



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

Case No. EA/2019/0156

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50807259
Dated: 11 March 2018**

Appellant: John McTighe
Respondent: The Information Commissioner
Second Respondent: The Welsh Government
Date of hearing: 13 September 2019
Date of decision: 31 October 2019

Before

Anisa Dhanji

Judge

and

**David Wilkinson
and
Gareth Jones**

Panel Members

Subject matter

Freedom of Information Act 2000, section 14(1) - whether request was vexatious.

DECISION

Dated: 31 October 2019
Name of Complainant: John McTighe
Public Authority: The Welsh Government

The appeal is dismissed.

Signed

**Anisa Dhanji
Judge**

REASONS FOR DECISION

Introduction

1. This is an appeal by Dr John McTighe (the “Appellant”), against a Decision Notice (“DN”) issued by the Information Commissioner (the “Commissioner”), on 11 March 2019.
2. It concerns 3 requests for information made by the Appellant on 2 June 2018, 7 June 2018, and 13 July 2018, respectively (together the “Requests”).
3. The Requests were made under the Freedom of Information Act 2000 (“FOIA”), to the Welsh Government (“WG”) relating to the TrawsCymru bus services.
4. WG refused the Requests on the basis of section 14(1) of FOIA (vexatious requests).

Background to the Requests

5. The following explanation comes largely from WG’s Response. However, in its material aspects, we do not understand this background information to be in dispute.
6. The Requests are among 22 requests submitted to WG by the Appellant since January 2016 relating primarily to the timetable and connections between TrawsCymru bus services arriving into and departing from Aberystwyth.
7. TrawsCymru describes the long distance bus network in Wales (the “Network”). There are 10 TrawsCymru bus services in total (T1, T2, T3, T4, T5, T6, T9, T1C, T1S and T14). Each bus service is delivered under a contract between the respective local authority and the bus operator. WG is not a party to these contracts, but it provides funding and has overall strategic responsibility.
8. The Network is managed through service delivery groups consisting of representatives of the local authorities, bus operators and passenger interests. The groups are all chaired by the Network Manager who is employed by WG. There is also the TrawsCymru Strategic Management Board (the “Board”) which takes key strategic decisions.
9. The timetables for the services are set by the relevant local authority and the bus operator, after discussion with the relevant service delivery group and, where appropriate, the Board.
10. In January 2016, the Appellant wrote to WG making two complaints:
 - the northbound Aberystwyth to Bangor T2 service should be re-timed by 5 minutes from 10.00 am to 10.05 am to allow for a better connection with bus services from the south.
 - the T1 and T2 bus services both due to depart and arrive into Aberystwyth at 18.40 respectively should be re-timed to allow for a connecting service.
11. In response to the first complaint, following discussions with operators and local authorities, the 10am T2 service departure time was changed so that it departed from Aberystwyth at 10.05am.

12. However, for operational reasons, no changes were made to the 18:40 service, which was the subject of the second complaint. We have been referred to the correspondence between WG and the Appellant in this regard. Edwina Hart AM, the Minister for Economy, Science and Transport at that time, also wrote to the Appellant on 29 April 2016 to explain why no changes could be made. A further written explanation was also provided to the Appellant by the Network Manager on 24 May 2016.
13. The Appellant was given alternative north-south public transport options to complete his journey. It was also suggested that if the Appellant wished to pursue the matter, he should contact his local bus surgery hosted by the local authority.
14. The Appellant was not satisfied with the explanations referred to at para 12, above, and continued to write to WG on the matter. By January 2017, WG considered that there was nothing more it could add. Mindful of the amount of time spent in dealing with this correspondence and the impact it was having on resources, WG informed the Appellant that it would not reply to any further correspondence on matters that had already been addressed. The Appellant continued, however, to send FOIA requests which WG dealt with separately.
15. By September 2017, the focus of the Appellant's correspondence turned to a review carried out by Dr Victoria Winckler of the Bevan Foundation. The Bevan Foundation is an independent think tank and was commissioned by Edwina Hart AM in July 2013, to undertake a review of long-distance bus services in Wales.
16. There was a proposal to introduce a new T3 service between Barmouth and Wrexham. It had been suggested that further work be done in advance of the introduction of the proposed T3 service on the feasibility of its operation to Aberystwyth rather than Barmouth.
17. The Appellant submitted a request for information under FOIA about the feasibility study, on the assumption that it had been carried out. He was dissatisfied with the explanations provided to him in this regard, insisted that WG should carry out a feasibility study. He also made a number of complaints to the Commissioner that his requests had not been complied with.
18. A high level strategic review of the TrawsCymru T3 service was carried out in early 2018 by Professor Stuart Cole who recommended that the route of the T3 service not be changed to serve Aberystwyth. Professor Cole reported his findings to the Board which accepted his recommendation.
19. On 9 July 2018, around the time the Requests were received, the Board wrote to the Appellant advising him of the outcome of Professor Cole's review and explaining why it was not possible to provide connections between all services at all times of the day. The Appellant was invited to meet with Professor Cole to discuss the matter, but he declined.

The Requests

20. The Requests are lengthy. They are reproduced in the Schedule to this decision.
21. The WG responded to the 2 and 7 June requests on 25 June 2018, refusing them on the basis of section 14(1) (vexatiousness).
22. WG replied to the 13 July 2018 request on 24 August 2018 stating that it did not hold any recorded information that would answer questions 5, 6, 7 and 23. WG relied on section 14(1) for the remainder of the request.

23. At the Appellant's request, WG undertook internal reviews on the Requests, but maintained its original position.

Complaint to the Commissioner

24. On 16 July 2018, the Appellant complained to the Commissioner regarding the way the Requests had been handled. The Appellant disputed that his Requests were vexatious.
25. The Commissioner investigated the complaint. For the reasons set out in her DN, she agreed that the Requests were vexatious, and upheld the refusal under section 14(1).

Appeal to the Tribunal

26. The Appellant has appealed against the Commissioner's DN under section 50 of FOIA. WG has been joined as a party to the appeal.
27. The scope of the Tribunal's jurisdiction in dealing with an appeal from a DN is set out in section 58(1) of FOIA. If the Tribunal considers that the DN is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, she ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
28. The Appellant has requested that this appeal be determined on the papers without an oral hearing. The Commissioner and the WG agreed. Having regard to the nature of the issues raised, and the nature of the evidence, we are satisfied that the appeal can properly be determined without an oral hearing.
29. The parties have lodged an open bundle comprising over 300 pages, and an additional open bundle has been submitted by the Appellant.
30. We have considered all the material that has been submitted, even if not specifically referred to in this decision. There has been no closed material.

The Statutory Framework

31. Under section 1 of FOIA, any person who makes a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
32. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA or if certain other provisions apply. In the present case, WG has only invoked section 14(1).
33. Section 14 of FOIA sets out two grounds on which a public authority may refuse a request. The first is where the request is vexatious. The second is where the request is identical or substantially similar to a previous request that the public authority has already complied with. The WG has relied on the first ground.
34. Where section 14 applies, the public authority does not have to provide the information requested, nor indeed is it required to inform the requester if it holds the information.

Meaning of Vexatious

35. FOIA does not define “vexatious”. However, there are a number of decisions of the Upper Tribunal (“UT”), and the Court of Appeal (“CA”), which have offered guidance as to what the term means in the context of information requests.
36. The principles are perhaps most comprehensively set out by the UT in Information Commissioner v Devon County Council and Dransfield; Craven v Information Commissioner and Department of Energy and Climate Change; and Ainslie v Information Commissioner and Dorset County Council [2012] UKUT 440 AAC.
37. These cases concerned section 14(1) of FOIA and/or the corresponding provision under the Environmental Information Regulations 2004. They were heard by Judge Wikeley, who treated Dransfield as the ‘lead case’ and set out guidance on the meaning of “vexatious”, which we have summarised below:
- In the context of section 14, “vexatious” carries its ordinary and natural meaning, within the particular statutory context of FOIA. The dictionary definition of “vexatious” as “*causing, tending or disposing to cause ... annoyance, irritation, dissatisfaction or disappointment*” can only take us so far. As a starting point, a request which is annoying or irritating to the recipient may well be vexatious, but it depends on the circumstances.
 - “Vexatious” connotes “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. Such misuse may be evidenced in different ways.
 - The Commissioner’s guidance that “*the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause*”, provides a useful starting point, so long as the emphasis is on the issue of justification (or not).
 - The purpose of section 14 is to protect public authorities and their employees in their everyday business. Thus, consideration of the effect of a request on them is entirely justified. A single abusive and offensive request may well cause distress, and so be vexatious. A torrent of individually benign requests may well cause disruption. However, it may be more difficult to construe a request which merely causes irritation, without more, as vexatious.
 - An important aspect of the balancing exercise may involve consideration of whether there is an adequate or proper justification for the request.
 - A common theme underpinning section 14(1) as it applies on the basis of a past course of dealings between a public authority and a particular requester, is a lack of proportionality.
38. Judge Wikeley stressed that this guidance is not intended to be prescriptive, and went on to say that the question of whether a request is truly vexatious may be determined by considering four broad issues or themes:
- 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 caused to the staff.

In paragraphs 29 to 45, he set out further guidance about each of these four themes.

39. The UT decisions in Craven and Dransfield were upheld by the CA ([2015] EWCA Civ 454). The CA added that the starting point is that vexatiousness primarily involves

making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, the public, or to any section of the public. It went on to say (at para 68), that:

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.

40. The CA also considered that where a motive can be established, that may be evidence of vexatiousness, although if a request is aimed at disclosure of important information which ought to be publicly available, then even a “vengeful” request may not meet the test.
41. The UT has revisited vexatious requests in a number of further cases, including CP v Information Commissioner [2016] UT 427 (AAC). This case considered whether the First-tier Tribunal (“FTT”), had correctly given weight to the nature of the requests made, and had conducted an appropriately rounded assessment in light of the high hurdle required to satisfy section 14(1), and also whether the evidential basis for the FTT’s decision was sufficiently clear. The UT stressed that the satisfaction of the section 14(1) test requires an appropriately detailed evidential foundation of the course of dealings between the requestor and the public authority. While a compendious and exhaustive chronology exhibiting numerous items of correspondence is not required, there must be some evidence, particularly from the Commissioner, about the past course of dealings between the requestor and the public authority, which explains and contextualises them. The UT went on to say that a proper scrutiny of the number of previous FOIA requests requires more than a superficial count, and that section 14 should not be invoked without objective and careful justification.
42. In some cases, a request may pose a substantial burden for the authority in circumstances where it cannot rely on section 12; i.e. it goes beyond the location of the information and extends to the review of information for whether exemptions and redactions are required. In principle, section 14 can be relied upon in such a case. In Cabinet Office v Information Commissioner and Ashton [2018] UKUT 208 (AAC), for example, the request was for some 6 files relating to British relations with Libya between 1990-2002. It was clear that there was a significant public interest in the information. The Cabinet Office relied on section 14 based on the burden alone. Judge Wikeley accepted that section 14 can be relied upon on the basis of burden, without any other signs of vexatiousness. He also endorsed CP to the effect that public interest in the information cannot act as a trump card to justify disclosure. What is not permitted, though, is for a public authority to place any great reliance on the absence of resources, as that would risk undermining the general right provided by section 1 of FOIA.
43. The more recent decision of the UT in Home Office v Information Commissioner and Cruelty Free International [2019] UKUT 299 (AAC) stresses the inherent flexibility of the concept of vexatiousness, and the need to consider the particular circumstances of each case. It also reaffirms that depending on the context, the cost burden of a request could render it vexatious.
44. As to the relevance of the requester’s conduct, in Oxford Phoenix Innovation Ltd v Information Commissioner & Medicines and Healthcare Products Regulatory Agency [2018] UKUT 192 (AAC), the UT observed that although the focus is on the request, it is usually difficult entirely to divorce that from the requestor where it is the course of conduct which is in issue. In that case, the requestor had repeatedly made

disparaging and offensive allegations against the public authority which included drawing parallels between the public authority and the Nazis. Judge Markus QC considered that while at one point, there had probably been a genuine dispute, the requests had drifted into vexatiousness. Any proper purpose the requestor had had was overtaken by what seemed to be a “war” by any, and every, means available.

45. The motive of the requester may also be a relevant factor in assessing whether a request is vexatious. Judge Wikeley noted in Dransfield, at paragraph 34, that “the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request”.

The Parties’ Positions

WG’s Position

46. WG says that the Commissioner’s DN was correct. It was entitled to rely on section 14(1). The Requests were clearly vexatious. In addition, in relation to some questions in the Requests, WG says it did not hold the relevant information.
47. WG says that since January 2016, the Appellant had made 22 requests for information and subsequent complaints to WG which have resulted in 5 Decision Notices. None of his complaints were upheld. He appealed 4 of the decisions to the First-tier Tribunal (“FTT”).
48. WG says that in determining that the Requests were vexatious, it was entitled to take into account its previous dealings with the Appellant, and the considerable public resources that had already been expended in efforts to address his complaints and requests.
49. WG says that while it had refused to comply with the request submitted on 7 June 2018 on the basis that the Appellant was acting in concert with another requester, it now accepts the explanation given by the Appellant in his grounds of appeal and retracts this basis for refusal. Nevertheless, WG says the request was still vexatious.
50. In finding the Requests to be vexatious, WG says it took into consideration the indicators set out in paragraph 25 of the Commissioner’s Guidance on vexatious requests. WG says, in particular, that:
- the burden that would have been imposed on public resources was excessive;
 - that burden was disproportionate given the Appellant’s purpose in seeking the information and its value;
 - the Requests were of a repetitive nature relating to the same relatively narrow issue;
 - the Appellant had been unreasonably persistent in his attempts to keep revisiting an issue that has already been comprehensively addressed by WG;
 - the Appellant had taken an unreasonably entrenched view that WG must hold information to support his allegations about failings in the management of the Network and misconduct on the part of officials; and
 - the Appellant has made unfounded accusations including in the public domain about the conduct of WG’s officials and a Minister. The Appellant’s correspondence indicated that he had a personal grudge against an official who he had accused of lying and had called for him to be dismissed.

51. More specifically, as to burden, WG says that that significant resources would have had to be engaged in order to comply with the Requests. They were sent within a period of 6 weeks and contained a total of 68 separate questions, all of which related to issues about the connectivity of the T1, T2, T3 and T5 services. The Requests overlapped in that the Appellant submitted new requests before WG had time, within the prescribed statutory timescales, to comply with the previous requests.
52. WG says it did not hold the information requested in questions 5, 6, 7 and 23 of the request of 13 July 2018, but it would have required a considerable amount time to analyse each of the other questions and assess whether it might hold any information within scope.
53. WG says that in relying on section 14, it took account of the resources that it had already expended in dealing with previous correspondence and requests from the Appellant. It says that between January 2016 and 2018 when the Requests were received, the Appellant sent in excess of 150 emails to Ministers and officials of WG, Assembly Members, Members of Parliament and local authorities. Whilst these emails were not all sent directly to WG, they generated correspondence from Assembly Members and Members of Parliament which required a response.
54. WG says that the effort required was disproportionate to the Appellant's purpose in seeking the information and the wider value and public interest of the information. The Appellant's overall objective was to achieve a change in the timetables for the TrawsCymru services to give priority to connections between services in Aberystwyth. The purpose of the Requests and other requests was to gather information to support his view about mismanagement by WG. However, there has been no evidence to support the allegation of mismanagement.
55. WG says that it also took account of the information that had already been provided to the Appellant and to the comprehensive explanations it had given for decisions that had been made. By the time the Requests were received in early 2018, WG had sent 14 letters, 6 of which were from Ministers (including one from the First Minister), demonstrating, it says, a genuine effort to address the Appellant's concerns (including inviting him to meetings with officials which he declined).
56. WG says even before the Requests, it had already reached a point where it could not justify the amount of public resources and level of disruption to the organisation in dealing with the high volume of complaints and requests from one member of the public on one issue. It also took account of the fact that no other members of the public had made the same or similar complaints and there did not appear to be a wider interest in the issue. It was apparent that any information disclosed would have limited value in terms of public interest.
57. WG says that the Appellant has made a number of unfounded allegations. He maintains that WG will not intervene to change the timetable because of wrongdoing on the part of WG's officials and Ministers. He says they have been acting in their own self-interest. He has also asserted that the relevant Ministers have ignored the Ministerial Code of Conduct. WG says that he has provided no evidence to support these repeated assertions. WG acknowledges that the Requests themselves do not make any such allegations but says that they were made in correspondence and in the public domain.
58. WG has given the following examples:

In an email dated 16 December 2016, the Appellant stated:

"If Sheena Hague and Mr Skates are not interested in "The facts appertaining to the lack of connectivity of the T2 with the T1 in Aberystwyth at 18:40" then

I see no point in having a meeting. This is a very simply problem that is easily solvable. However Mr Hall (a government official) has refused to put it right and resorted to lying in order to justify his refusal. Mr Hall has opposed 2 previous complaints and lost both these because I called upon the previous Transport Secretary (Edwina Hart) who overruled Mr Hall because TrawsCymru were breaking the Road Traffic Regulations. Mr Hall has therefore decided he will not lose a third complaint and has therefore resorted to lying and devious responses rather than considering the facts.....”

In an email dated 19 November 2017 to Carwyn Jones AM, former First Minister which was circulated to a number of Assembly Members and Members of Parliament the Appellant states, the Appellant stated:

“...Why does a member of the public still persist in complaining of this issue? The reason is that nothing is more infuriating than being repeatedly lied to by Government Officials [David Hall, (TrawsCymru Network Manager), Sheena Hague, (Deputy Director Network Management) and Simon Jones (Director, Transport)] who should be focusing their efforts on improving the Welsh Government funded TrawsCymru network. What makes this situation even more infuriating is that Ken Skates the Government Minister responsible for Transport has condoned the lies from this official, has lied himself, has made an incorrect written statement....”

59. WG acknowledges that senior officials with outward public facing roles are expected to be sufficiently robust to cope with some criticism from members of the public. However, WG considers that the allegations made by the Appellant against officials and Ministers go beyond what is reasonable to expect that they should be subjected to. It says that repeated allegations that officials have lied are indicative of a personal grudge held by the Appellant.
60. WG also says that the significant number of questions and their repetitive nature are indicative of the obsessive way in which the Appellant has pursued his complaints. The volume of the correspondence and the belligerent tone overall has had a harassing effect on officials, particularly to those who have been the target of repeated allegations that they have lied. WG points out that even an unsubstantiated allegation will be stressful to those concerned.

The Commissioner's Position

61. The Commissioner's position is set out primarily in the DN and her Response to the Appellant's grounds of appeal
62. The Commissioner noted that WG had considered the following factors in respect of all Requests:
 - Abusive or aggressive language;
 - Personal grudges;
 - Unreasonable persistence;
 - Unfounded accusations;
 - Intransigence; and
 - Frequent or overlapping requests:

63. WG had confirmed that much of the information within the scope of the Requests was the same as previous requests the Appellant has made. The most recent such request had been submitted on 16 January 2019 and constituted the 22nd FOIA request the Appellant had submitted to WG about the TrawsCymru bus services.
64. As regards the burden imposed on WG, the Commissioner noted that since January 2016, there has been in excess of over 150 items of correspondence in the form of emails direct to named officials and Ministers, correspondence to other AMs and MPs, as well as the 22 FOI requests all regarding the bus service. WG had considered it necessary to develop a coping strategy to deal with the extent of the correspondence.
65. WG had provided extracts showing the use of aggressive or abusive language in the Appellant's correspondence, including frequently calling employees and ministers "liars". The Commissioner noted that the Appellant appeared to harbour a personal grudge against an employee of WG.
66. The Commissioner also noted that WG had provided opportunities for a meeting with the Appellant but that he rejected this. The Commissioner considered that this indicated that the Appellant was intransigent and unwilling to engage to resolve his concerns.
67. The Commissioner further noted that she had previously considered a number of complaints from the Appellant about WG's handling of his requests for information. The Commissioner said she was mindful of the evidence she had previously considered in respect of DN FS50734061, and noted that the pattern identified at the time had continued in respect of the Requests. As with DN FS50734061, the Commissioner considered that the Requests were likely to cause a disproportionate or unjustified level of disruption, irritation, or distress, and concluded that that the weight of evidence overwhelmingly supported WG's decision to refuse the Requests on the basis of section 14(1).

The Appellant's Position

68. The Appellant's position is set out in his grounds of appeal and various written submissions, as well as in correspondence. He contests the finding that the Requests (or any of them) were vexatious.
69. The Appellant's grounds of appeal run to about 12 pages. His precise points are not straightforward to work out. Some points are not directly relevant to the issue in this appeal. The Appellant has also commented on various paragraphs of the DN. We have considered these comments even if not specifically referred to in this decision.
70. He says that requests 1 and 2 are related as they were both on the subject of the high-level review of a T3 Aberystwyth to Wrexham route, but that request 3 was unrelated to the first two requests, and indeed was unrelated to any previous request. It concerned the Trawscymru Free Weekend Travel Scheme (including the T5 service)
71. He says that in her finding that the Requests were vexatious, the Commissioner noted the presence of the following factors:
 - Abusive or aggressive language
 - Personal grudges
 - Unreasonable persistence
 - Unfounded Allegations

- Intransigence
- Frequent or Overlapping Requests

72. The Appellant says that these factors were not present in the Requests, and that:

The Welsh Government and the Information Commissioner are therefore basing their judgement on 3 years of correspondence although for the past 18 months this has virtually become communication in only 1 direction because of the Director For Transport's threat on 20th October 2017 (see MAIL4) that all my correspondence would be ignored/filed and his decision in February 2018 that all my FOI requests on Trawscymru are "vexatious" (see High Court Tribunal Reference. EA/2019/0008).

However, the FOIA guidelines say that "the request has to be vexatious not the requestor" and that "a request cannot be rejected as vexatious on the basis of a previous request being declared as vexatious".

73. He goes on to say that:

The Director For Transport is continually expressing his view that my requests are attempting to re-open previous issues regarding complaints made in 2016 and on 07/02/2019 the Director For Transport actually inserted those complaints, (which were not in my FOI request), into his reply in order to reject the FOI request as "vexatious".

I am now permanently excluded for life from receiving any information from the Welsh Government and Local Authorities on Trawscymru Bus Services. The Director for Transport has decided that the Welsh Government can write an unsolicited letter to me, but I have no right to question the information contained in that letter. The Director for Transport has decided that, if I write a letter to my Assembly Member asking her to take the matter up with the Transport Minister, the Director for Transport can intercept that letter, designate it as an FOI request and reject it as vexatious. Welsh Government officials have also informed at least 3 Local Authorities (Ceredigion, Carmarthenshire and Gwynedd) that they need not comply with FOI requests on Trawscymru Bus Services as the Welsh Government will deal with such requests. (see High Court Tribunal Reference. EA/2019/0008)

74. He says this behaviour is irresponsible and undemocratic and shows 4 of the vexatious indicators in the attitude of WG against him, namely personal grudges, unreasonable persistence, intransigence, and unfounded allegations.

75. In relation to the second request, he says it related to Free Weekend travel after several instances of being left stranded at weekends by full Trawscymru buses going past unable to pick up passengers. He says the request was rejected as "vexatious" because he was "acting in concert" with his wife. He says, however, that he simply shares the same computer and personal email address with his wife.

76. The Appellant also says that WG has used section 14(1) to avoid scrutiny, and that in cases of wrong-doing, the burden of requests can be justified.

77. The Appellant also says that the records that WG relies upon as regards his previous requests is misleading. He says that it includes all the communications he had to engage in to obtain answers to questions that WG was not providing.

78. He also refers to matters arising in previous cases before the FTT in connection with previous requests he made to WG. He refers, for example, to witness statements

being inaccurate and pages having been removed from an appeal bundle in order to mislead the FTT. He also refers to WG's failure to provide a usable index in a previous case before the FTT.

79. In addition, he says that the number of items of correspondence from him does not reflect the burden on WG. Many of the emails are not from him directly to the WG, but rather they were being copied in on his correspondence to third parties or he was simply asking when they would reply as most replies to his requests have been delivered late. He says he has made 45 FOI requests in total. There were 24 requests made to "Local Authorities/Bus Users Cymru/Bus Operators/Traffic Commissioner" and 21 FOI requests to WG.

Finding and Reasons

80. The only issue before us is whether the Requests were vexatious. The burden of showing that it is, lies with the public authority asserting it, to the civil standard.
81. The Commissioner dealt with all 3 requests together in a single DN. Although where the issues that arise may be similar, it may be convenient to deal with requests together, in reaching our findings, we have kept in mind that each request must be considered separately, and that just because one request is vexatious, it does not follow that all are.
82. Request 1 concerns information largely in relation to TrawsCymru T1, T2 and T3 services. The focus of Request 2 is on passenger numbers and costs in relation to T1, T2, T3, and T5. Request 3 largely concerns information about the Board, about Professor Cole's "High Level Strategic Review" of the TrawsCymrub T3 service route and other routes/services.
83. We do not consider that request 2 falls to be treated differently on the basis that it concerns a different subject matter. The Appellant says that it is on a new subject, that it does not overlap with previous requests, and does not re-open any previous issue as to the timing of bus services. We accept that it does not relate specifically to the timing of bus services. However, the Appellant's numerous requests have had different emphasis at different times. It is clear that this request, like the Appellant's other requests is intended to elicit information to challenge the adequacy of the bus services and the basis on which decisions are made. We find it likely that it would lead to further requests. For the avoidance of doubt, we do not say that every request for information made by the Appellant to WG concerning any aspect of the TrawsCymru bus services can be refused on the basis of section 14(1). WG must of course consider each request on its own terms.
84. Were the Requests vexatious? We will set out our findings by reference to Judge Wikeley's 4 themes, although for convenience, we will address them in a different order. We will not, however, make any findings on the underlying substantive issues raised by the Appellant about or relating to the Trawscymru bus services. Those are matters outside our jurisdiction.

Motive, Value and Purpose

85. We have considered these themes together because on the facts of the present case, as indeed in Dransfield, the issues are closely intertwined.
86. We accept that the Appellant has not acted maliciously and has a genuine interest in the TrawsCymru bus service. We also accept that the way in which the TrawsCymru bus service is run is a matter of public interest. However, the issues the Appellant has raised are specific to his particular concerns. We do not find that the issues raised by the Appellant are of weighty or general public interest. We note that WG say that

they have not had similar issues and complaints raised by others. The Appellant has not put forward evidence to support a finding that there are others who share his concerns.

87. In any event, having a justification does not mean that a request cannot be vexatious. We consider that the Appellant has used the Requests, and his previous requests on the same broad subject matter, not simply as a means of obtaining information, but as a basis to challenge and discredit decision-making by WG.
88. While it is not, of course, a misuse of FOIA to make requests intended to hold public authorities accountable, we consider that the persistent nature of the Appellant's requests, and his pursuit of his quest through multiple channels is indicative of a level of obsessiveness that goes beyond accountability. The very nature of the Requests themselves are concerning. Many of them ask "why" or "is the Minister aware" and are tendentious debating points, rather than genuine requests for information. As such we consider them to be a misuse of FOIA.
89. We keep in mind that although the Appellant has alleged wrong-doing, the evidence does not support a finding in that regard. The Appellant's references to how WG conducted itself in previous hearings before the FTT are matters that would have been dealt with by the FTT as appropriate. We are not in a position to make findings on such matters and they do not, in any event, relate to whether the Requests were vexatious.

Burden

90. The 3 Requests each contain a large number of questions. There can be no doubt that to respond to them would involve a significant burden for WG.
91. It is not only the burden arising from the Requests that must be considered. Rather, the Requests must be seen in the context of the Appellant's previous and likely future requests. This is in line with Judge Wikeley's guidance in Dransfield (at paragraph 29):

First the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor.

92. The evidence before us is that the Appellant has previously engaged extensively with WG, with information requests on various aspects of the same general subject matter. When considering the history, we have taken into account only the evidence of requests and correspondence pre-dating the Requests. However, these are very substantial. It is clear that the Appellant is convinced that the decisions made by WG were tainted by improper conduct, although as already noted, that claim has been supported by the evidence put forward by the Appellant.
93. We consider that the Appellant's attempt to use FOIA, to the extent he has, is unreasonable, having regard in particular to the burden for WG arising from these Requests, and the cumulative effect of the Appellant's previous and his likely future requests.
94. We consider that the cumulative impact on WG has become disproportionate, bearing in mind also that one response, seems to generate further requests, thereby increasing the burden further. We find it likely that his requests for information will

continue, with one response leading to another and often overlapping request, as in the past.

95. We accept that the Appellant was not acting in concert with others in respect of the second request, and as noted, this has now been accepted by WG as well.
96. It is sometimes argued that the public authority is the author of its own misfortunes by not having provided such information as it reasonably could have. That is not the case here. It is clear that a great deal of information has already been provided to the Appellant. The Request contains extensive and very detailed questions. We accept that dealing with the Requests would have added a considerable burden on WG.

Harassment or Distress Caused to the Staff

97. Although a finding of vexatiousness does not depend on there being harassment or distress caused to the public authority's staff, it may be evidenced:

...by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive... (Dransfield, at paragraph 39).

98. We accept that a number of requests made by the Appellant have been made in offensive or intemperate terms, with various accusations about misconduct, examples of which are set out above.
99. We accept that the Requests do not themselves contain such language or accusations. We also note that there is no direct evidence from WG's staff to the effect that the Appellant's conduct, language or assertions in connection with the Requests or at any other time, have given rise to distress for its staff.
100. Nevertheless, we consider that the extent of the challenge, allegations and criticisms has been such as to inevitably have caused harassment to WG's staff and officials. We also consider that the Requests are a continuum of and cannot reasonably be viewed in isolation from the Appellant's previous conduct and requests. We further consider that the Appellant's insistence and persistence on requests on the same subject matter will itself have caused distress to WG's staff, regardless of the language used.
101. We consider that the number of the Appellant's requests in addition to the Requests, his persistence, and his conviction that there must be wrong-doing borders on obsessiveness. As already noted, we make no findings on the merits of his views; simply that he has put forward the evidence to support them.

Decision

102. For all these reasons, we find the Requests to be vexatious.
103. It follows that we uphold the Commissioner's decision and dismiss the appeal.
104. Our decision is unanimous.

Signed

Anisa Dhanji
Judge

Date: 31 October 2019
Promulgation date: 5 November 2019

SCHEDULE

Request 1 – dated 2 June 2018

I would be grateful if you could arrange for answers to given to the following questions:-

Question 1 Could the Minister give the reason why the review of a T3 Aberystwyth to Wrexham route has not been started? (the review was commissioned by the Minister on 14/11/2017 in a letter to Alun Williams, Ceredigion Councillor responsible for transport and was recommended by the Bevan Foundation review of Trawscymru in 2013). The current T2/T3 route from Aberystwyth to Wrexham takes 5.5 hours and this could be cut to 4 hours by a direct, strategic, express service route via Machynleth Newtown, Welshpool and Oswestry

Question 2 Could the Minister say when the review of a T3 Aberystwyth to Wrexham route will be started and when it will be completed?

Question 3 Could the Minister say when the Welsh Government Transport Strategy (Chapter 4 - Focusing our work: strategic priorities Page 48) will be addressed and when the Welsh Government will take action to improve journey times and reliability on the strategic North/South T2/T1 route between Bangor and Carmarthen, which has links to the rail network at Bangor, Porthmadog, Machynleth, Aberystwyth and Carmarthen? (The strategic North/South T2/T1 route between Bangor and Carmarthen is currently dysfunctional because of the 15 minute delays to the T2 services in Dolgellau, in both North and South directions, these delays being required to wait for late running T3 services from Wrexham)

Question 4 Could the Minister give the reason why the T3 route between Wrexham and Dolgellau follows exactly the same route as the D94 Crossville Motors bus service which replaced the Ruabon to Barmouth railway following its closure 53 years ago in 1965?

Question 5 Could the Minister give the reason why the T3 route was not redesigned when it was introduced in 2014 to replace the Arriva X94 service? (The Trawscymru Network Manager has said the T3 route was “designed” as a “strategic” East-West route requiring connections with the T2/T1 North/South route between Bangor and Carmarthen.)

Question 6 Is the Minister aware that in 2013 the Welsh Government reported on a public consultation carried out on the TrawsCambria network when a government spokesman said over 300 responses were received to the consultation exercise and 70% of respondents supported the introduction of more limited stop faster express services between major centres?

Question 7 In view of the fact that in 2013 “70% of respondents supported the introduction of more limited stop faster express services between major centres”, could the Minister give the reason why the T3 route between Wrexham and Dolgellau, introduced a year later in 2014, has 42% of its length as diversions off the direct route to service outlying settlements?

Question 8 Is the Minister aware that 17 T3 services per day (9 from Dolgellau and 8 from Wrexham) are being diverted off the direct route between Dolgellau and Wrexham to service the villages of Llanuchlynn, Llanderfel, Llandrillo and Cynwyd in the AM constituency of South Clwyd?

Question 9 Could the Minister give the reason why the published journey time in the timetable for the T3 service is 2 hours for the journey from Dolgellau to Wrexham and 2 hours 10 minutes from Wrexham to Dolgellau?

Question 10 Could the Minister give the reason why the T3 service is consistently between 9 and 20 minutes late in arriving at Wrexham and Dolgellau.? (NB This is based on my experience of 2 years using the T2/T1 route through Dolgellau on a weekly basis and having

to wait in Dolgellau for late T3 services from Wrexham as well as being based on my recent experience of using the T3 in May 2018)

Question 11 Could the Minister say whether the consistent lateness of between 9 and 20 minutes of the T3 service is the reason that T2 services going North and South between Bangor and Aberystwyth have to be held back for 15 minutes in Dolgellau to wait for the T3 service from Wrexham?

Question 12 Is the Minister aware that an Arriva no 5 bus service runs every 15 minutes/half hour (24 services per day in both directions) between Wrexham and Llangollen on exactly the same route as the Trawscymru T3 service and takes the same amount of time as the T3 (35 minutes) to cover the same journey?

Question 13 Is the Minister aware that an X5 Wrexham to Corwen service,(which covers exactly the same route as the Trawscymru T3), is operated by Coastline Taxis with 2 services per day in each direction and taking 37 minutes to reach Llangollen?

Question 14 Is the Minister aware that an hourly bus service (Arriva no 2 with 14 services per day in both directions) runs from Oswestry to Wrexham via Chirk, Ruabon and Johnstown and covers most of the current T3 route between Llangollen and Wrexham?

Question 15 Could the Minister give the reason why passengers travelling to points between Wrexham and Llangollen cannot use local bus services (X5 and Arriva no 5 and no 2) instead of the Trawscymru T3 service?

Question 16 Could the Minister give the reason why the part of the T3 route between Wrexham and Llangollen , which is well served by local buses (X5 and Arriva no 5 and no 2), cannot be made into a direct route via the A5/A483 to save between 10 and 15 minutes in T3 journey time both into and out of Wrexham?

Question 17 Is the Minister aware that a saving of between 10 and 15 minutes in T3 journey time into and out of Wrexham would:-

- a) avoid the consistently late arrivals at Wrexham and Dolgellau
- b) avoid the waits of 15 minutes currently imposed on the T2 (Bangor to Aberystwyth) services in Dolgellau to wait for the T3 from Wrexham.
- c) allow connectivity of the T2 and T1 services to be restored in Aberystwyth and therefore meet the published Welsh Transport Strategy?

Question 18 Is the Minister aware that a saving of between 10 and 15 minutes in T3 journey time into and out of Wrexham would allow the last T2 service of the day to arrive in Aberystwyth from Bangor at 18.30 and therefore comfortably connect with the last T1 service from Aberystwyth to Carmarthen at 18.40.? This would allow passengers from Gwyned and Powys (between Bangor and Aberystwyth) to use the 15.15 T2 departure from Bangor to catch the 18.40 T1 from Aberystwyth and connect to the last train to Cardiff in Carmarthen.

Question 19 In view of the evidence supplied below based on 17 Trawscymru T1 journeys from Aberystwyth to Carmarthen rail station where the worst late arrival was 4 minutes late could the Minister say why the Trawscymru Network Manager insisted in 2016 that 10 minutes connection time was necessary for connection with the train by the 18.40 T1 departure from Aberystwyth?

Question 20 In view of the evidence supplied below based on 17 Trawscymru T1 journeys from Aberystwyth to Carmarthen rail station could the Minister say why the T1 departure from

Aberystwyth at 18.40 could not be changed to say 18.43 which would leave 7 minutes for the T1 to connect with the train in Carmarthen?

Question 21 Can the Minister give the reason why on 01/01/2018 the departure time of all T2 services from Bangor were brought forward by 10 minutes, the journey time between Bangor and Caernarfon increased by 10 minutes and the total journey time between Bangor and Aberystwyth increased by 10 minutes?

Question 22 Could the Minister give the reason why on 01/01/2018 there was only one T2 service, where the total journey between Bangor and Aberystwyth was increased by 20 minutes and not 10 minutes, and this one T2 service was the 18.40 arrival in Aberystwyth where T1 departs to Carmarthen at 18.40? Could the Minister also give the reason why on 01/01/2018 all other T2 services from Bangor had their total journey time increased by only 10 minutes and not 20 minutes?

Question 23 Could the Minister give the reason why on 01/01/2018 the 18.40 T2 arrival in Aberystwyth was changed to 18.50 by inserting 10 minutes of delay near Aberystwyth. ? Could the Minister give the reason why an unnecessary wait of 5 minutes in Machynleth (16 miles from Aberystwyth) and an unnecessary 5 minute diversion off the a487 on the edge of Aberystwyth through a small village and an Aberystwyth housing estate were introduced?

Question 24 Could the Minister give the reason why the 18.50 T2 arrival in Aberystwyth cannot be changed back to 18.40 by removing the wait of 5 minutes in Machynleth and removing the 5 minute diversion off the a487 on the edge of Aberystwyth through a small village and an Aberystwyth housing estate?

Question 25 Could the Minister give the reason why the 18.50 T2 arrival in Aberystwyth cannot be changed back to 18.40 and the T1 departure time in Aberystwyth be changed to from 18.40 to 18.43 giving 3 minutes of connection time in Aberystwyth and leaving the T1 7 minutes to connect with the last train to Cardiff in Carmarthen ? (NB the Trawscymru T1C coach service from Aberystwyth introduced in April 2018 has only 3 minutes of connectivity in Carmarthen to the Trawscymru T1S to Swansea.)

Question 26 Could the Minister give the reason why the Trawscymru T2 departure from Dolgellau cannot be changed to 8.00 instead of 8.10 to allow passengers from North of Aberystwyth to reach Aberystwyth at 9.15 and connect with the T1C coach service from Aberystwyth. to Cardiff?

Question 27 Could the Minister give the reason why the Trawscymru T1C departure from Aberystwyth to Cardiff cannot be changed to 9.25 instead of 9.30 to allow passengers 8 minutes of connectivity instead of 3 minutes in Carmarthen to the Trawscymru T1S service to Swansea?

Question 28 Can the Minister give the reason why a Trawscymru route between Oswestry/Chirk and Bangor (via Wrexham) has been reviewed by the Welsh Government?

Question 29 Is the Minister aware of the following services between Oswestry/Chirk and Wrexham:-

- (1) An hourly bus service (Arriva no 2) from Oswestry to Wrexham via Chirk, Ruabon and Johnstown taking 60 minutes (43 minutes Chirk to Wrexham) and covering most of the current T3 route between Llangollen and Wrexham.*
- (2) EasyBus operates a bus from Wrexham to Oswestry and Oswestry to Wrexham with six services per day in both directions taking 25 minutes.*

(3) *An hourly train which runs from Chirk to Wrexham and which takes 12 minutes.*

Question 30 In view of the services outlined in question 29 can the Minister give the reason why part of the new Trawscymru bus route under review is between Oswestry/Chirk and Wrexham?

Question 31 Can the Minister give the reason why a Trawscymru route between Oswestry/Chirk and Bangor (via Wrexham) is necessary, when there is a fast train service from Chirk to Bangor (via Wrexham) with 14 services per day and taking between 1 hr 43 minutes and .2 hrs 18 minutes?

Question 32 Could the Minister give the reason why questions such as those above are considered by the Welsh Government to be “vexatious” and why the Welsh Government refuse to answer them.

Request 2 – dated 7 June 2018

Could you please provide the following information regarding the following Trawscymru bus routes.

TrawsCymru T1 Aberystwyth – Aberaeron - Lampeter – Carmarthen; TrawsCymru T1C Aberystwyth – Carmarthen – Cardiff;

TrawsCymru T2 Bangor – Dolgellau – Aberystwyth;

TrawsCymru T3 Wrexham – Llangollen – Dolgellau - Barmouth;

TrawsCymru T5 Aberystwyth – Aberaeron – Cardigan – Haverfordwest;

Could you please tell me the following figures for each of the above services individually:-

- (1) The total number of passengers carried on weekdays on each of the above services for the year 1st April 2016 to 31st March 2017 or any other period in 2016 to 2017 just before the free weekend travel scheme started on 8th July 2017*
- (2) The Total number of bus journeys on weekdays on each of the above services for the same time period as in (1)*
- (3) The Total number of passengers carried on weekends on each of the above services for the same time period as in (1)*
- (4) The Total number of bus journeys on weekends on each of the above services for the same time period as in (1)*
- (5) The Total cost incurred for each of the above services on weekdays for the same time period as in (1).*
- (6) The Total cost incurred for each of the above services on weekends for the same time period as in (1).*
- (7) The total number of bus journeys on weekdays for each of the above services for the time period 8th July 2017 to May 2018 during the free weekend pilot scheme.*
- (8) The Total number of passengers carried on weekdays on each of the above services for the time period 8th July 2017 to May 2018 during the free weekend pilot scheme.*

- (9) *The total number of bus journeys on weekends for each of the above services for the time period 8th July 2017 to May 2018 during the free weekend pilot scheme.*
- (10) *The Total number of passengers carried on weekends on each of the above services for the time period 8th July 2017 to May 2018 during the free weekend pilot scheme.*
- (11) *The Total cost incurred on weekdays for each of the above services for the time period 8th July 2017 to May 2018 during the free weekend pilot scheme.*
- (12) *The Total cost incurred on weekends for each of the above services for the time period 8th July 2017 to May 2018 during the free weekend pilot scheme.*
- (13) *The Total extra cost incurred on weekends for each of the above services for the time period 8th July 2017 to May 2018 as a result of extra services, extra manpower etc to provide the free weekend pilot scheme.”*

Request 3 – dated 13 July 2018

Could the Welsh Government please provide the following information.

- (1) *Could the Welsh Government please provide a full list of the TrawsCymru Strategic Management Board ie job title and organisation?*
- (2) *Could the Welsh Government please provide the job title and organisation of the Chairman of the TrawsCymru Strategic Management Board?*
- (3) *Could the Welsh Government please give specific details of which “Trawscymru issues” the TrawsCymru Strategic Management Board agreed to a “joint position of all Board members” on?*
- (4) *Could the Welsh Government please say whether the “joint position of all members of the Board” was dealt with at a meeting, or by email, or by phone, or by any other means?*
- (5) *If the “joint position of the TrawsCymru Strategic Management Board” was agreed at a meeting could the Welsh Government please provide the date of the meeting and say whether the “joint position” was minuted at the meeting . Could the Welsh Government please provide the text within the meeting notes which dealt with the “joint position” ?*
- (6) *) If the “joint position of the TrawsCymru Strategic Management Board” was agreed at a meeting could the Welsh Government please provide a full list of the TrawsCymru Strategic Management Board members who attended the meeting at which “the joint position of all members of the Board” was arrived at as stated in the Trawscymru Network Manager’s letter of 09/07/2018 ?*
- (7) *If the “joint position of the TrawsCymru Strategic Management Board” was agreed at a meeting could the Welsh Government please say whether each of the “Trawscymru issues” was discussed at the meeting and could the Welsh Government please say whether discussion on each of the “Trawscymru issues” was minuted at the meeting?*
- (8) *If the “joint position of the TrawsCymru Strategic Management Board” was agreed by email, or by phone or by any other means could the Welsh Government please provide the job title and organisation of the person who took the lead in organising the “joint position of the TrawsCymru Strategic Management Board”?*

- (9) *If the "joint position of the TrawsCymru Strategic Management Board" was agreed by email, or by phone or by any other means could the Welsh Government please state how each of the "Trawscymru issues" was disseminated to all the Board members to allow them to agree a "joint position of the TrawsCymru Strategic Management Board" on all the "Trawscymru issues"?*
- (10) *Could the Welsh Government please say who within the Welsh Government provided the remit to Professor Cole for his 'High Level' strategic review of the TrawsCymru T3 service which links Wrexham to Barmouth?*
- (11) *Could the Welsh Government please provide a copy of the remit for Professor Cole's 'High Level' strategic review of the TrawsCymru T3 service which links Wrexham to Barmouth?*
- (12) *Could the Welsh Government please state the date on which Professor Cole produced the 'High Level' strategic review of the TrawsCymru T3 service which links Wrexham to Barmouth?*
- (13) *Could the Welsh Government please state when and how I can access a full copy of the Professor Cole's 'High Level' strategic review of the TrawsCymru T3 service which links Wrexham to Barmouth?*
- (14) *Could the Welsh Government please state why the review by Professor Cole does not contain any mention of an Aberystwyth to Wrexham Trawscymru route?*
- (15) *Could the Welsh Government please state why, despite the fact that it is not mentioned in Professor Cole's review, the Trawscymru Network Manager states in his letter that Professor Cole has not recommended a Trawscymru Aberystwyth to Wrexham service?*
- (16) *Could the Welsh Government please provide the relevant text from within the 'High Level' strategic review document of the TrawsCymru T3 service which links Wrexham to Barmouth, which gives the recommendation by Professor Cole to not provide a Trawscymru Aberystwyth to Wrexham service?*
- (17) *Could the Welsh Government please provide the reasons that Professor Cole gave for not recommending a Trawscymru Aberystwyth to Wrexham service?*
- (18) *Could the Welsh Government please provide the relevant text from within the review document which gives the reasons that Professor Cole gave for not recommending a Trawscymru Aberystwyth to Wrexham service?*
- (19) *Could the Welsh Government please say why a review of a Trawscymru Wrexham to Aberystwyth route commissioned by the Cabinet Minister for Economy and Infrastructure on 14/11/2017 has not been carried out?*
- (20) *Could the Welsh Government please state when and how I can access a full copy of the review/evaluation/justification document of the TrawsCymru T10/T11 service (Machynlleth to Wrexham)?*
- (21) *Could the Welsh Government please state when the review of the TrawsCymru T10/T11 service (Machynlleth to Wrexham) was or will be placed in the public domain for public consultation?*
- (22) *Could the Welsh Government please state which organisations have been consulted regarding the TrawsCymru T10/T11 service (Machynlleth to Wrexham)?*

(23) *Could the Welsh Government please state when and how I can access a full copy of the review/evaluation/justification document of the proposed TrawsCymru Llandudno?*