 1 might, potentially, have been of value to her in relation to that litigation.
33. We did not accept, however, that Ms Gaskin was requesting that information for that potentially serious purpose. The way she worded her request (in particular, her frivolous reference to any section of the policy restricting claims: “For instance “we do not like the person/we don’t think they should get the sums””) led us to conclude that the primary purpose of her request was to vent her frustrations against the Council for her failure to secure the settlement she seeks. We noted that she used very similar language in her email at page 147 (headed “SETTLE ALL MATTERS IS PROPOSED”), paragraph 2.1 of which says: “*There is indeed a simple solution. It is one that would mean no more emails ever, from. Ms G !*”.
34. In any event, as Mr Bull explained in his Response at pages 30-36 of Bundle 2, the claim against the Council was struck out on 24/7/17 (with permission to appeal refused on 25/10/17). He provided a copy of the General Civil Restraint Order of 25/10/17 which supports this (paragraph 2a, page 35). Ms Gaskin had appealed the matter to the High Court, but Mr Bull’s understanding was that she had been unable to comply with the High Court’s deadlines for the submission of documents and was seeking a further extension of time. That was consistent with the information provided by Ms Gaskin and referred to in bullet 3 of paragraph 19 above. For all practical intents and purposes, therefore, the litigation came to an end on 24/7/17 and it seemed to us that there was only a very slim possibility of it being revived.
35. Ms Gaskin made request 1 on the day following the strike out on 24/7/17. The dispute concerning her lost belongings had been going on for some considerable time. She told us at the first hearing that she had already received a “generalised” insurance document. Ms Gaskin has considerable experience of making information requests. It seemed improbable to us that she would have waited until July 2017 to request further information relating to the policy that applied at the relevant time if she really felt that it would be of value to her in relation to that litigation. It seemed more likely to us that her request was a response to the strike out order as an act of retaliation against the Council.
36. In our judgement, the information sought (particularly given the specific reference to any section containing the fanciful types of restrictions to which Ms Gaskin referred) would not realistically be of value to the wider public or to any section of the public. We could not see what public benefit could be gained from having open access to one specific contract of insurance entered into by the Council, in isolation from the additional information (e.g. about other insurances in place) that would inevitably be necessary to draw any useful and practical information from it.

Request 2

37. This request did not, in our judgement, have any reasonable foundation. We had little difficulty in concluding that the information requested had no serious value to Ms Gaskin or to any section of the public.
38. It became increasingly obvious that Ms Gaskin had deliberately worded request 2 to try to ensure that the Council dealt with it under FOIA and did not treat it as a subject access under the Data Protection Act (“Using the name Ms. S.f. Gaskin as a reference but otherwise not accessing any personal data at all.....”). Ms Gaskin told us at the first hearing that she had previously made a subject access request for the same information. We were not clear about the outcome of that request, but we understood that the SAR had either been refused or that she had received only part of the requested information.
39. At the first hearing, Ms Gaskin explained that she has made regular subject access requests to the Council for many years. This is evident from page 43 of Bundle 3 (internal email dated 30/3/17, referring to a SAR just received and her previous one in April 2016 – although, oddly, neither of these requests is mentioned in the list provided by the Council at page 30 of Bundle 2). She also referred to related enforcement action against the Council. She said that she had made request 2 under FOIA, as well as under the DPA, so that the information would enter the public domain. She referred to the publication of costs data by the Council’s audit department, which she believed would include costs incurred by the Council in relation to herself.
40. Bizarrely, however, Ms Gaskin then tried to persuade us that the Council had deliberately and maliciously treated request 2 as a FOIA request, when they should have treated it as a subject access request. She insisted that she had seen an email along the lines referred to in bullet 3 of paragraph 19 above. This was one of the reasons we adjourned the first hearing.
41. At the second hearing, it transpired that the “missing” Mr Bull email which we had tried to track down was in fact the email at 49 of Bundle 3 (from Mr Bull to his colleague, Mr Swan on 15/9/17 at 08:23). This came to light during the discussions relating to the preliminary matter referred to in paragraph 28 above, after Ms Gaskin mentioned an exchange of emails between Mr Swan and Mr Bull. When we adjourned to discuss the preliminary matter, we made the link between the email we had been trying to locate and the emails at pages 49. Ms Gaskin subsequently confirmed that Mr Bull’s email of 15/9/17 (page 5 of bundle 3) was in fact the “missing” email.

We read the two emails to her. The relevant part of Mr Swan’s reads as follows: *“My only other ever so slight concern is about whether the ICO might consider there to be a DPA angle (i.e. the second question being Subject Access rather than FOI); however I think Ms Gaskin has assisted us here by making it clear that she’s only really looking for costs rather than disclosure of her personal records.”* The relevant part of Mr Bull’s response reads as follows: *“I agree that the costs is not a subject access request. She has made a subject access request relatively recently so has received any personal data we hold on her”*. Ms Gaskin would not accept that this did not align with her previous

description of the wording of Mr Bull's email and her connotations of "malicious intent". She was adamant that the wording in Mr Bull's response was the same as that in her email.

42. At the first hearing, we asked Ms Gaskin whether she considered that there was any wider public interest in the information requested. Her answers were not at all clear, but she alluded to: (a) legal requirements on Councils to pass (de-personalised) costs data to their auditors as well as public accountability issues; and (b) the "excessive" costs that had been incurred by the Council in dealing with her on the matters referred to in request 2.
43. We did not accept that there was any wider public interest in the information, which relates to the cost of one individual's disputes with the Council over many years. The bald costs figures relating to such disputes would reveal nothing about the propriety or otherwise of that expenditure and would be of no value whatsoever to the wider public.
44. We regarded Ms Gaskin's attempt to obtain her own personal data through FOIA and to subsequently allege that the Council had maliciously dealt with it under that disclosure regime as an abuse of FOIA.

Burden

45. In response to the Directions issued after the first hearing, Mr Bull provided a list of information requests made by Ms Gaskin from 2009 to 2018 (page 33 of Bundle 2). Disregarding those that post-dated requests 1 and 2, we noted that she had made 16 requests (one of which was a subject access request) over that 8-year period. In all but 2 of those cases, it appears that information was provided (although it appears that some of the responses were to the effect that information had previously been given). One request (made in 2012) was refused as being vexatious and another (2017) was partly refused on commercial sensitivity grounds. The requests related to a variety of matters (including planning, garages, trees, traffic penalty notices and tennis courts). As noted in paragraph 39 above, there were additional subject access requests that have been omitted from the list.
46. That is a significant number of requests but would not by itself justify refusing requests 1 and 2 on vexatiousness grounds.
47. Mr Bull also arranged a search of all correspondence from and to Ms Gaskin within the Council's customer contact system over that period. That shows a total of 548 incoming documents and 212 outgoing documents (although some of those documents may have post-dated requests 1 and 2) and indicated to us that Ms Gaskin's communications had placed a hefty burden on the Council resources over a number of years.
48. We were particularly struck by the burdensome style and length of Ms Gaskin's communications, many of which contain sections which are difficult to make sense of and which are extremely challenging and time consuming to read and attempt to understand. The majority of the communications from Ms Gaskin's in the bundles of evidence fit this description.

49. And although Ms Gaskin has a great deal of experience in making information requests, she has demonstrated some fundamental and strongly held misconceptions in relation to the rights and obligations under FOIA and otherwise.

For example, in her appeal form and elsewhere (see, for example, her email of 3/10/17 at page 175) she refers to an entitlement of 18 hours' time at £25. It appears from this that Ms Gaskin has confused section 12 of FOIA (which allows a public authority to refuse a request if it estimates that the cost of complying with the request would exceed "the appropriate limit") with section 14(1) (which allows a public authority to refuse a request that is vexatious). The Council did not refuse the request on section 12 grounds and so the cost limit to which she refers is not relevant to the appeal.

She makes many references to "points of law" and "errors of law", which are not obviously so (or of relevance to the issue of vexatiousness). For examples: paragraph 2.1 on page 5 of Bundle 2; point 3 on page 57 of Bundle 2; the handwritten postscript on page 58 of Bundle 2; paragraph (c) on page 60 of Bundle 2; and page 30 of Bundle 3, penultimate paragraph.

50. We very much doubted that any substantive response to requests 1 and 2 would have satisfied Ms Gaskin in relation to these matters. We considered it more likely that a substantive response would have fuelled a further increase in her demands on the Council's resources. As she indicated in the email referred to in paragraph 33 above, the only way to stop her emails was to settle her claims.
51. We noted Ms Gaskin's many references to the First-Tier Tribunal Decision dated 5/4/16 in Appeal No. EA/2015/0156 (Judge D. Farrer). That Decision related to a 2014 request by Ms Gaskin about protected trees in Browne's Meadow, part of Norwich Cathedral Close. The issue in that case was whether relevant information was held by the Council. Despite winning that appeal, Ms Gaskin applied to the Upper Tribunal for permission to appeal against Judge Farrer's Decision. Her application was struck out by Upper Tribunal Judge Wikeley ([2016] UKUT 0382 (AAC)). His reasons for the strike out are set out in paragraph 15 of his Decision:

"15. First, Ms Gaskin actually won her appeal. The general rule in civil litigation is that a successful party cannot appeal to a higher court or tribunal against a decision in their favour. This principle has been established in case law There are some narrow exceptions to that principle, but none applies here. Second, I note from the report of the High Court's ruling in Gaskin v Norwich CC and Others [2013] EWHC 623 (QB) that Ms Gaskin had previously brought 29 actions in the courts against various parties, 26 of which were brought against the Information Commissioner. All those actions were struck out. The High Court (Sir Raymond Jack) (i) refused permission to appeal against the District Judge's order striking out those various actions and (ii) dismissed the application to set aside a general civil restraint order made in respect of Ms Gaskin. In doing so, as regards (i) Sir Raymond Jack noted there was "no coherent, comprehensible statement as to what the case is that is

advanced against any of these defendants”. As to (ii), the general civil restraint order (which presumably has by now expired) was “amply justified”. I have real concerns that the present application is in effect an abuse of process, attempting to continue and perpetuate Ms Gaskin’s grievances against the Commissioner and the public authority through a different route. That is a further reason for applying a strike out in this case without holding yet a further hearing.”

52. We also note (from page 35 of Bundle 2) that, following the expiry of two General Civil Restraint orders made against Ms Gaskin in 2012, a further such order was made on 25/10/17 (applicable to proceedings/applications in the County Court) by reason of her having made three further claims in 2017 that were struck out by reason of being totally without merit.

53. All of this provides clear evidence of the disproportionate and unjustifiable burden that Ms Gaskin’s dealings with the Council have placed on the Council’s resources and her determination to continue in the same vein unless and until her demands are met.

Harassment of/distress to staff

54. It seemed to us that in her handling of this matter Ms Gaskin had demonstrated an obsessive and unjustifiable persistence with her personal disputes with the Council and (at best) a lack of insight regarding the unreasonable burden and personal impact this has inevitably placed on the Council’s staff and others.

- Her correspondence with the Council, the Commissioner’s office and the Tribunal has been consistently incoherent, as is evidenced throughout the bundles of evidence.
- The tone of her language has frequently been discourteous and hectoring (see, for example, the email at page 76). She has made numerous allegations of “malicious intent” and “bias” by the Council and Commissioner staff/officers (see for examples: points 10 and 11 of her appeal grounds; page 73; page 96; page 102; and page 104).
- She has further maligned the Council’s Director of Business Services and the Commissioner’s staff/officers in other ways (and the Solicitors acting for Zurich in the litigation referred to above) - see for examples: page 92 - the references to CK are to the Commissioner’s Lead case officer; page 104; and page 108).
- She has made many references to the Tribunal’s criticism of the Council and the ICO in the appeal referred to in paragraph 51 above, whilst ignoring the comments made by the First-tier tribunal and the Upper Tribunal about her own conduct in that appeal (see, for example, point 3 on page 91).
- She misled the Tribunal by alleging impropriety on the part of Council staff in their handling of request 2 and insisting that this was evidenced by a “missing” email. When that email subsequently came to light, it did

not in any way support Ms Gaskin's insinuations in that respect, but she was not remotely contrite about that.

- She inundated the Commissioner's office and the Tribunal office with lengthy and often incomprehensible communications. This led to the Commissioner refusing service from Ms Gaskin by any method other than post and the Tribunal imposing similar restrictions (albeit on both parties, in the interests of fairness (page 33)). In April 2019, the Chamber President additionally ruled that all communications by Ms Gaskin were to be in *typed* documents, a direction that Ms Gaskin went on to breach (page 91 of Bundle 2).
- At the two hearings, we attempted to get a clearer understanding of Ms Gaskin's position, but it was very difficult to get her to stick to the point. Her oral evidence was generally as confusing as her written evidence. She made many references to "errors of law" (as she did in her written evidence), which were not obviously so. We found her to be quite antagonistic and, at times, uncooperative. For examples, at the first hearing she was very reluctant to provide any details about the background to her claim for compensation from the Council, saying that the background was relevant. At the second hearing (which took place over eight months after the first hearing), she became very frustrated on a number of occasions when we attempted to re-explore points that had arisen at the first hearing.

55. It is evident from the Decision relating to the above-mentioned appeal relating to the trees in Browne's Meadow that this is characteristic of the way Ms Gaskin conducts herself when pursuing such matters.

In paragraph 20 of his Decision, Judge Farrer said:

"Not content with appealing the ICO's decision, Ms. Gaskin peremptorily demanded that he amend it. She proceeded to launch upon the ICO a barrage of confused, vituperative and often insulting emails, usually copied to the Tribunal, in the course of which she accused members of his staff of bias in favour of the Counciland of wilfully suppressing evidence and of self – interested "obfuscation" She described comments of the ICO's solicitor as "specious" Her references to the Council involved charges of being disingenuous and deliberately misleading the Commissioner She plainly proceeded on the basis that she was being wrongfully excluded from seeing entries relating to Browne's Meadow in the statutory register of TPOs, in it a readily comprehensible error but one which led her to inexcusable slurs."

56. In paragraph 10 of his strike out Decision Judge Wikeley made the following comments.

"10. Reading the FTT's decision was a whole, this is in many senses a "plague on all your houses" judgment. The Judge was plainly less than impressed by both the city council's record-keeping and subsequent searches and by certain aspects of the IC's investigation. That said, Judge Farrer QC was particularly concerned at Ms Gaskin's conduct of her appeal: "43. I regret to conclude this

Decision by referring again to the conduct of Ms. Gaskin who, contrary to my clear directions of 23rd November and 11th December, 2015 and those of the Chamber's President of 24th January, 2016, continued to harass tribunal staff with telephone calls, sometimes abusive, and wordy emails, showing a complete disregard for such directions and the burden placed on the staff, which was wholly disproportionate to the value of her communications. By virtue of Rule 8(3)(a) the Tribunal has power to strike out an appeal where a party fails to comply with a direction. This appeal would, in my judgment, have been a clear candidate for such action, had I stipulated when giving directions that a breach might have that consequence. Gaskin v (1) Information Commissioner and (2) Norwich City Council [2016] UKUT 0382 (AAC) GIA/1739/2016 4 44. Parties minded persistently to ignore tribunal directions should have regard to that rule."

Additional points arising from the appeal

57. We did not agree that the Council and the Commissioner had erred by considering both requests together. It is clear (from page 68 - question 5) that the Commissioner's investigation covered both requests and that the Commissioner's decision notice covered both requests. The ease or otherwise of providing the information referred to in request 1 was not relevant to whether it was vexatious.
58. As mentioned above, Ms Gaskin's belief that the Council was not entitled to reject her request as vexatious because she was entitled to 18 hours of FOI time is clearly misconceived.
59. We did not agree that her past dealings with the Council on a variety of matters had wrongly and maliciously been considered when dealing with these requests.

Conclusion

60. Having considered the matter objectively and holistically, we were satisfied that Ms Gaskin's requests had no reasonable foundation and amounted to a manifestly unjustified and improper use of FOIA. We agreed with the Commissioner's conclusion that they were vexatious. The Respondent's decision notice was, therefore, in accordance with the law and we dismissed the appeal.

Signed: Karen Booth

Judge of the First-tier Tribunal

Date: 30 November 2019

Promulgation date 4th December 2019