



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

Appeal Reference: EA/2021/0126V

Before
Judge Stephen Cragg Q.C.

Tribunal Members

Ms Rosalind Tatam
Mr Dave Sivers

Heard via the CVP platform on 11 October 2021

Between

Raja Miah

Appellant

and

Information Commissioner

Respondent

The Appellant represented himself

The Commissioner was not represented

DECISION AND REASONS

DECISION

1. The appeal is allowed.

MODE OF HEARING

2. The proceedings were held via the Cloud Video Platform. The Appellant joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way
3. The Tribunal considered an agreed open bundle of evidence comprising 212 pages.

BACKGROUND

4. Between 13 October 2019 and 27 January 2020 the Appellant submitted six items of correspondence (each containing a number of information requests and/or seeking answers to questions) to Oldham Council (the Council) relating to various subject matters including child sexual exploitation, officers' registers of interest, the sale of public land, and General Election voting. The items of correspondence are set out in Appendix A to this decision.
5. The Council replied on 24 July 2020 and refused to comply with the information requests, citing section 14(1) FOIA which refers to vexatious requests, and said as follows:-

From the information supplied in your requests, it is believed that your requests for information have been designed to cause a disproportionate or unjustified level of disruption, irritation or distress to the services and staff of Oldham Council and has therefore been deemed to be a manifestly unreasonable and / or vexatious request.

In making this assessment, we have considered the Information Commissioner's Office guidance which identifies factors to consider and these include some of the following:

- Can the request fairly be seen as obsessive / persistent / repetitive?
- Is the request harassing the authority or causing distress to staff?
- Does it indicate a personal grudge towards a particular person(s)?
- Does it use abusive and / or aggressive language?
- Would complying with the request impose a significant burden / disproportionate effort?
- Is the request designed to cause disruption or annoyance?

It has been noted that within your requests:

- there are similar themes e.g. Glodwick Baths, sale of land at Alexandra Retail Park, Oldham Central Masjid, declarations of interest by Elected Members amongst others. Some of these requests had initially been responded to already.
- your use of language and tone plus the targeting of officers, not just in your requests, but in your social media / websites activity is not acceptable and has been raised with you.
- your requests, although in the public domain via What Do They Know, are further publicised via your social media / websites and appear to be part of a campaign to discredit, annoy and disrupt the council and targeted individuals, as opposed to making a serious request for information.

6. The Appellant contacted the Commissioner to complain about the way the requests for information had been handled, and specifically that the Council was not entitled to apply section 14(1) FOIA.

THE LAW

7. Section 8(1)(c) FOIA provides that a request can only be valid if it ‘describes the information requested’.
8. The Commissioner’s guidance states that ‘...we are of the view that there has to be a low test for a description to meet the requirements of Section 8(1)(c)’.¹ In relation to ‘requests framed as questions’ (which appears to us to be relevant in this case) the Commissioner’s guidance states that:-

A request in the form of a question will be valid under Section 8(1)(c) FOIA, provided it still describes distinguishing characteristics of the information, as in the examples below where the information is differentiated by its subject matter (sickness absence policy, overseas aid spending, and measures to tackle vandalism respectively);

‘Why has the Council changed its policy on sickness absence?’

‘How much money did the department spend on overseas aid last year?’

‘What is being done to tackle vandalism in the local park?’

¹ <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

9. Section 14(1) FOIA states that ‘section 1(1) [FOIA] does not oblige a public authority to comply with a request for information if the request is vexatious’. Vexatiousness is not defined in section 14 FOIA, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.

10. Amongst other things, the Commissioner’s guidance on section 14 FOIA states that it is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. The Guidance also states that:-

The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies.

11. The approach to vexatiousness is based mainly around the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC). The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in *Dransfield* when it defined the purpose of section 14 as follows:

‘Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen’s right under Section 1(1)...The purpose of Section 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...’ (paragraph10).

12. Also in *Dransfield*, the UT took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question as to whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. As the UT observed:-

‘There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA’.

13. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed at paragraph 68 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... The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.”

14. The more recent UT case of *Cabinet Office v Information Commissioner v Ashton* [2018] UKUT 208 (AAC) made clear that s14(1) FOIA can apply purely on the basis of the burden placed on the public authority, even where there was a public interest in the request being addressed and where there was a ‘reasonable foundation’ for the request.
15. The case also confirmed the approach in *Dransfield* to the effect that the Tribunal should take a holistic approach, taking into account all the relevant factors, in order to reach a balanced conclusion as whether a particular request is vexatious: see especially paragraph 27 of the UT judgment in *Ashton*.
16. Further, the Commissioner has identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:-

- Abusive or aggressive language
- Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence

- Frequent or overlapping requests
- Deliberate intention to cause annoyance

THE DECISION NOTICE

17. The Commissioner's decision notice is dated 15 April 2021. The Commissioner records that Appellant was of the view that the requests to seek information were in the public interest, and that this was particularly so in relation to those requests relating to child sexual exploitation, to which he considers the Council has attempted to subdue or hide related information. In relation to the Council the Commissioner records that:-

12. The Council considers that the requests represent an ongoing pattern whereby requests are made to raise the profile of the complainant's various allegations of bias and corruption against council officers and councillors. These allegations have been contained in correspondence with the Council, and publicly on social media platforms such as Twitter, Patreon, and on the complainant's own website. The Council further considers that, on these platforms, the complainant has evidenced an ongoing grudge against the Labour Party, councillors, and the trustees of Oldham Central Mosque.

13. The Council has referred the Commissioner to the previous requests made by the complainant on whatdotheyknow.com, and specifically those made on 18 May 2019, 18 May 2019, 5 July 2019, and the subsequent generation of further requests and correspondence following the Council providing responses under the FOIA. The Council considers that compliance with the requests refused under section 14 would generate further such requests and correspondence.

14. The Council has also referred the Commissioner to specific actions (including a Greater Manchester [police] commissioned 'Independent Review') that it has taken in response to historic failings by the Council in respect of safeguarding duties and child sexual exploitation. The Council has explained that whilst the Independent Review has attempted to engage with the complainant in respect of specific allegations that he has made (and evidence that he claims to hold), it has struggled to gain engagement. The Council asserts that it is committed to supporting the Independent Review, and that this was a factor in its decision to not apply section 14(1) at an earlier stage to the requests as they were being submitted.

18. The Commissioner specifically recognised that the issues raised by the Appellant are

likely to relate to matters of public interest, and that it is important that such matters are subject to appropriate transparency by public authorities. The Commissioner states that the phrasing and contents of the requests 'are likely to cause significant difficulties for the Council to issue responses under the terms of the FOIA'. This is because a significant number of the requests 'do not clearly seek recorded information that may be held by the Council, but rather, ask the Council to provide statements that confirm either the complainant's understanding of a subject, or whether a certain event has occurred' (paragraph 18).

19. The Commissioner states, therefore, that responding will be burdensome for the Council as it would need to provide extensive advice and assistance to the Appellant (under the duty imposed by section 16 FOIA) to clarify what, if any, recorded information is sought. The Commissioner makes two further points. The first is that she considers that 'the provision of responses under the FOIA would be highly likely to generate further requests and related correspondence, which would of necessity, require further public resources to be expended'. The second is that, as three of the requests were made on a single day 'it is reasonable for the Commissioner to interpret this action as having been taken to knowingly place a burden upon the Council' (paragraph 24).

20. The conclusions of the Commissioner are as follows:-

26 ...the evidence available to the Commissioner indicates that the complainant is failing to use the rights provided by the FOIA responsibly. The phrasing and content of the correspondence suggests that the intent of the requests is not simply to seek access to official information, but to raise and pursue various allegations in a public manner.

27. The Commissioner emphasises that the purpose of the FOIA is to provide a public access regime to official information; should a requestor hold concerns about the actions undertaken by a public authority, this should be escalated through the proper processes, e.g. the authority's complaints process or the appropriate review body.

28. Having considered the purpose and value of the requests, the Commissioner is also not satisfied that the burden placed upon the Council – in attempting to comply with its duties under the FOIA – would be justified.

THE APPEAL

21. The Appellant filed an appeal dated 13 May 2021 and makes the following points:-

- (a) The Council does not like what the Appellant does with the information the Appellant obtains, but the Commissioner has not addressed this point.
- (b) The Commissioner was wrong to categorise the requests as requests for statements, and each request should be considered individually.
- (c) If the requests did not clearly request information then the Council should have contacted the Appellant to provide him with advice.
- (d) The fact that there may be other bodies to contact does not impact on the Appellant's right to request information under FOIA.
- (e) It is pure conjecture that responding to these requests will lead to further requests.
- (f) The Appellant did not 'knowingly' place a burden on the Council.
- (g) There is nothing wrong with using responses to FOIA requests to pursue other matters in public.

22. In her response to the appeal, the Commissioner supports the conclusions in the decision notice. She denied that the reason s14 FOIA was relied upon was because the Council did not like what the Appellant did with information. She highlighted that, as stated in *Dransfield* in the UT (para 29), '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', and that (para 10) 'the purpose of section 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'. The Appellant has filed a skeleton argument on 1 September 2021 which provides more background to his various requests. He also stated that:-

- I also intend to call witness who will confirm;
- my FOI's are in the public interest
- that they had similar FOI's fulfilled and that the only visible difference between their requests and mine was my ethnic background

- that the only distinguishable difference between my and their FOI requests is our ethnic background.

THE HEARING

23. Before the hearing the Appellant provided the names of the witnesses he intended to call. The Tribunal noticed that no directions had been given about the filing of witness statements or the calling of witnesses. The Tribunal gave directions for summaries of evidence to be filed and the Appellant helpfully managed to do this before the hearing. In the end the Tribunal did not need to admit the witness statements or hear from the witnesses to decide the appeal.
24. At the appeal hearing, the Commissioner did not appear, relying upon what had been submitted in writing. The Tribunal informed the Appellant, that having considered the submissions made by both parties in writing it was of the view that the appeal should succeed as s14 FOIA had been wrongly applied to these requests and that reasons in writing would follow shortly.

DISCUSSION AND REASONS

25. It is true that the requests made the Appellant may not all qualify as requests for information under FOIA. It would be a matter for the Council to decide which of the requests qualify under FOIA and which do not, no doubt applying the Commissioner's guidance (as set out above) that the bar as to what qualifies is a low one to ascertain whether a particular request 'still describes distinguishing characteristics of the information'. It seems to us that many of the requests made by the Appellant are very similar to the examples given by the Commissioner. We are surprised that the Commissioner has not referred to and applied her own guidance in this case.
26. We also note that the Commissioner has not said that responding to the requests (once identified) would be burdensome, but has merely asserted that the initial process of extracting valid FOIA requests from the Appellant's correspondence will be burdensome without explaining why this would be the case. It does not seem to

us that the task is particularly burdensome at all. For example, Correspondence 2 is the longest set of questions asked by the Appellant, but essentially what it requires the Council to do (to comply with the Commissioner's own guidance) is to couch the requests into what might be called 'FOIA language'.

27. Thus the first three questions in Correspondence 2 are these:-

1. When planning was approved, was the Council aware that [redacted name] was brother and business partner of Cllr [redacted name]?
2. When the land was sold to FIRST CHOICE PROPERTY INVESTMENTS, was the Council aware that the Director of the company, [redacted name], was brother and business partner of Cllr [redacted name]?
3. Was Cllr [redacted name] in any way involved in the sale of the land or the approval of planning permission?

28. It would only take a short time to convert these to the following as advised by the guidance:-

Any information held by the Council indicating that:-

1. When planning was approved, it was aware that [redacted name] was brother and business partner of Cllr [redacted name].
2. When the land was sold to FIRST CHOICE PROPERTY INVESTMENTS, it was aware that the Director of the company was brother and business partner of Cllr [redacted name].
3. It was aware that Cllr [redacted name] was in any way involved in the sale of the land or the approval of planning permission

29. We cannot predict how the Council would respond to such requests as formulated in this way. For example, to some of these requests it may be that the Council does not hold any information. However, we are of the view that it has not been established that the work required just to reformulate the requests is so burdensome as to make the requests vexatious.

30. Next, the Commissioner is concerned that any responses to these requests is likely to generate further requests and related correspondence. There is some evidence that the Appellant is persistent in relation to the matters that he is concerned about, and he has made a number of FOI requests in a short period. But in our view, there is

insufficient evidence, at this point of ‘unreasonable persistence’ so as to make the requests vexatious. That does not, of course, rule out the Council relying on s14 FOIA in the future if the burden of additional requests and correspondence does become excessive.

31. We also cannot agree with the Commissioner’s conclusion that it is reasonable for her to conclude that because there were three requests in one day that the Appellant has taken that action ‘knowingly’ to place a burden on the Council. It seems to us that the Appellant has genuine reasons for seeking information and is not making requests simply to create more work for the Council, as the Commissioner’s finding implies.
32. We are also concerned about the Commissioner’s conclusions at paragraphs 26-28 of the decision notice that ‘the intent of the requests is not simply to seek access to official information’. It seems to us that in many cases requesters must seek information so that they can make specific use of it. One only needs to think about journalists who frequently use FOIA requests, not ‘simply to seek access to official information’, but so they can use the fruits of their requests to write stories or produce documentaries for which they will be paid. Campaigning organisations (and individuals) also use FOI requests to obtain information which they hope will further their aims. Neither journalists nor campaigners are told that their requests are vexatious simply because of this.
33. We concur with the Commissioner that in certain circumstances, addressing a FOIA request to authority A where authority B would be more appropriate, could form part of the assessment for whether s14 FOIA applies. However, we do not agree with the Commissioner’s conclusion that if a requestor holds ‘concerns about the actions undertaken by a public authority’ then it is not appropriate (and vexatious) to make a FOIA request, and the matter should be escalated by a complaints process or through a review body. It seems to us that a FOIA request can often be a first port of call for a requestor who is unsure whether their grievance against a public authority is well founded, and/or that a requestor is entitled to make a FOIA request at the same time as pursuing other remedies.

34. Having made these criticisms of the Commissioner's approach we do accept that we need to look holistically at the request to reach a conclusion as to whether the requests are vexatious and that will mean looking at the points made by the Commissioner cumulatively rather than just individually.
35. In doing so we note that the Commissioner accepted that the requests relate to matters of public interest, and that it is important that such matters are subject to appropriate transparency by public authorities. Thus it is accepted by the Commissioner that the requests have value. It does not seem to us, on the evidence before us, that a combination of (a) the burden caused to the Council in having assist in formulating the requests, (b) the request history (and associated correspondence) of the Appellant, (c) his motivations in making the requests, and (d) the availability of other remedies is sufficient in all the circumstances to make the requests vexatious. We note that although reference has been made in the paperwork to some aggressive or abusive behaviour by the Appellant, no details or evidence has been provided to us about this.
36. As already stated, our decision does not mean that the Council would necessarily be unsuccessful in relying on s14 FOIA if further requests are made by the Appellant in pursuing these or other issues. As the case-law set out above demonstrates, the decision on each FOIA request has to take all the circumstances in relation to that particular request into account, when considering whether it is vexatious.
37. We are also aware that, although the Council's response to the Appellant described the requests as 'vexatious', in correspondence with the Commissioner on 9 September 2020 the Council repeatedly describes the Appellant himself as 'vexatious', which is not an issue about which s14 FOIA is concerned.

CONCLUSION

38. On that basis, we would allow this appeal. We substitute a decision notice in the terms set out above in this decision and require the Council, to whom a copy of this decision must be sent, to respond to the Appellant's requests by 12 November 2021.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 12 October 2021.

Promulgated: 14 October 2021

Appendix A

On 13 October 2019, Appellant submitted Correspondence 1:-

1. You claim that [redacted name]'s declaration was updated on the 30th April 2019. You are fully aware that this was during purdah. Please provide me with both OMBC guidelines for publishing during purdah and also OMBC policy for purdah.
2. You refuse to answer my questions regarding [redacted name]. You confirm I asked the following.
 - Did [redacted name] do this with the authority of Oldham Council?
 - Was this an official response from Oldham Council or had [redacted name] hijacked the Council log in details and used them for her own ends?
3. You are by now no doubt aware that having allegedly made her declaration of Directorship of GELATO's ICE LOUNGE to Oldham Council on 30th April 2019, Deputy Leader of Oldham Council, Cllr [redacted name], has now amended records at Companies House and backdated her resignation there to 1st February 2018. Can you confirm that you have investigated this anomaly and/or referred the matter to the Police for fraud?

On 12 November 2019, the Appellant submitted Correspondence 2:-

On the 5th June 2019, Oldham Council's Planning Committee approved 'Land to east of Alexandra Centre Retail Park' to be approved for a proposed soccer centre. The application was made by FIRST CHOICE PROPERTY INVESTMENTS. The applicant [redacted name] even attended the planning meeting and addressed the Committee. There are no notes from the minutes of the Committee that declare that [redacted name] as either Cllr [redacted name]'s brother or business partner.

A previous FOI has gleamed some information on the sale of this land to Cllr [redacted name]'s brother and Business Partner.

Can Oldham Council please now confirm

1. When planning was approved, was the Council aware that [redacted name] was brother and business partner of Cllr [redacted name]?
2. When the land was sold to FIRST CHOICE PROPERTY INVESTMENTS, was the Council aware that the Director of the company, [redacted name], was brother and business partner of Cllr [redacted name]?
3. Was Cllr [redacted name] in any way involved in the sale of the land or the approval of planning permission?

4. You claim that a total of 6 bids were received. Can you confirm if the 6 bids were from 6 different sources? If not how many multiple bids were there from the same sources?
5. Can you confirm that FIRST CHOICE PROPERTY INVESTMENTS submitted the highest bid?
6. Can you confirm that FIRST CHOICE PROPERTY INVESTMENTS bid was received before the advertised deadline?
7. Can you confirm that due diligence was carried out with FIRST CHOICE PROPERTY INVESTMENTS to confirm that they had proof of funds to purchase the land and also to develop it as per their proposals?
8. Can you confirm how market value was determined for the land and what this market value was?
9. Can you confirm the amount of the successful bid? If not, because you are still in negotiations etc, can you confirm if the accepted bid was above or below the market value that the Council had determined prior to placing the land on the market?
10. Can you confirm if there have been any complaints received regarding the sale of this land from party's that for instance claim that they submitted a bid that was subsequently lost?
11. Can you confirm if Oldham Council has sold any other plots and/or buildings to any company associated with [redacted name]? If so please provide the details.

On 17 December 2019, the Appellant submitted Correspondence 3:

At the General Election Count, Oldham Council split the votes cast in to 18 tables. Each table clustered various areas. Could you please confirm - how this clustering was determined (was it by ward or some other method) and the name, if any you gave to each of these 18 clusters

- the total verified number of votes per table
- the total number of votes per table that were cast in the ballot box
- the total number of votes per table that were cast by postal vote or all other means
- a breakdown per candidate, per table, the number of votes each received by ballot box candidate received by postal vote or all other means

On 17 December 2019, the Appellant submitted Correspondence 4:

[redacted name] represented Shaw Ward for 25 years before resigning on the 9th December 2017.

- Please confirm if Oldham Council was aware of any investigation in to Cllr [redacted name] prior to his resignation. I don't need the details, just a simple yes or no please

- Please confirm if Cllr [redacted name]'s Council laptop and other digital devices were removed from him prior to his resignation. If they were by who.
- Please confirm if Oldham Council issued any statement to the public regarding Cllr [redacted name]'s resignation
- Please confirm if Oldham Council undertook any reviews, checks or investigations of any kind following Cllr [redacted name]'s resignations and if so what these were.

On 17 December 2019, the Appellant submitted Correspondence 5:-

Alarmed Oldham parents first found out that [redacted name] was convicted for sexually assaulting children after reading newspaper reports. Though his convictions were associated to a school outside Oldham, they read horrified over how this paedophile primary school teacher had called girls 'darling' and 'sweetheart' before sexually assaulting them inside classrooms and the school canteen.

Unfortunately, since the newspaper reports, evidence has emerged that [redacted name] taught in at least one school in Oldham, South Failsworth Primary. As an agency worker, the likelihood is that he also worked in other Oldham schools.

Please provide details of

- all Oldham Schools in which this paedophile worked directly and/or through an agency
- the dates that he worked in each school

Please also confirm details of what, if any, investigations have taken place in these schools to determine if [redacted name] also abused children whilst he was there.

On 27 January 2020, the Appellant submitted Correspondence 6:-

I request the following information regarding Oldham Council's expenditure specifically with the following publications

- The Oldham Evening Chronicle
- The Oldham Times

I request this expenditure is broken down as follows

- During the period that [redacted name] was Leader of Oldham Council, what was the year on year spend with each of these publications and the total amount spent whilst he was leader?
- During the period that [redacted name] was Leader of Oldham Council, what was the year on year spend with each of these publications and the total amount spent whilst she was leader?
- During the period that [redacted name] has been Leader of Oldham Council, what was the year on year spend with each of these publications and the total amount spent whilst he was leader?

- Please also confirm the details of staff that you have recruited from either publication on a freelance or permanent position in to the Council. Specifically, times and dates of appointments and also for freelance/consultancy roles, the amount spent on each occasion.