Appeal number: EA/2019/0295P

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

DAVID HENDY **Appellant**

- and -

THE INFORMATION COMMISSIONER **Respondents**
THE ANIMAL AND PLANT HEALTH AGENCY
("APHA")

TRIBUNAL: JUDGE ALISON MCKENNA (CP)

Determined on the papers, the Tribunal sitting in Chambers on 12 May 2020

MODE OF HEARING

1. This determination was conducted by a Judge, sitting alone. The Tribunal was satisfied that it was appropriate to compose the panel in this way, having regard to paragraph 6 (a) of the Senior President's Pilot Practice Direction dated 19 March 2020[1] and the desirability of determining all cases which are capable of determination by the most expeditious means possible during the pandemic.

2. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Chamber's Procedure Rules.

3. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 730, plus final submissions dated 9 March 2020 from APHA and the Appellant.

DECISION

4. The appeal is allowed in part.

5. I conclude that the correct regime for the treatment of this request is the Freedom of Information Act 2000, so to that extent the Decision Notice contains an error of law in applying the Environmental Information Regulations 2004.

6. However, as I also conclude that the request was vexatious, no further steps are required to be taken.

REASONS

Background to Appeal

7. The Appellant made a request to APHA on 22 November 2018, for information about Tuberculosis test results in cattle herds.

8. APHA refused the information request in reliance upon s. 14 of the Freedom of Information Act 2000 ("FOIA") as it regarded the request as vexatious. It confirmed its position on completing an internal review on 25 March 2019. The Appellant complained to the Information Commissioner.

9. The Information Commissioner issued Decision Notice FER0830908 dated 22 July 2019, in which she found that APHA had incorrectly relied on s. 14 FOIA, but had been entitled to refuse the request as vexatious under regulation 12 (4) (b) of the Environmental Information Regulations 2004 ("EIRs"). She required no steps to be taken. The Appellant appealed to the Tribunal.

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[1] https://www.judiciary.uk/wp-content/uploads/2020/03/General-Panel-Composition-Pilot-Final-for-Publication-1.pdf

10. The Decision Notice notes that the Appellant had in 2017 made a previous request for similar information which had exceeded the cost limit under s. 12 FOIA. That decision was the subject of an unsuccessful appeal to this Tribunal. On this occasion, the Appellant made a further request which refined the earlier request, apparently in an attempt to bring this request within the cost limit. The Decision Notice notes that the earlier request was dealt with under FOIA but considers that this request falls under the EIRs.

11. It is also noted that, in refining the request, the Appellant had not followed the advice given by APHA about the best way to request the statistical information he required. This particular information request was described as having been made against a background of 32 information requests from the Appellant since 2012, the disclosure of significant information, five complaints to the Information Commissioner and two appeals to the Tribunal. APHA reported that it had explained to the Appellant that *the information has to be extracted from databases deigned for APHA business with its customers…. his TB related statistical requests often cover an enormous amount of information and …gathering it involves a significant cost and diversion of resources from APHA's other work.* APHA reported that its staff were caused stress by the need to divert their attention from their other work to respond to the Appellant's frequent requests.

12. The Decision Notice concluded that, whilst it was not *per se* unreasonable to submit a refined request following the application of the cost limit, the number of requests made and the very technical nature of the data requested by the Appellant placed a significant burden on APHA and that it could not sustain the level of disruption the Appellant's requests had caused. It concluded that the request was *manifestly unreasonable* within the meaning of regulation 12 EIRs. The Decision Notice concluded that the information requested by this very technical request was unlikely to advance the knowledge of the general public on the issue of bovine TB testing, in respect of which data was routinely published. It concluded that, whilst there was a public interest in transparency, there was also a public interest in not imposing an unjustifiable burden on APHA. (I understand this to be a reference to balancing the value of the request against its burden, rather than the application of a true public interest test).

Appeal to the Tribunal

13. The Appellant's Notice of Appeal dated 19 August 2019 relied on grounds presented as a paragraph-by-paragraph commentary on the Decision Notice. In summarising them, I note that it is submitted that APHA had misinterpreted his earlier request in 2017 which, if interpreted correctly, would have been within the cost limit. Further, that any distress which had been caused by his requests had been occasioned by the failure of APHA staff themselves to deal with his requests properly and was not related to his own actions. It is also submitted that, provided the present request complies with the cost limit, it cannot properly be regarded as vexatious. He denies that the information he seeks is technical and cites the support of others in the farming community for his efforts to obtain information to add to the store of valuable public

knowledge on this subject. The application of the EIR regime is not disputed. The Appellant exhibits much information from his previous litigation.

14. The Information Commissioner's Response dated 16 September 2019 maintained the analysis as set out in the Decision Notice. It is submitted that the issue of cost limits is irrelevant to this particular appeal. Further, that the Appellant appears to accept that his requests have placed a burden on APHA staff in seeking to argue that this arises from their own actions. Finally, that the public interest in transparency about bovine TB testing has been acknowledged in the Decision Notice, but that the public interest in avoiding the burden on APHA is greater. The Information Commissioner refers to the recent Upper Tribunal Decision in *Vesco v IC and GLD* [2019] UKUT 247 (AAC)[2] and submits that the presumption of disclosure (not specifically considered in the Decision Notice) arising under the EIRs should not be applied in this case because the public interests are not equally balanced.

15. APHA was joined as a party to the appeal. APHA's Response dated 31 October 2019 makes the point that APHA is not itself a public authority but an Executive Agency of DEFRA, which is a public authority. It disputed that the EIRs were the correct regime and submitted that it was correct to rely on s. 14 FOIA in refusing the Appellant's information request. It is explained that complying with the information request would involve a high level of extraction and manipulation of the data held. The Appellant is said to be aware of the burden his request would impose from his previous dealings with APHA.

16. The Appellant's Replies to the Respondent's Responses (8 October 2019 and 26 November 2019 respectively) dispute that he has made 32 information requests and state that, according to his own records, he has made 31 requests. He reiterates the strong public interest which he believes exists in disclosure of the requested information, including a letter of support for his research from the Farmers' Union of Wales. He disputes the similarity between his 2017 and 2018 requests. He refers to witness evidence given in his previous appeal about the estimated time to comply with his previous request and to his belief that APHA has breached s. 16 FOIA in its dealings with him.

17. In a table of his previous requests, the Appellant demonstrates that they have been made on average every three months and not in quick succession, and that they cover a wide range of subjects under the banner of bovine TB. In his submission, this number, breadth and pattern of his requests does not support APHA's claim that the 2018 request should be viewed as lacking in proportionality and vexatious. He enclosed further letters of support for the public interest in disclosure of the requested information. He declined to make any submissions on the applicable regime.

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[2] https://assets.publishing.service.gov.uk/media/5d9dc592e5274a595bf5dabf/SGIA_44_2019ii.pdf

18. APHA's final written submissions address the applicable regime, and the alleged "vexatious" nature of the request in some detail, with reference to the case law (considered below) and the witness evidence.

19. In the Appellant's final written submissions, he disputes APHA's estimate of the time it would take to respond to his request by reference to the evidence provided to the Tribunal in his earlier appeal. He relies on a submission that APHA had handled his request deficiently in the previous case (causing disruption to itself), so that this undermines its claim that the current request is disproportionate or unjustified. He asserts the value of this request because he states it will address gaps in knowledge about how TB infection spreads. He refers to needing the requested data for the publication of his own academic papers, which have not yet been submitted for peer review.

20. The Appellant also filed, as an annexe to his written submissions, a "Reply" to Ms White's witness statement filed on behalf of APHA. This is a document for which he did not have the permission of the Tribunal. I comment on this below.

Evidence

21. APHA relied on a witness statement by Allison White, its Records Manager. She describes the repetitious nature of the Appellant's request, the level of disruption that it would cause APHA to respond, the cost of compliance, the burden on APHA caused by the history of similar requests from the Appellant, and the lack of value in the raw statistical data requested in the context of much information already published. She exhibits a bundle of documents referred to in her statement.

22. She described how the information requested in 2017 was originally for data spanning the years 2003-2016 but was subsequently narrowed by the Appellant to the period 2011 -2016. The 2018 request related to the period 2015-2016 only. APHA had been advised by its data analyst that the 2018 request was for a subset of the data previously requested and refused in reliance on s. 12 FOIA. Ms White describes how four data analysts had been required to consider the 2017 request and that they had concluded that a bespoke Structured Query Language search would be required to extract the requested data, which would cause disruption to APHA's business customers, so a different approach had to be taken. This process had taken 42 hours in relation to one year's data alone. She states that, even with the reduced scope of the 2018 request, it can therefore be seen that it would be burdensome to respond (an estimated 50 hours) and would take data scientists away from their core work.

23. Ms White relies on her own records to show that the Appellant has made 32 information requests to APHA. She had informed the Information Commissioner that the overall time taken to respond to them all had been equivalent to 468 working days. Recognising that there is a public interest in the issue of bovine TB, Ms White describes the quantity and nature of information routinely placed into the public domain but disputes the additional value of the statistical data requested by the Appellant. She suggests that the Appellant is seeking to obtain data on which he intends to publish his own analysis, which may be inaccurate and misleading.

24. Neither the Appellant nor the Information Commissioner relied on witness evidence.

The Law

25. The EIRs are engaged by requests for information falling within the definition of "environmental information" in regulation 2[3], as follows:

> "*. any information in written...form on –*
>
> *(a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites…*
>
> *(b) Factors such as substances, energy, noise, radiation or waste…emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
>
> *(c) Measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in (a) and (b) …*
>
> *(d) …*
>
> *(e) …*
>
> *(f) The state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"*

26. This definition was considered by the Court of Appeal in *Department for Business, Energy and Industrial Strategy v Henney and ICO [*2017] EWCA Civ 844[4]. At paragraphs [46] to [48] the Court gave guidance as to the correct approach, as follows:

> *46. The question is how to draw the line between information that qualifies and information that does not. The example given by the judge (a report focussed on the public relations and advertising strategy of the Smart Meter Programme) and other examples canvassed at the hearing show that there may be difficulties in doing this. Mr Facenna recognised that not all information would qualify but submitted that the example given by the Judge would do so because having access to information about how a development is*

[3] http://www.legislation.gov.uk/uksi/2004/3391/regulation/2

[4] https://www.bailii.org/ew/cases/EWCA/Civ/2017/844.html

to be promoted will enable more informed participation by the public in the programme. His example of information that would not qualify was information relating to a public authority's procurement of canteen services in the department responsible for delivering a road project. This information would not qualify because it is likely to be too remote from or incidental to the wider project to be "on" it for the purposes of regulation 2(1)(c).

47. In my judgment, the way the line will be drawn is by reference to the general principle that the regulations, the Directive, and the Aarhus Convention are to be construed purposively. Determining on which side of the line information falls will be fact and context-specific. But it is possible to provide some general guidance as to the circumstances in which information relating to a project will not be information "on" the project for the purposes of section 2(1)(c) because it is not consistent with or does not advance the purpose of those instruments.

48. My starting point is the recitals to the Aarhus Convention and the Directive, in particular those set out at [15] above. They refer to the requirement that citizens have access to information to enable them to participate in environmental decision-making more effectively, and the contribution of access to a greater awareness of environmental matters, and eventually, to a better environment. They give an indication of how the very broad language of the text of the provisions may have to be assessed and provide a framework for determining the question of whether in a particular case information can properly be described as "on" a given measure.

27. At paragraph [52] of its judgment in *Henney*, the Court warned against *an overly expansive reading that sweeps in information which on no reasonable construction can be said to fall within the terms of the statutory definition.*

28. In *Department for Transport v ICO and Cieslik* [2018] UKUT 127 (AAC)[5] the Upper Tribunal described the correct approach as follows:

33. ...the principle established by the Court of Appeal in Henney and in Gawischnig [is] that information which has only a minimal connection with the environment is not environmental information. The principle must apply not only in deciding whether information is 'on' an environmental matter but whether a measure or activity has the requisite environmental effect.

29. S. 14 (1) FOIA provides as follows:

14. Vexatious or repeated requests

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

[5] https://assets.publishing.service.gov.uk/media/5ae970eeed915d42f42b60bb/GIA_0224_2016-00.pdf

30. In *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 AAC[6], the Upper Tribunal interpreted "vexatious requests" as being manifestly unjustified, or involving inappropriate or improper use of a formal procedure. The Upper Tribunal considered four broad criteria for assessing whether a request was vexatious, namely: (i) the burden imposed by the request on the public authority and its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the request and (iv) whether there is harassment of or distress to the public authority's staff.

31. In respect of the burden of complying with a request, at paragraph 10 of its Decision, the Upper Tribunal commented that:

> "…*The purpose of s.14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA".*

32. In respect of the value of a request, the Upper Tribunal commented at paragraph 38 of its Decision that:

> *"…usually bound up to some degree with the question of the requester's motive is the inherent value of the request. Does the request have a value or serious purpose in terms of the objective public interest of the information sought? In some cases, the value or serious purpose will be obvious…In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident".*

33. The Upper Tribunal stressed the importance of taking a holistic approach. The Upper Tribunal's approach was broadly endorsed by the Court of Appeal in its decision (reported at [2015] EWCA Civ 454[7]), emphasising the need for a decision maker to consider "*all the relevant circumstances*". In *CP v Information Commissioner* [2016] UKUT 0427 (AAC)[8] Upper Tribunal Judge Knowles QC (as she then was) found that the Court of Appeal's approach to s. 14 FOIA was consistent with that of the Upper Tribunal.

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[6] https://www.bailii.org/uk/cases/UKUT/AAC/2013/440.html

[7] https://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html

[8] https://www.gov.uk/administrative-appeals-tribunal-decisions/cp-v-the-information-commissioner-2016-ukut-427-aac

34. In the Court of Appeal, Arden LJ commented on the issues of value and purpose and resources at paragraphs 68 and 73 of her judgment as follows:

> 68. "…. *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….*
>
> *72. Before I leave this appeal, I note that the UT held that the purpose of section 14 was "to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA" (UT, Dransfield, Judgment, para. 10). For my own part, I would wish to qualify that aim as one only to be realised if the high standard set by vexatiousness is satisfied. This is one of the respects in which the public interest and the individual rights conferred by FOIA have, as Lord Sumption indicated in Kennedy (para. 2 above), been carefully calibrated."*

35. The Information Commissioner's Guidance on dealing with vexatious requests[9] suggests at paragraph 52 that the purpose and value of a request should be judged as objectively as possible; "*in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority".* The Guidance also comments on requests where collating the requested information will impose a significant burden on the public authority. It suggests that s. 12 FOIA would be the more appropriate regime in such cases and that there is a high threshold for applying s. 14 FOIA on the grounds that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the public authority.

36. APHA has referred me to some First-tier Tribunal Decisions. This Tribunal is bound as a matter of legal precedent by Decisions of the Upper Tribunal and the

[9] https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf

Higher Courts, but not by Decisions of differently constituted First-tier Tribunals. See *O'Hanlon v Information Commissioner* [2019] UKUT 34 (AAC).[10]

37. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA[11], as follows:

> *"If on an appeal under section 57 the Tribunal considers -*
>
> *(a) that the notice against which the appeal is brought is not in accordance with the law, or*
> *(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*
>
> *the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*
>
> *On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."*

38. I note that the burden of proof in satisfying the Tribunal that the Commissioner's Decision Notice was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant. The standard of proof by which any matters of fact must be resolved is the balance of probabilities.

Conclusions:

39. The Appellant requested a paper determination of his appeal from the outset and did not ask to challenge any evidence at an oral hearing. When APHA requested an oral hearing (and, accordingly, a date was set for this) the Appellant notified the Tribunal that he would not be attending the hearing, as he preferred to address the Tribunal in writing. As the Information Commissioner also informed the Tribunal that she would not be attending, APHA at a late stage consented to a determination of this appeal on the papers.

40. If the Appellant had sought the Tribunal's permission to file a written challenge to a witness's evidence, I would have refused it. As it is, he submitted it without permission so I must consider whether to accept it.

41. I take into account the fact that the Appellant is a litigant in person and unused to the rules of evidence. APHA (which is legally represented) understood, in requesting an oral hearing, that it would have had to arrange for its witness to attend

[10] https://assets.publishing.service.gov.uk/media/5c7fb354e5274a3f8edc00cf/GIA_1680_2018-00.pdf

[11] http://www.legislation.gov.uk/ukpga/2000/36/section/58

and be cross examined, but the Appellant chose not to avail himself of this opportunity. I have considered whether I should, even now, direct an oral hearing to give the Appellant this opportunity, but I note that he has given detailed reasons for preferring to express himself in writing and I am not persuaded that he would attend even if I were to convene an oral hearing.

42. In these unusual circumstances, I conclude that it would not be fair and just to take into account the Appellant's written challenge to Ms White's evidence when she has not herself been able to answer these challenges. I consider that the evidence of Ms White should be accepted by the Tribunal on the basis that it is unchallenged, as she has signed a Statement of Truth and has not been required to attend for cross examination.

(i)The Applicable Regime

43. The Decision Notice deals with the applicable regime shortly at paragraphs 13 to 15 as follows:

> *14. The requested information relates to a programme run by Defra…which aims to reduce and ultimately eradicate bovine TB and one part of this is the ongoing testing of herds for bovine TB. Defra has stated that the risk to human health from bovine TB is very low due to milk pasturisation and the early identification of cattle with TB on farms and in abattoirs.*
>
> *15.Whilst the risk to human health and contamination of the food chain is low, the programme is clearly in place to reduce and ultimately eradicate this risk and so information relating to TB testing under this initiative is information on human health and potential contamination of the food chain.*
>
> *16. The Commissioner has therefore considered this request under EIR rather than FOIA.*

44. I note that the Appellant's previous request, also related to bovine TB testing, was considered by a Judge of this Tribunal under FOIA. The Judge would have been obliged to say if he had thought that EIRs were as a matter of law the appropriate regime, as it would have affected the lawfulness of the Decision Notice. He did not do so.

45. I have considered whether the Decision Notice was correct to find at paragraph 13 that the information requested engaged regulation 2(1) (f) of the EIRs. APHA has submitted that the requested information was not "on" the state of human health, but "on" the state of bovine health. Further, that the Decision Notice made an impermissible connection between Defra's overall testing programme and the particular data requested by the Appellant, as the requested information itself does not relate to the state of any element of the environment, or any measure affecting the state of any element of the environment. APHA submits that on the analysis taken by the Decision Notice, any information about bovine TB would be caught by the definition, notwithstanding its minimal connection to the environment, so this is the wrong approach.

46. I note that the Information Commissioner's Response did not comment on the applicable regime, as it did not appear to be disputed by the Appellant. The Information Commissioner did not later engage with APHA's submissions on the point.

47. I have taken the fact and context-specific approach to this question advocated by the Court of Appeal in *Henney*. Having done so, I conclude that APHA's submission is correct and that the Decision Notice was wrong to conclude that the EIRs were the applicable regime. I find this because the requested information is about cattle herd movements, which is not itself "on" the state of human health and safety, including the contamination of the food chain. I discern no more than a minimal connection between the two and it seems to me that the Decision Notice has thus strayed into the overly expansive approach warned against by the Court of Appeal in *Henney*. Furthermore, it seems to me that, if the appropriate measure to be considered is Defra's bovine TB testing regime (about which I have some doubt), then it is quite unclear how this affects the state of an element of the environment as defined. On this basis, the requested information fails both parts of the test described in *Cieslik* and I conclude that APHA was correct to consider the request under FOIA.

48. The test for deciding wither a request is vexatious is, of course, similar under the two regimes. However, the significant implication of my conclusion for this appeal is that FOIA does not include the presumption of disclosure which is to be applied under the EIRs.

(ii) S. 14 (1) FOIA

49. Following the Court of Appeal's approval of the UT's approach in *Dransfield*, I have considered whether s. 14 (1) FOIA is engaged by this request with reference to a holistic consideration of (i) the burden imposed by the request on APHA and its staff; (ii) the motive of the requester; (iii) the value or serious purpose of the request and (iv) whether there is harassment of, or distress to, the public authority's staff.

50. As noted above, I accept Ms White's evidence. She describes the burden placed on APHA by this request as the need to involve two or three data scientists, who would be required to work for approximately 50 hours, taking them away from their core duties. In considering this burden, I also take into account the context of the Appellant's own account that his requests have averaged one every three months over several years, amounting to 31 requests. It seems to me that this volume of requests raises the question, posed by the Upper Tribunal in *Dransfield*, of whether APHA's resources are being squandered by a disproportionate use of FOIA by the Appellant.

51. I also note that the Appellant has developed a sophisticated interest in APHA's work so that his requests are detailed and technical, requiring a detailed and technical response. It seems to me that the nature of these requests should be considered as adding context to the burden on APHA, unless the value of this request is considered to be high.

52. In considering the motive of the requester, I acknowledge the Appellant's intense interest in the issue of bovine TB and the sincerity of his wish to obtain more information and to publish his own discussion papers on those aspects of the problem that interest him and others. However, as those papers have not been peer-reviewed, it is difficult to conclude that they have value when applying an objective standard.

53. In considering the value or serious purpose of the information request, I consider that this is not a case in which the value or purpose of the requested data is self-evident. I have therefore considered whether it would add to knowledge about bovine TB testing in a way which would be valuable to the public. I note that Ms White's evidence is that the Appellant wishes to extrapolate the risks of cattle to cattle and badger to badger transmission by conducting his own analysis of the raw data, but I am unsure if this is correct. I have taken into account the significant volume of regularly published statistical information described by Ms White in her witness statement and her concern that inaccurate or misleading conclusions could be drawn from the raw data requested by the Appellant. It seems to me that this risk detracts from the value of the requested information. I conclude that whilst the value of the information to the Appellant himself is high in pursing his own lines of research, when applying an objective standard, the value of the requested information overall is low.

54. Whilst I accept Ms White's evidence as to the institutional burden of the request, she does not give evidence about distress or harassment to staff. The Appellant appears to have conceded that staff have been distressed, but says it is their own fault for mishandling his requests. I conclude that, whilst distress to staff was pleaded by APHA, the evidence before me does not support its case in this respect. There is, appropriately, no suggestion that this Appellant has harassed APHA staff.

55. I have taken a holistic approach in considering whether *a reasonable person would think that the purpose and value of the requested information are enough to justify the impact on APHA of responding to this request.* I have concluded that the value of the requested information has not been shown, in all the circumstances, to be sufficiently high to justify the significant impact that there would be on APHA in responding to this request. This conclusion means that s. 14 (1) FOIA is engaged.

56. For these reasons, I conclude that APHA was correct to refuse the request in reliance upon s. 14 (1) FOIA. I have found that the Decision Notice was wrong to conclude that the appropriate regime was the EIRs so, for that reason, I must allow the appeal in part, but I require no steps to be taken.

(Signed)

JUDGE ALISON MCKENNA **DATE: 14 May 2020**

CHAMBER PRESIDENT **PROMULGATED DATE: 19 May 2020**