



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

**Appeal Reference: EA/2019/0206**

**Heard at the Leeds Magistrates Court  
On 10 December 2019**

**Representation:**

**Appellant: In person**

**First Respondent: Did not appear**

**Second Respondent: Mr Davidson (Counsel)**

**Before**

**JUDGE BUCKLEY**

**JEAN NELSON**

**PAUL TAYLOR**

**Between**

**TIM BROWN**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

First Respondent

**DONCASTER METROPOLITAN BOROUGH COUNCIL**

Second Respondent

**DECISION**

1. For the reasons set out below the Tribunal dismisses the appeal.

## REASONS

### **Introduction**

1. This is an appeal against the Commissioner's decision notice FS50761383 of 16 May 2019 which held that Doncaster Metropolitan Borough Council ('the Council') were entitled to rely on s 14(1) of the Freedom of Information Act 2000 (FOIA). The Commissioner did not require the public authority to take any steps.

### **Factual background to the appeal**

2. There is a long and complex background to this appeal and it is not necessary to make detailed factual findings on this. However, Mr Brown refers repeatedly in written and oral submissions to four issues:
  1. The Council's decision in 2009 to withdraw funding from Black History Month and the findings of an investigation carried out by Hazel Salisbury, a solicitor, under s 59 of the Local Government Act ('the s 59 report') on who was responsible for that decision;
  2. The sending of a letter with Nadeem Murtaja's electronic signature but without his consent in response to a FOI request by Mr Brown about the decision to withdraw funding;
  3. The removal of the £50,000 funding for the Community Champions Programme by the then chief executive Jo Miller in June 2010.
  4. The Council's failure to investigate allegations of race discrimination and potentially unlawful activity made by Nadeem Murtaja in email correspondence with Jo Miller in 2018.
3. It is not within the tribunal's remit to consider all the relevant evidence in order to make findings, on the balance of probabilities, as to what happened on each of these three occasions. Rather we set out below our understanding of these events in so far as it is necessary to do so to determine their relevance or otherwise to the issues before us.

#### *Withdrawal of funding for Black History Month*

4. Mayor Peter Davies was elected in June 2009. In his manifesto he had stated that he would not 'support financing such politically correct initiatives as...Black History Month...' Nadeem Murtaja held the position of Policy and Change Manager for the Council in 2009. He headed a team of five officers who as part of their roles advised other officers on issues relating to equalities and equality impact assessments. Mr Murtaja managed the Council's participation in Calendar events.
5. Here it is convenient to take the summary of background events largely from a report dated 27 May 2010 of an investigation carried out by Hazel Salisbury, a solicitor, under s 59 of the Local Government Act. The investigation was into

allegations that Mayor Peter Davies had breached the Council's Code of Conduct. This report is referred to as the s0 59 report in this judgment.

6. The investigation considered, *inter alia*, whether there was a breach of para 3(2)(a) of the Code of Conduct which states  
You must not –
  - (a) Do anything which may cause your authority to breach any of the equality enactments...
7. One of the allegations which was considered in relation to para 3(2)(a) was an allegation that Mayor Davies had breached or caused the Council to breach equalities legislation by improperly cancelling support for events in support of ethnic and other minorities.
8. In chapter 4 of the report appear factual findings about what happened in 2009 in relation to changes to the Council's Calendar of Events (see paras 4.143 onwards).
9. The Council's Calendar of Events for 2009, approved as part of the Corporate Equality Framework on 10 December 2008, included events which it had previously supported through grants, officer time or other facilities. This included Black History Month.
10. In August 2009, Doncaster Focus Group requested £1,400 support for proposed Black History Month events. Mr Murtaja, on the basis that this event was in the Calendar, replied to this request by stating that he was more than pleased to support the objective in the proposal. He did not report the proposal to Jane Miller or Mr Hart (then Chief Executive), because Black History Month was in the approved Calendar.
11. After the election of the Mayor, a number of discussions had taken place about the Calendar, including a meeting on 4 September 2009, attended by Mayor Davies, Jane Miller, the Chief Executive (Mr Hart) and Councillor Milner (the Cabinet member responsible for equality and cohesion). In this meeting Mayor Davies expressed the view that, *inter alia*, Black History Month should not be supported by grant money or staff time. After the meeting, it was expected by the four attendees that a process of consultation, including or comprising an Equality Impact Assessment, would take place before a final decision was taken.
12. The report found that senior officers were confused about the position in relation to current events which would be under review in the future. They recognised that a change to the Calendar would need a formal process and decided that an Equality Impact Assessment would be needed before a decision could be taken on changes. They did not consider whether a change to a single event such as the Black History Month event needed a similar procedure.

13. In September Mr Murtaja confirmed to Jane Miller and Mr Hart that funding was committed in support of Black History Month and asked if it should be stopped. The reply to that from Jane Miller on 9 September 2009 was 'yes please'. As a result an email was sent out by Mr Murtaja on 11 September 2009 to Doncaster Focus Group saying that the Mayor was reviewing the Calendar of Events and it had been decided that there would be no financial support for Black History Month.
14. The report's conclusion was that Jane Miller authorised the countermanding of funding for the Black History Month event in the email of 9 September and 'Taking into account her comments on the Mayor's acceptance of the need for consultation on changes to the Calendar and her awareness of his not wanting to do anything to break the law, and Mayor Davies' comments. I am satisfied that Mayor Davies did not directly require her or any other officer to countermand the funding for the Black History event.'
15. The report concluded that the Council *may* have breached the relevant Equality Acts, because it was arguable that an Equality Impact Assessment was required for the change to the planned expenditure on Black History events in 2009, although the report reached no certain conclusion on this point.
16. In assessing if there was a breach of para 3(2)(a) by Mayor Davies, the report went on to consider if he, individually, had done anything which was likely to cause the action which lead to the potential breach. The report concluded that 'may cause' meant it must be likely to cause the Council's action in the sense of being a direct cause, or the most significant causal factor.
17. The report concluded that Mayor Davies' views were a significant factor in the decision not to fund Black History Month in 2009. However, the report found that Mayor Davies had been advised by officers that a further process was required to change the policy, that Mayor Davies accepted that, and that he had repeatedly told officers that he did not want to break the law and relied on them for guidance as to what was allowed in law. The report therefore concluded that, if the failure to carry out an Equality Impact Assessment before removing funding for Black History Month was a breach of the regulations, then it was not caused by or likely to be caused by Mayor Davies , but by a failure by officers to consider that possibility and follow an appropriate procedure.
18. In July 2010 Mr Brown helped to co-chair a public equalities meeting held by the Council. The meeting was difficult and people expressed concerns about, inter alia, the decision to withdraw funding from the Black History Month. Jane Miller emailed Mr Brown the next day to thank him.

*Inappropriate insertion of Mr Murtaja's signature*

19. In 2010 Mr Brown made a freedom of information request (FOI request) to the Council, asking who was responsible for making the decision to withdraw funding. He was told in a reply dated 4 March 2010 that 'As you have previously been made aware, a decision was reached by the Mayor to withdraw funding including officer resource at a meeting on 4<sup>th</sup> September 2009. I attach once more the relevant documents from this meeting.' This letter contained Mr Murtaja's electronic signature, but had been amended by his manager without his consent.
20. The first tier tribunal (FTT) in EA/2016/0038 appears to have proceeded on the basis that it was the letter of 11 September 2009 which contained Mr Murtaja's signature without authorisation, and that is what Mr Wiles's statement (prepared for that appeal) also suggests at para 10. It also appears that the Council issued an apology to community groups on this basis, and there are a number of media articles in the bundle that also make that assumption.
21. It appears to us to be fairly clear from the documents in the bundle that it was on the response to Mr Brown's FOI request in March 2010 that the unauthorised signature was placed. It makes no difference to the outcome of this appeal, and so we need not make a finding on this.

*The decision to remove funding from the community champions programme*

22. Following the meeting in September 2009 it was determined that an equality impact assessment would be carried out in relation to proposed future changes to the Calendar. One of the proposals which came out of the report was a Community Champions Programme.
23. The bundle includes notes of a Cabinet meeting on 2 June 2010 in which Cabinet agreed to support the development of a new strategic engagement approach to begin at the end of August 2010 following the Equality Impact Assessment on changes to the Calendar. We assume that this refers to the Community Champions Programme. There is no specific decision about budget or any other commitment recorded in those minutes.
24. Mr Brown submits that the emails in the bundle show that £50,000 that was being allocated to the community champions programme was suddenly axed by Jo Miller. It is not our role to make findings on whether this did or did not happen.
25. The emails show that an informal CLT meeting took place on 22 June 2010 to decide where the £5.2m budget reduction in the Area Based Grant and other grants should be allocated. The notes of the meeting emailed by Steve Mawson the next day state that Community Champions should be 'reviewed and taken out of committed'. A subsequent email in reply to those notes from Jo Miller on

the same day raises 'a couple of issues re your note' and states that at the meeting she 'also pointed out that there was no increased contracted amount or commitment to community champions at 50K and indeed when the report came to CLT, we rejected the staffing and costs info.'

26. Mr Murtaja alleges in an email exchange in 2018 that the decision not to provide funding of £50,000 to community champions was arbitrarily taken outside the CLT meeting without any evidence of consultation or due regard to the Equality Impact Assessment, and that it completely abolished the equalities budget. He states that the model had been agreed at the CLT meeting and praised by Jo Miller, who had 'changed her mind overnight'.
27. Although we are not here to resolve these conflicts of fact, we note that Mr Murtaja's recollection of the meeting of 22 June 2010 does not accord exactly with the notes of the meeting circulated by Steve Mawson the next day which state that the community champions funding should be 'reviewed and taken out of committed'. Further, the notes of the meeting appear to show that no final decisions had been made, and that proposals would be subject to further consideration and approval.
28. We do not have all the information before us, but what we do have does not amount to evidence that shows that the Chief Executive acted unlawfully by 'reneging on the decision of the Mayor and Cabinet', although we accept that this appears to be what Mr Murtaja is alleging. Further, we cannot see how a 'duty of candour' would have led to these actions by Jo Miller being presented as part of the evidence before the previous FTT: it is not relevant to the issue that tribunal had to decide.

*The Council's failure to investigate allegations of race discrimination and potentially unlawful activity made by Nadeem Murtaja in email correspondence with Jo Miller in 2018*

29. This email exchange post-dates the requests. Any alleged failure to investigate allegations made in this email exchange is not relevant to the issues we have to determine. In so far as the email exchange relates to the removal of funding by Jo Miller, this is dealt with above.

*Single point of contact*

30. The claimant has been assigned a 'SPOC' (a single point of contact) by the Council since November 2012. This is reviewed and renewed on an annual basis.

## **Requests, Decision Notice and appeal**

### *The Requests*

31. The decision notice deals with three requests. The Second Respondent says that the first request in the decision notice was put on hold at Mr Brown's request

and that the relevant first request is one sent on 9 March 2018 at 1.03am. The tribunal raised this with the parties in attendance at the start of the hearing. Mr Brown was not apparently aware that he had asked for any requests to be put on hold. In the circumstances both parties agreed that we should consider four requests: those three in the decision notice and the request sent on 9 March 2018 at 1.03am.

32. We set out below the FOI sections of the emails, but the surrounding content of the emails is also relevant and dealt with elsewhere in the judgment.

33. The first request (said by the Second Respondent to have been 'put on hold' at Mr Brown's request) was made on 6 March 2018 as follows:

I would like under the Freedom of Information Act to have access to the LGA Equality report to see if there is any reference to addressing any of the substantive race equality issues which I and other black citizens have brought to DMBC's attention over the past 20 years?

34. The second request was sent by email on 9 March 2018 at 1.03 am. It was sent to the Mayor, and copied to a number of Council Officers and Councillors including the Council's Monitoring Officer. The request itself stated:

I have been revisiting the questionable FOI response I received before Christmas.

1. I would like to know under the FOI Act what was the process to decide who would actually sit on the Equality, Diversity and Inclusion Board?
2. For each member/Champion, I would like to know whether there is any information to suggest that any of them (individually and collectively) have a proven track record of doing anything tangible to prevent discrimination, advance equality and foster good relations etc in Doncaster?
3. I would like the papers, emails, briefing notes, background papers that show that the Board has shown a willingness to embrace the Nolan Principles, including considering how the respective protected groups meaningfully and proportionately feed into the Board work programme?
4. I would like papers, emails, background papers that relate to the Board giving due regard to the PSED especially in the context of services and employment functions that impact on black citizens?
5. I would like to know whether there is a performance mechanism which would disband the Board if as is likely that the only reason by Mayor Jones cannot answer bog standard Diversity and Inclusion questions is that the Board is not fit for purpose and she is over reliant on poor advice?

35. The third request was made on 9 March 2018 at 8.35am as follows:

I politely ask under the Freedom of Information Act for the following information:

1. The names and position of all officers and members who were involved in providing the response which was given to me 15 minutes prior to the Full Council meeting.

2. The notes, emails, background papers, reports which contributed to your response on the 5<sup>th</sup> March 2018.
3. The number of DMBC apprenticeships in 2015; 2016 and 2017 and the length of contracts.
4. For each apprenticeship year 2015, 2016, 2017 what % of the DMBC apprentices secured a permanent job with DMBC after the completion of their apprenticeship contract?
5. Results of any DMBC consultation, monitoring or assessment with BME parents and young people over the past 3 years regarding DMBC's Apprenticeship Offer?
6. What percentage of the apprenticeship intake for 2015, 2016 and 2017 are Non White and what % of these groups secured a permanent job with DMBC?
7. In your response reference was made to the LGA support, I attach the contradictory FOI response which as sent to me indicating that the Cabinet had not had sight of the LGA report/recommendations. I now ask for emails, reports, background papers, briefing notes between Mayor/Cabinet and DMBC Officers regarding the LGA peer review process,
8. Given the contradictory FOI response, when did the Mayor and Cabinet have sight of the LGA peer review report/recommendations? to have access to the LGA Equality report to see if there is any reference to addressing any of the substantive race equality issues which I and other black citizens have brought to DMBC's attention over the past 20 years?
9. All reports, briefing, background papers, emails by Mayor/Cabinet and Officers that has resulted in the decision not to allow BME citizens to have an input into the publicly funded LGA Peer Review process and the subsequent Equality, Diversity and Inclusion Framework.
10. The information you relied upon to make the ludicrous claim that significant progress has been made in the context of DMBC reaching 5% ethnic minorities across DMBC workforce – please provide the workforce data showing for 2014, 2015, 2016 and 2017 the total number of staff white staff (white British, white Irish, white other) and total number of non white staff (black, white, Asian, mixed etc)?
11. I would be grateful for the above years to know the number of white/non white staff who are permanent/part time?
12. What is the number of staff employed at Head of Service and above and what is the actual to the breakdown at each level white and non white staff
13. Emails, briefing notes, action plans, reports from DMBC officers and Cabinet in the context of specifically addressing any identified workforce race equality disparities etc.

36. The third request was made on 11 March 2018 as follows:

I would like to exercise my rights under the Freedom of Information Act to obtain the following:

1. The number of public questions at Cabinet in the 3 years prior to the decision to insist that public questions are submitted prior to the Cabinet meeting.
2. The number of public questions submitted for each year after the decision to insist that public questions are submitted prior to the Cabinet meeting.



3. During the past 5 years, I would like to have sight of any BME/Race Equality questions and subsequent response from Mayor Jones via her advisors to highlight that such issues are not being taken seriously?
4. Notes, background papers, email which show DMBC officers having Due Regard to the PSED (Public Sector Equality Duty)?
5. Any information which shows any action taken by members of this committee have taken an interest in widening democratic participation by promoting Public Questions?
6. All briefing papers, reports, notes, assessments relating to Mayor Jones releasing her pre-prepared responses to the public 15 minutes prior to Cabinet and Full Council meeting.

### *The Council's reply*

1. The Council issued a single refusal notice in relation to the second, third and fourth requests on 9 April 2018. It refused to supply the information relying on s 14 – vexatious requests. Mr Brown requested an internal review and the Council upheld its decision.

### *The Decision Notice*

2. In a decision notice dated 16 May 2019 the Commissioner decided that the Council had correctly applied s 14(1) FOIA (vexatious request). As stated, the Decision Notice deals with the first, third and fourth request.
3. The Commissioner concluded that the Council was entitled to consider the combined burden of the three requests, given that they were submitted within 5 days of each other and had the same underlying theme. She accepted that some parts of the requests were either unclear or excessively broad, and would require clarifying to be addressed within the appropriate limit. While 12 requests in 12 months is not excessive, nine requests between 5 October 2017 and 6 November is disproportionate. In terms of motive and value the requested information is likely to be of wider public interest, but this has been overtaken by the unreasonable nature of Mr Brown's behaviour in making those requests.
4. The Council has established that there was a pattern of broad ranging requests followed by further partially overlapping requests copied to multiple individuals and made before the response to the original request has been received. The Commissioner accepts that the complainant is asking for large volumes of information in the hope of finding something to support his predetermined conclusion. She took account of the regular unfair accusations of racism without sufficient evidence in support. Further Mr Brown's behaviour has not altered since a previous FTT which found that his request was vexatious and his behaviour harassing.

## *Notice of Appeal*

5. Mr Brown appealed against the Commissioner's decision notice. His grounds of appeal are as follows:
  1. The rationale for engaging s 14 is wrong and very weak;
  2. All the relevant evidence has not been taken into account including the email exchanges between Jo Miller and Mr Murtuja;
  3. The Commissioner failed to balance the number of requests with the responsibility to show compliance with the law;
  4. The Council has not disclosed all relevant evidence because of a non-disclosure agreement (NDA);
  5. The Council has not shown that it was faced with an undue burden;
  6. There is a serious purpose behind the requests and a public interest in disclosure;
  7. There could have been no harassment or distress to staff in an organisation the size and importance of the Council;
  8. The three requests should not have been conflated;
  9. Mr Brown should have been given the opportunity to clarify the requests;
  10. The Commissioner has failed to take the required holistic approach;
  11. The purpose of the requests were serious, they are of clear value and the motive is not obsessive or disproportionate;
  12. The exposure of potential misuse of an NDA and evidence of alleged racism is a matter of public interest;
  13. Copying in relevant people is not unreasonable.

## *The ICO's response*

6. The Commissioner submits, in summary, that Mr Brown has advanced no argument of substance which challenges her finding that the requests are vexatious.

## *The Second Respondent's response*

7. The Second Respondent submits that the Commissioner has erroneously included a request which had been put on hold, and sets out the request (referred to in this judgment as the second request) which is under consideration in this appeal.
8. The second request (9 March 2018 1.03am) was sent to the Mayor, a number of Council Officers and Councillors including the Council's monitoring officer. It was not sent to Mr Brown's SPOC or the Council's FOI inbox. Aside from including the request, in the email Mr Brown:
  - (a) Complained of years of racism and racial abuse without particulars
  - (b) asserted that the interview processes were rigged or influenced by conscious or unconscious bias
  - (c) implied that the Council had a racially discriminatory policy of offering positions to white candidates

- (c) indirectly accused members of the Cabinet of a dubious track record on race equality and/or of failing to address known racial inequalities
  - (d) said that a named Cabinet member should be embarrassed
  - (e) said that the Monitoring Officer was 'too heavily compromised'.
9. The third request (9 March 2018 8.35am) was sent to the Mayor but copied to the members of the Cabinet and the Monitoring Officer. It was not sent to Mr Brown's SPOC or the Council's FOI inbox. Aside from the FOI request Mr Brown:
- (a) accused the Mayor of wilfully misleading him, and of making comments which were intentionally provocative and tantamount to racism
  - (b) alleged less favourable treatment by the Mayor and her colleagues
  - (c) alleged a deep rooted political and administrative racism across the Council and made repeated references to racism and oppressive behaviour.
10. The fourth request (11 March 2018) was sent to the Chair of the Elections and Democratic Structures Committee, members of that committee and the Monitoring Officer, not to Mr Brown's SPOC or the FOI inbox. Aside from the FOI request Mr Brown:
- (a) asserted that he had been subject to racist treatment at a Council meeting and accused unnamed members of being at ease with racism and racial disparity
  - (b) accused the Council of treating black citizens with contempt.
  - (c) accused elected members and officers of being in breach of the Code of Conduct.
- Burden*
11. The requests were not sent to Mr Brown's SPOC or the FOI inbox. Each request was in several parts and wide-ranging. The scope of information requested was broad or unclear.
12. Mr Brown made 16 requests to the Council in the preceding 12 months, all on the subject of equality. Several required follow up emails from the Council seeking clarification or suggesting refining the scope. In six there was an internal review. Many were made in lengthy and offensive emails. Most are wide-ranging, in several parts and requiring excessive detail. Four were sent to more than twelve individuals within the Council. Ten arrived within a one month period. There were hundreds of other lengthy, repetitive and offensive emails from Mr Brown during this period and over many years, often copied to multiple people.
13. One of Mr Brown's previous requests was ruled to be vexatious in the first tier tribunal decision **Brown v IC and Doncaster MBC** EA/2016/0038.
14. Mr Brown's failure to abide by the 'single point of contact' (SPOC) arrangement, described by the previous FTT as reasonable, shows a disregard for the Council's legitimate interest in using its resources efficiently.

15. The history of dealings paints a picture of an irrational insatiable campaign.

*Value or serious purpose*

16. Mr Brown is misusing the FOIA to pursue a longstanding grievance rather than to genuinely obtain information. Any substance which may have pertained to the complaints has long since evaporated and the campaign has drifted to pure vexatiousness.

*Harassment and distress*

17. The decade of persistent and unjustified accusations of racism and other misconduct amounts to harassment and causes unjustified distress to staff.

**Issues**

18. The issue for the Tribunal to determine is whether or not the requests are vexatious.

**Legal framework**

S 14(1) Vexatious Request

19. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):

20. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).

21. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The IC's guidance that the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not).

An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).

22. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.
23. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.
24. As to burden, 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 the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].
25. Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].
26. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68: 'In my judgment the Upper Tribunal 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 own 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, that is, 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. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...'

27. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
28. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

#### *The role of the tribunal*

29. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

#### **Evidence and submissions**

30. We heard evidence from Mr Brown and, on behalf of the Council, from Sarah Marshall, one of the Council's Information Governance Officers. We read a witness statement produced for the previous tribunal from Mr Wiles, Director of Finance and Corporate Services.
31. We have read the written submissions from all parties and listened to oral submissions from Mr Brown and Mr Davidson on behalf of the Second Respondent. We have taken account of all those submissions.

#### **Discussion and conclusions**

32. We deal first with the relevance of the four issues raised by Mr Brown summarised in the background information above.

*The relevance of the s 59 report*

33. Mr Brown's submission appears to be that the finding that Jane Miller was responsible for the decision to countermand the funding for Black History Month means that in responding to his 2010 FOI request the Council wanted Mayor Davies and then Mr Murtaja to take the blame. We do not accept that this is the only or even the most likely explanation for the Council's actions.
34. The tribunal notes that the findings in the s 59 report were focussed on answering the question of whether or not Mayor Davies should be personally sanctioned for a decision to remove the funding for Black History Month before an equality impact assessment was carried out.
37. We do not accept that it is reasonable to infer from the Council's failure to focus on the specific mechanics of what happened after that meeting in the context of an FOI request, rather than in the context of an investigation into an individual's personal liability for an alleged breach of the code of conduct, that they did this out of a desire to shift the blame from Jane Miller onto the Mayor.
38. Nor do we think it is reasonable to infer that this was a 'dishonest' response even if it is to some extent inconsistent with the specific findings in the s 59 report. It is clear from the s 59 report that Mayor Davies' views were the catalyst for that decision, even if there was confusion as to how those views should be implemented in relation to events already in the calendar and even if the s 59 report found that Mayor Davies could not be personally held accountable for the decision to withdraw funding before an Equality Impact Assessment was carried out.
39. For those reasons, neither do we think that any relevant inference can be drawn from the Council's continued reference, whether before the previous first tier tribunal or otherwise, to the decision maker being Mayor Davies.
40. Mr Brown states that if his original response had been answered honestly there would have been no need for him to be so persistent. Having reviewed the sample of Mr Brown's correspondence with the Council provided in the bundle, we think it extremely unlikely that Mr Brown would have been satisfied and not written those further letters had the original response been that Jane Miller made the decision.
41. Mr Brown further submits that the s 59 report shows that the Council has not acted in good faith when it comes to withdrawing funding and services aimed at BME groups and that paragraphs 4.144-4.221 of the report show that Mr Brown has been 100% correct to raise legitimate concerns. We have summarised the findings of the report above and read the rest of the report in detail. None of the findings in the report affect the legitimacy of the concerns raised by Mr

Brown in the specific requests under consideration in this appeal. We consider the question of serious purpose or value below.

42. Further the tribunal does not accept that anything in the s 59 report shows that the Council has presented a 'false narrative' in this appeal.

*The relevance of the inappropriate insertion of Mr Murtaja's signature*

43. Similarly, we do not accept that it is reasonable to infer from the fact that the reply to Mr Brown's FOI request in March 2010 was wrongly sent out with Mr Murtaja's electronic signature that this was a racially aggravated conspiracy to deceive Mr Brown into thinking that the letter was from Mr Murtaja or that it was done out of a desire to shift the blame onto Mr Murtaja.
44. We accept that Mr Brown may have had some justification initially in his complaint that no personal apology was made to him, which provides an explanation for a small proportion of the correspondence after the issue first arose. However given the date at which this occurred and the council's acknowledgement of the error the time for Mr Brown to move on has long passed.

*The relevance of the email exchange between Mr Murtaja and Jo Miller*

35. We have dealt with the issue of the failure to investigate above.
36. It appears that Mr Brown's submission is that this email exchange shows that the Council were in breach of s 77 in relation to previous FOI requests. This is not something that is within our remit to determine.
37. He also relies on the email exchange as supporting a public interest argument: he submits that there is a public interest in knowing whether the substantive issues raised by Mr Murtaja have been addressed and he submits that if the allegations in those emails are true, it is in the public interest for Mr Brown to request access to relevant information held by the Council, especially in the context of how it is handling equalities issues.
38. Finally Mr Brown relies on these emails to show that his previous FOI requests were not burdensome, because the requested information was always available.
39. We have not been provided with the text of all Mr Brown's previous FOI requests, but having reviewed the sample of correspondence and requests in the bundle we think it is extremely unlikely that Mr Brown would have been satisfied and not written those further letters/made further requests had he been aware of the allegations made in those emails and the documents referred to therein.



45. Further the tribunal does not accept that anything in the email exchange shows that the Council has presented a 'false narrative' in this appeal.

*The relevance of the decision to remove funding from the community champions programme*

40. The tribunal does not view this evidence in the same light as Mr Brown. We do not see these documents as evidence of unlawful action by Jo Miller. Further, we do not accept Mr Brown's submission that if there was evidence that in 2010 Jo Miller unilaterally withdrew funding from the Community Champions Programme without proper consultation or regard to the Equalities Impact Assessment that this would justify or explain the level and nature of his correspondence with the Council over the past ten years.
41. Nor do we accept that any failure by the Council to disclose this information at an earlier stage has had any impact on Mr Brown's actions. It is inconceivable that if Mr Brown had been aware at an earlier of stage of what he sees as clear evidence of unlawful action by Jo Miller that this would have led to a reduction in his requests or other correspondence to the Council. Further this information cannot retrospectively provide a justification for the earlier requests and correspondence. Finally it has no relevance to the present requests, other than the general point dealt with below about serious purpose and value.

*The factors relevant to vexatiousness*

42. The Tribunal considers the four factors identified by the Upper Tribunal to be a helpful framework to structure its consideration of whether the request was vexatious but has had regard to the fact that it is not intended to be an exhaustive definition or a checklist for determination of this issue and that a holistic approach must be taken, with no one factor acting as a trump card.

**Purpose or value**

43. In general terms, we accept that there is a serious underlying purpose to all Mr Brown's requests and indeed his correspondence. We do not think that Mr Brown's *purpose* is to cause offence, annoyance or disruption even though that is often the result. He is genuinely committed to tackling racism within the Council in all its forms. However we find that his primary grievance, as demonstrated by the focus of his submissions in this appeal, is about historic issues, some from 2009 and 2010, which have been exhaustively considered and addressed, and therefore the weight to be attached to that serious purpose as a justification for the continued level of correspondence has, in our view, diminished over time. His continued focus on those issues has reached the point where it can fairly be categorised as an obsessive fixation on historical matters.
44. In terms of the specific requests in issue in this appeal, the amount of time Mr Brown dedicated in his oral and written submissions to explaining the serious

purpose behind these specific requests was dwarfed by the amount of time he spent on addressing us on the four events set out above.

45. Mr Brown states that the request relating to apprenticeship information was to help his son with his desire to apply for an apprenticeship with the Council. His son was disappointed that an essential criteria in the job description was prior experience with the Council. Mr Brown submits that it is legitimate to raise concerns about the Council's handling of equalities issues when people like his son are prevented from applying for entry-level positions at the Council.
46. He states that the other two requests also had a serious purpose and were aligned to understanding how the Council was handling equalities issues. He submits that the Council should have been able to provide the LGA related information, especially as it was paid for with public money. Finally, he submits that the other request 'would have helped to understand whether Doncaster Council had bothered to evaluate the decision to make it mandatory for the public to have to submit their questions in writing before they can be tabled at a Cabinet meeting'.
47. In relation to the specific requests in issue, we accept that the information requested can, in isolation, be seen to have a serious underlying purpose.
48. However, although the requests for information *taken in isolation* could be seen to have a serious purpose, that is not the approach we must take. We must look at the context. Mr Brown has had experience of a first tier tribunal ('the 2016 tribunal') and has the benefit of a judgment highlighting the features of his requests which led to them being considered vexatious. If Mr Brown's purpose was to receive the information requested, he could have taken a number of steps which would have reduced the risk of the request being categorised as vexatious, and therefore increased his chances of obtaining the information.
49. The 2016 tribunal found that the imposition of a single point of contact ('SPOC') was not unfair or irrational but an efficient and common method of dealing with multiple issues and queries. We agree. When sending the requests under consideration in this appeal, Mr Brown could have, but did not, send the requests to the SPOC.
50. Contrary to Mr Brown's view that the imposition of a SPOC 'paints a clear picture of the former Chief Executive's obsessional and insatiable campaign to deny the Appellant [the] right to obtain information through the FOIA', we find that Mr Brown should have known that he would have been much more likely to obtain the requested information if he had sent it to the SPOC. His failure to do so undermines his argument that his requests for information had a serious purpose.

51. Further, Mr Brown surrounded his requests with unparticularised and/or unsubstantiated allegations against the Council and individuals working for the Council. These are extensive and will not be repeated in full here are set out in the Council's submissions at paras 5(a)-(e), 7(a)-(e) and 9(a)-(c). Given Mr Brown's knowledge of the 2016 tribunal decision, he should have known that omitting these allegations would have made it much more likely that he would obtain the requested information. Again, his failure to do so undermines his argument that his requests for information had a serious purpose.
52. Finally, we accept Mr Davidson's submission that any underlying serious purpose, whether general or specific to these particular requests, is dwarfed by the burden on the Council and the distress or harassment caused. Despite Mr Brown's genuine commitment to tackling racism within the Council in all its forms, his continued focus and persistence on these issues, some now from ten years ago, has become vastly disproportionate and wholly unreasonable bearing in mind the impact on the Council, both in terms of on its limited resources and on its individual employees.

### **Burden**

53. We have looked at each of the four requests individually, but in a context which includes the other three requests and the history of Mr Brown's involvement with the Council on these and related issues.
54. The four requests were submitted within a short period of time. All of them contain multiple parts. Many of the parts are broad, covering large amounts of information, and a number are unfocussed. Some overlap with each other or previous requests.
55. Mr Brown submitted that the Council should have asked him to clarify his requests or invited him in for a meeting to discuss them. We accept Ms Marshall's evidence that previous attempts to clarify requests have, on a number of occasions, lead to Mr Brown submitting changes to the original request along with new unrelated requests, many of which also require further clarification. Further we accept Mr Davidson's submissions that in the light of Mr Brown's approach over the last ten years there was no basis on which the Council might have concluded that inviting him to a meeting was likely to be fruitful.
56. On this basis we find that each request, taken in isolation, would be burdensome for the Council. Looked at in the context of the history of Mr Brown's dealings with the Council, the evidence of a significant, excessive and unreasonable burden is compelling.
57. It is clear from the previous first tier tribunal decision that already at that point, the burden on the Council was significant. The evidence of Sarah Marshall as to the work created by the requests and correspondence from Mr Brown over a

significant period of time demonstrate the resources which the Council is having to dedicate to dealing with Mr Brown's requests and correspondence. Mr Brown has sent thousands of emails to the Council, often lengthy, often copied in to multiple people. Mr Brown consistently fails to send correspondence to his assigned SPOC. Miss Marshall gave evidence that correspondence that might appear not to contain a FOI request has to be scrutinised because it often does contain requests for information. Mr Brown's habit of including large sections of previous emails compounds the problem. Requests for clarification have led to further requests. Answers to requests do not lead to resolution: Mr Brown appears incapable of being satisfied whatever information is provided. Requests for internal reviews are non-specific and confusing and often attach new requests.

58. Overall we take the view that the burden on the Council placed by these four requests, looked at individually but in the context of each other and the history of Mr Brown's dealings with the Council, is disproportionate and excessive. Any serious purpose whether specific to these requests or more general, is dwarfed by the severe burden on the Council.

### Harassment and distress

59. The emails containing the four requests in issue, do not simply contain the requests for information. They also contain multiple allegations of misconduct against individuals and groups in the Council, including but not limited to racism, racial abuse and bias. We do not intend to detail the full list of allegations, but they can be seen in the requests themselves and are summarised in the Second Respondent's response. These wide-ranging and unsubstantiated allegations are representative of Mr Brown's correspondence with the Council and are reflected in his written submissions on Miss Marshall's witness statement.
60. Ms Marshall gave compelling evidence of the personal effect on her of dealing with Mr Brown's correspondence and requests. She gave evidence that she was 'filled with anxiety' going to work because she was anticipating more emails from Mr Brown. She described in detail how this stress was caused by the content and form of Mr Brown's emails. Further we accept that she had a legitimate concern that this work stress might spill over into her private life. Mr Brown has, in the past, approached employees of the Council in public places to discuss his concerns, and we accept that Ms Marshall's anxiousness that he might approach her in person to discuss these issues is justified.
61. It is clear that it has caused her significant and long term stress, to the extent that her manager had concerns that she was being caused undue anxiety. She has since moved to a different role, partly motivated by a desire to move away from dealing with Mr Brown's correspondence and requests.

62. We find that there is clear evidence of distress caused. to staff, and that while it may not be Mr Brown's intention to harass staff, the content, tone, format and frequency of his emails to the Council clearly objectively have this effect.

### **Conclusion**

63. We have taken a holistic and broad approach and have looked at the entire course of dealings. We have considered the history of Mr Brown's dealings with the Council and we have considered the value and purpose of these particular requests. Looking at all these factors we find that the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of the FOIA.

Signed Sophie Buckley

Judge of the First-tier Tribunal

Date: 6 January 2020

Promulgation date: 9 January 2020