



NCN: [2022] UKFTT 00339 (GRC)

Appeal Number: EA/2021/0256

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

Between:

Philip Swift

Appellant:

And

The Information Commissioner

First Respondent:

National Highways

Second Respondent

Date and type of Hearing: - Hearing on the papers on 28 July 2022.

Panel: Brian Kennedy KC, Marion Saunders, and Paul Taylor.

Date of Decision: - 16 September 2022.

Result: The Tribunal refuses the Appeal.

REASONS

Introduction:

- [1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“DN”) dated 13 September 2021 (reference IC-68339-C5N6), which is a matter of public record.

Factual Background to this Appeal:

- [2] Full details of the background to this appeal and the Commissioner’s decision are set out in the DN and not repeated here, other than to state that, in brief, the appeal concerns a request made to National Highways and their reliance on section 14(1) of the FOIA to refuse the request.

History and Chronology:

- [3] On 28 August 2020, the Appellant made the following request for information under the FOIA –

*“I refer to my request at DCP rates & Their Description
<https://www.whatdotheyknow.com/request/d...>*

In respect of which I await the outcome of the IR in respect of the 14/08/2020 response.

The following results form (sic) the response and mindful your Authority has a habit of considering such clarification or explanation a new request, I have commenced this new submission / thread as to not confuse. With regard to ‘DCP rates & Their Description’, you state

‘In compliance with a Court order for disclosure, the information released by Kier and their representatives in relation to these cases is the Pricing Schedules to the Area 3 contract in an unredacted form.’

You explain this is the 'confidential' information, also referred to as 'ASC Rates'. I am not seeking and have never sought this schedule of rates. The following should be addressed by my IR request:

Your General Counsel has more recently acknowledged that, contrary to previous statements the ASC schedule is the only schedule of costs, there exists at least one other schedule of rates, a price list that has thus far been withheld and is claimed to be unavailable. This schedule of DCP rates features in claims before the S Wales Court yet, by reference to your response, was not disclosed to the Court and/or legal representatives for the defendant.

Your General Counsel acknowledged that the reference I presented was, in fact, a schedule of rates, within 2 days of my disclosure - <http://www.englandhighways.co.uk/200430-...> . I then presented further similar examples of schedules of rates utilised by Kier These further references were from the same source as the first and therefore also likely to be accurate.

Your General Counsel wrote 08/07/2020 ' We are looking into the existence or otherwise of the document Area 9 DCP 35010.' I did not receive an update as promptly (within 2 days) and despite this assurance enquiries were in hand and an FOIA request for information relating to said references, I have yet to receive further comment or information about same.

Please:

- A. list all schedules of rates relating to DCP works held by Highways England or Kier Highways Ltd since 01/07/2014 and*
- B. which are still held*
- C. which were disposed of and on what date*
- D. why they were disposed of and why copies cannot be recovered*
- E. explain why these were not disclosed to the S. Wales Court*
- F. provide the exchanges between Highways England and Kier to locate the various schedules and*

G. *provide the explanation supplied for the disposal of all or any when:*

1. *you are aware of the interest in rates and have been since 2013*
2. *matters involving said schedules were and are before the Court*
3. *there is a need to retain such information, if only for accounting purposes*
4. *the schedules were being used in or after 2019 i.e. recently (you have failed to state when the acknowledged schedule was said to have been deleted)*
5. *the schedules are electronic i.e. it is reasonable for them to be retained or be recoverable*
6. *in accordance with a Tribunal Ruling, these rates were to be disclosed ~ - 13/12/2018 – APPEAL: EA/2018/0088 04/10/2019*

E. if and schedules have been disposed, please describe all attempts to recover a copy

With regard to the 04/10/2019 finding, dismissing your appeal (EA/2018/0088), I again ask to be provided the rates that were to be released i.e. that you comply with the Tribunal finding.”

- [4] Highways England replied on 28 September 2020, refusing to respond to the request and citing section 14(1) FOIA. It stated that it had previously repeatedly addressed issues concerning the provision of schedules of rates held for damage repair work. It also referred to an Information Rights Tribunal decision dated, 12 December 2019, that found that no such schedule of rates was held. Additionally, Highways England said that the complainant had previously requested information disclosed to Cardiff County Court and that he had received a full response to this.
- [5] The Appellant asked for an internal review on the same day.
- [6] Highways England provided an internal review on 26 October 2020 in which it maintained its original position, that the request was vexatious.

[7] The Appellant complained to the Commissioner. By her DN dated 13 September 2021, the Commissioner upheld National Highway's refusal to comply with the Request. The Appellant subsequently appealed the DN to the Tribunal.

Relevant Law:

S1 FOIA General right of access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled —
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

S14 FOIA 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.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach, in this case, was subsequently upheld in the Court of Appeal. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. Dransfield also considered four broad issues in paragraph [45]:

“(1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.”

In *Craven v ICO & Department for Energy and Climate Change* [2015] EWCA Civ 454 the Court of Appeal accepted *“there is no warrant for reading section 14 FOIA as subject to some express or implied qualification that a request cannot be vexatious in part because of, or solely because of, the costs of complying with the current request.”* at [85].

In *Cabinet Office v Information Commissioner and Ashton* [2018] UKUT 208 (AAC), in which the Upper Tribunal stated, having considered the relevant case law:

“The law is thus absolutely clear. The application of section 14 of FOIA requires a holistic assessment of all the circumstances. Section 14 may be invoked on the grounds of resources alone to show that a request is vexatious. A substantial public interest underlying the request for information does not necessarily trump a resources argument.”

In *CP v Information Commissioner* [2016] UKUT 0427 (AAC) the Upper Tribunal stated that:

“In this case and in others where past dealings are of relevance, I find that an appropriately detailed evidential foundation addressing the course of dealings between the requestor and the public authority is a necessary part of that assessment. A compendious and exhaustive chronology exhibiting numerous items of correspondence is not required but there must be some evidence,

particularly from the IC, about the past course of dealings between the requestor and the public authority which also explains and contextualises them". (at [34]).

Commissioner's Decision Notice:

- [8] In reaching her conclusion, the Commissioner noted that she is not considering whether the requested information is held or not held, though some of the history and context of what information is held by Highways England concerning this request is relevant to section 14 being cited. Although this is very much the issue for the Appellant, the Commissioner stated that she is only able to consider whether the request is vexatious.
- [9] Secondly, the Commissioner noted that the request is confusing and consequently the extent of its scope, is ill-defined. This can be problematic and the Commissioner recognised the sometimes-complex nature of the information being requested and the fact that she is not an expert in this field. Highways England should perhaps have tried to clarify the scope fully but it has had many requests over a long period of time from the complainant that lack focus in this way. However, she has taken a proportionate approach and, whilst there might be different interpretations of the request, the Commissioner believed that Highways England understood certain parts of the request and considered them vexatious.
- [10] Additionally, the Commissioner needed to consider the situation at the time the request was made. At the time the request was made, Highways England had repeatedly told the Appellant that it did not hold the rates he had requested. Subsequent to this request, it had been established that rates (people costs) were held for Area 9 and disclosed to the complainant but that there was nothing further to disclose. The Tribunal in EA/2019/0390 accepted that there was nothing equivalent in use in Area 10 though that did not form part of this request. Area 3 had been considered before this request and a Tribunal had decided that the requested rates were not held.

[11] In a sense, events have now superseded the request. It could be argued that a level of persistence meant that the Appellant had had information disclosed to him that it had been stated was 'not held'. It could also be argued that, although the Appellant had received the rates in relation to people costs were held before he made this request, the Tribunal had not yet made its decision and the outcome was still unknown. Nonetheless, both that appeal, and more recent appeals have characterised the complainant as "*overzealous and almost obsessive in his pursuit of Highways England over the issue*"

[12] The Commissioner concluded that the request has to be considered in its entirety. She might not have agreed with Highways England that the request was vexatious, had the request simply been for rates connected with Area 9 given the (at the time of the request) yet to be concluded Tribunal case. However, she accepted that the Appellant was unreasonably persistent and intransigent in requesting information about Area 3 where it had already been established in EA/2019/0119 that the information was not held, some eight months before the request was made.

Appellant's Grounds of Appeal:

[13] The Appellant's Grounds of Appeal ('the Grounds') are summarised as follows:

(a) DCP rates exist. The Appellant has had sight of certain schedules of rates, which negates any suggestion that they do not exist. In EA/2019/0390V, the Tribunal held that National Highways did hold a schedule of rates for "*people costs*" in respect of Area 9. During the course of the Cardiff Case, Kier indicated that it does hold such schedules and that it applies unauthorised uplifts to the prices that it charges to third parties.

(b) The Appellant is not vexatious. His admittedly tenacious conduct was required in the face of National Highway's repeated misrepresentations to the Commissioner that DCP Rates do not exist. The Appellant's persistence has secured the release of rate-related information which National Highways previously stated was not held.

(c) The Commissioner has shown improper favour to National Highways and failed adequately to investigate the Appellant's allegations of wrongdoing.

(d) Further, the Appellant seeks a review of National Highway's conduct.

The Commissioner's Response:

[14] The Commissioner resisted the appeal and relied on her DN for her findings. However, in response to the Appellant's Grounds of Appeal, the Commissioner made the following contentions.

[15] In considering this issue, the Commissioner stated that she is limited to considering whether the Request was vexatious at the time it was made. The Commissioner is therefore not able to determine whether schedules of DCP Rates are held by National Highways, nor matters relevant to the conduct of National Highways/Kier concerning the Cardiff Claim.

[16] At the time the Request was made, the Tribunal held: (i) - determined that no DCP Rates were held in respect of Area 3 (EA/2019/0019) but; (ii) not yet given judgment in EA/2019/039V, in which it found that a schedule of DCP rates relating to people costs was indeed held by National Highways about Area 9, but had not been disclosed. Had the Request been for rates related to Area 9 only, the Commissioner may not have agreed that it was vexatious, given that the Tribunal had, at that stage, yet to give judgment in EA/2019/0390V. To this extent, the Commissioner recognises that it may be arguable that the Appellant's persistence led to the disclosure of certain information which he considered he had requested previously but which had not been provided.

[17] On balance, however, and in line with its broad formulation, the Request should be considered in its entirety (i.e. as a request for schedules of DCP Rates in all Areas Operated by Kier, as opposed to as a request for such schedules in certain areas only). Accordingly, the Appellant had demonstrated an unreasonable level of persistence and intransigence (Guidance, §25 and §49)

in requesting DCP Rates for (inter alia) Area 3, given that the Tribunal had already established that no such Rates were held by National Highways. In this regard, it is also relevant that the Appellant has previously submitted an extremely high number of rate-related requests to National Highways. In EA/2019/0390V, the Tribunal described his general approach as being “*overzealous and almost obsessive in his pursuit of Highways England over the issue*” (§41).

[18] The Commissioner stated that she has not shown improper favour to National Highways. The Commissioner asserted that she gives full attention to every case before her. In any event, the Commissioner submitted that to the extent it is within the Tribunal's jurisdiction, the point falls away because the Tribunal will conduct a full merits review of the Appellant's appeal.

Appellant's Response:

[19] The Appellant requested spreadsheets, claiming that National Highways has deleted evidence and is refusing to explain further evidence.

[20] The Appellant contended that a set of rates (Area 3), issued in 2015 have been deleted, and queried who had the authority to do so. The Appellant argued that he has not yet received a response to his request for Area 9 rates. The Appellant stated that he is not vexatious and is not in the ‘business of challenging DCP-related claims’ but is in the business of resolving matters. The Appellant stated that he needs the information to be able to complete the charging methodology equation.

[21] The Appellant claimed that HHJ Harrison in the Cardiff Judgment made two statements in support of his allegations. Further, the Appellant said as of 21/08/2020 he has some of the DCP rates and evidence that third parties were overcharged.

[22] The Appellant contended that he lodged a formal complaint about the PA staff who allegedly misled him that the Cardiff Court claims were predicated by

Appendix A to Annex 23 process. The Appellant stated that he has made 57 requests and received the response 'held' and the response 'not held' when the Tribunal found for the Appellant.

- [23] The Appellant averred he has sought the assistance of the Commissioner to address the flawed DN's issued, the Tribunal outcomes that have resulted in the PA's 'oversight' and alleged file deletion. The Appellant argued that despite his requests from 2014, the PA on 08/2020 acknowledged that there are DCP rates. The appellant argued that throughout, the PA has had the support of the Commissioner, who accepted 'there are rates but they are commercially sensitive'. The Commissioner also agreed with the PA's 01/2019 position that 'there are no DCP rates'.
- [24] The Appellant argued that there are DCP rates and that the evidence before the Commissioner/Tribunal before 08/2020 was false. He contended the Commissioner did not review her submission, further that the Commissioner has a complaints process that is unsuitable for complicated matters such as this. The Appellant argued that decisions before 2019/0390 are tainted by the failure of the PA to disclose the DCP rates. He stated that his persistence has overcome the joint obstruction by the Commissioner and the PA working in unison and has led to the disclosure of 'DCP Rates'. The Appellant averred that the Commissioner, in their response (15/10/2021) appeared unable to bring themselves to use the term 'DCP rates'. In addition, the Appellant added concerning the Area 3 request the Commissioner's comment that *'the Tribunal had already established that no such Rates were held by National Highways'*. The Appellant believed that the commissioner is ignoring his requests for assistance. Further, he questioned why a Public Authority cannot be vexatious.

The Second Respondent's Submissions:

- [25] The Second Respondent contended the Appellant's request is vexatious and that there are a large number of overlapping requests. These matters have been addressed in several ways including DN's and Tribunal proceedings. The

Second Respondent argued that this issue has been extensive for independent members of the judiciary and Independent Authorities. The Second Respondent stated in EA/2019/0390 that the Tribunal considered Area 9 finding that there is nothing for the Second Respondent to provide.

- [26] The Second Respondent argued in EA/2019/0119, the Tribunal found that the Second Respondent did not hold a schedule of SDN rates for Area 3. The Second Respondent argued that the Appellant is aware of similar responses made to FOIA requests for the other areas covered by the request which confirms the request is futile. The Second Respondent averred that the Appellant has received a clear response to the question posed i.e. the Schedule of Rates does not exist.
- [27] The Second Respondent stated In continuing to respond to these requests, the Appellant demonstrates unreasonable persistence and refuses to accept that the information he seeks is not held. Further, the Tribunal has *found* “*there is a degree to which the Appellant has been overzealous and almost obsessive in his pursuit of the issue.*” [EA/2019/0390 §41]. The Second Respondent argued that the Appellant made several unfounded accusations about the Second Respondent’s behaviour. The request itself contains an unfounded accusation that the Second Respondent deleted information intentionally to prevent it from being disclosed.
- [28] In “*Reply to the ICO*”, the Appellant alleged that the Second Respondent “*has consistently misled him, the ICO and tribunals.*” [Reply to ICO, §10]. Again, it has been recognised that *this “must be very wearing and unpleasant for [NH] and its staff.”* [EA/2019/0390 §41] The Second Respondent contended that the burden on them is significant and many of the requests are repetitive. Each request requires review and analysis on the part of the Second Respondent with an assessment against the catalogue of previous requests, DNs and previous proceedings.
- [29] As recognised in the DN the Appellant’s “*characteristic approach*” is to provide a “great deal” of argument. [Decision Notice §36] It is not reasonable, or

proportionate, to spend public funds on this matter. The Second Respondent stated that whilst the Appellant's request was ongoing, the Second Respondent dealt with other requests from the month before (07/2020) as the Appellant lodged eight further FOIA requests. The Second Respondent argued it was correct for the Second Respondent, and the Commissioner, to consider the request as a whole, as opposed to applying the criteria for vexatiousness to each component of the Request. This is known as the Holistic consideration.

[30] The Second Respondent stated that the provision, in EA/2019/0390 of the notional people rates in Area 9, is not relevant. Further, the Tribunal specifically found, that despite these rates existing, they were for guidance only, and did not lead to a finding that there were other schedules of rates.

[31] The Tribunal held that "*the evidence was that no other aspect of the contracts relating to Area 9 has schedules such as those which set out people costs, such as the costs for plant or materials.*" (§45) The Second Respondent contended that the request strays beyond requesting information and is outside the scope of the FOIA. The Second Respondent argued that there is no purpose to the request and the Appellant pursues the request to prove his theories on overcharging.

[32] The Second Respondent stated that their position, accepted by the Commissioner and Tribunals, is that there is not a "schedule of rates". The Second Respondent stated both the Appellant and the Commissioner have indicated a paper hearing, however, the Second Respondent would request an oral hearing given the history of this matter. The Second Respondent invited the Tribunal to dismiss the appeal.

Witness Statement of Jonathan Drysdale:

[33] Jonathan Drysdale a Freedom of Information Officer at National Highways provided evidence to the Tribunal. He has been in the post since February 2019 and was previously an Environment Officer at the Environment Agency, which

he joined in July 2012. He stated that the request was received by National Highways on 28 August 2020. It arose out of a response to a request that had been issued on 14 August 2020, which had been answered in full on the same subject.

[34] National Highways decided to refuse the request under s. 14(1) FOIA. He carried out an internal review and upheld the decision. Mr Drysdale explained the reasons for that in his response to the Appellant dated 26 October 2020 [JD1/pp. 81-82]. The Appellant complained to the Information Commissioner and the ICO investigated. Mr Drysdale's responses to the ICO dated 8 July 2021 and 31 August 2021 set out in more detail the reasoning behind the refusal and the reliance on s. 14(1).

[35] The request was once again concerned with the subject of rates/costs of DCP repairs. In light of the history of the Appellant's requests, the information provided to him on this subject over the years, and the appeals in EA/2018/0104 (Area 10) and EA/2019/0119 (Area 3), which Mr Drysdale understand involved the Tribunal hearing detailed evidence and reaching decisions about what rates were held and what rates were commercially sensitive, Mr Drysdale felt that the request was largely going over old ground. He was not involved in those appeals, but he read the decisions and spoke to colleagues who were involved. Mr Drysdale took the view that the request was therefore unreasonably persistent and that it was also intransigent based on the Appellant's entrenched position that something must be held.

Further Witness Statement of Jonathan Drysdale:

[36] Mr Drysdale stated that during the 17 June 2022 hearing for Appeal EA/2021/0297, which was also concerned with information about a schedule of rates (albeit put in the form of a request for averaged rates based on a witness statement made by Brian Read, National Highways, and considered both in

EA/2019/0390V and EA/2021/0082) the Appellant commented that he now acknowledges that there were no schedules or lists of DCP rates held.

[37] The request in this appeal is based on information that the Appellant appears to accept that there are no schedules of DCP rates. Despite this, he has not withdrawn this appeal. Mr Drysdale stated that since he made his first statement, he has received seven new FOI requests from the Appellant. Five of these requests have also been followed by a subsequent request for an internal review. At least 3 of the requests relate to the withdrawal of EA/2021/0257 and one is a very similar request to request EA/2021/0257 but about Area 3.

The Appellant's Final Submission:

[38] The Appellant seeks the 'schedules' of DCP rates'. On 57 occasions he argued that National Highways stated they existed but on 01/2019 the appellant alleged that the National Highways informed him that they were non-existent. The Appellant contended that the history of his requests should not be criticised and maintained that he has only ever reacted to the behaviour of National Highways.

[39] He claimed that the schedule of rates ('Area 3') existed at a time National Highways claimed it was 'not held'. Further, the Appellant argued that the 'Area 9' schedule was 'live', and in use despite National Highways disputing this. The Appellant claimed that the National Highways informed him that the rates were 'held but sensitive'.

[40] The Appellant stated that previous conversations with National Highways demonstrate their failings. The Appellant argued that his request cannot be based on supposition, but it is rooted in documented fact and National Highways admission.

[41] The Appellant stated that National Highways is attempting to display his request as vexatious and disputed that this is procedural impropriety on behalf of

National Highways. The Appellant stated that requests before 08/2018 were considered, addressed and found not to be vexatious.

- [42] The Appellant argued that the request is based upon specific knowledge and evidence. Further, the request is based upon new information that emerged in 2020. The appellant averred that National Highways acknowledged a 'SCHEDULE' of 'RATES' and the location of which could also be identified.
- [43] The Appellant stated that these files were destroyed by National Highways when he sought the information. He stated that the files were held by named parties who had access to the same. The Appellant named an employee, whom he claimed held the information.
- [44] The Appellant claimed that he was made aware of an individual who had seemingly disposed of the information he sought. The appellant queried this on 21/05/2020 and Tim Reardon replied stating that he could *'provide no more information relating to the 2015 list of plant rates beyond what I set out to you in my email of 30 April'*. Following this, an update on Area 9 was requested. The Appellant averred he was informed that National Highways was investigating the existence of the document Area 9 DCP 35010. The Appellant claimed he had no further correspondence from National Highways.
- [45] The Appellant argued that on 07/2018, National Highways was aware of what he was seeking as an National Highways statement for FTT 2018/0088 concerning requests from 2013 to 20/07/2018, explained: *'I believe that the majority of Mr Swift's requests relate to a specific issue or related issues, namely the rates that contractors charge third parties for the costs of repairing damage to highways resulting from accidents/negligence under Asset Support Contracts'*.
- [46] The Appellant averred that the 'xls' files are indisputable evidence these non-existent rates used to charge third parties for costs of repairing damage to highways do exist. The Appellant claimed that the request is not vexatious, the conduct of National Highways is, however FOIA makes no provision for this.

The Second Respondent's Final Submission:

- [47] The Second Respondent claimed that the request is both lengthy and complex. The Second Respondent suggested that many of the previous requests from the Appellant are of a similar format. The Second Respondent contended that the Appellant made numerous requests which made it difficult to keep track of and respond to.
- [48] The Second Respondent argued that the Commissioner also spends a significant amount of time corresponding with the Appellant. The Second Respondent stated that it is not reasonable or proportionate to spend public funds on the Appellant's requests.
- [49] The Second Respondent claimed that the burden is compounded once the history of the Appellant's requests is taken into account. While the Appellant's request was ongoing, the Second Respondent had other requests to respond to. For example, in July 2020, the month before this request was made, the Appellant made eight FOIA requests. The Second Respondent stated that It was correct to consider the request as a whole, rather than applying the criteria for vexatiousness to each component. The Holistic approach.
- [50] The Second Respondent argued that the Appellant's request has no reasonable foundation. The provision, in EA/2019/0390 of the notional people rates in Area 9, does not weigh in favour of the request not being vexatious. The Tribunal specifically found, that despite these rates existing, they were for guidance only, and did not lead to a finding that there were other schedules of rates.
- [51] The Tribunal found: *that "the evidence was that no other aspect of the contracts relating to Area 9 has schedules such as those which set out people costs, such as the costs for plant or materials."*
- [52] The Second Respondent claimed that the Appellant has this evidence, including the explanation as to why this process arose in Area 9 at the time of

the request. The Second Respondent argued that the request is outside the scope of FOIA.

[53] The Second Respondent averred that the Appellant pursued the request to prove his theories on overcharging, which he says would be proven by a schedule of rates. The Second Respondent contended that the Appellant's position is wholly entrenched despite the numerous reasonable explanations he has been offered as to why there is no such schedule of rates.

[54] The Second Respondent argued there is not a "schedule of rates". The Second Respondent disputed that there is no basis for a finding that the request has the serious purpose of uncovering dishonest overcharging.

[55] The Second Respondent stated that the Appellant's request is futile and a detailed explanation was provided to explain why the 'schedule of rates' does not exist. These explanations have been accepted by the Commissioner and the Tribunal. The Second Respondent invited the Tribunal to dismiss the appeal.

Conclusions:

[32] The Appellant has failed to persuade us, or provide evidence, to support his derogatory comments against the Respondents and we cannot uphold those allegations, which we find support our holistic assessment of the impugned request as being vexatious. The Tribunal again recognise and accept that the remedy sought by the Appellant in relation to reform of, or the conduct as complained of in relation to the Public Authority is not within our jurisdiction.

[33] The Appellant believes he has been wrongly labelled "vexatious". It is important to note that when considering the exemption provided by s.14 (1), it is the request, which is regarded as vexatious, rather than the Appellant. We accept the DN finding that the impugned request is vexatious in the wider and descriptive terms recognised by the leading authorities.

[34] In all the circumstances and for the reasons above we unanimously find the request to be vexatious and find the DN was in accordance with the law and have not been persuaded that it erred on its assessment of the factual matrix pertaining, nor did the DN err to the extent that the notice involved an exercise of discretion by the Commissioner. We are not persuaded that there are sufficient grounds to establish that the Respondent ought to have exercised her discretion differently

[35] Accordingly, we dismiss this appeal.

Brian Kennedy KC

16th September 2022.

Promulgation date : 20th September 2022.