



NCN: [2022] UKFTT 00386 (GRC)
Case Reference: EA/2021/0258

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

Heard by: determination on the papers

**Heard on: 23 September 2022
Decision given on: 27 October 2022**

Before

**TRIBUNAL JUDGE STEPHEN ROPER
TRIBUNAL MEMBER MARION SAUNDERS
TRIBUNAL MEMBER SUZANNE COSGRAVE**

Between

SEAN LAVERTY

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Dismissed

REASONS

Preliminary matters

1. In this decision, we use the following abbreviations to denote the meanings shown:

Commissioner: The Information Commissioner.

Council: Mid and East Antrim Borough Council.

Decision Notice: The Decision Notice of the Information Commissioner dated 16 August 2021, reference IC-49485-R5H4, relating to the Requests.

FOIA: The Freedom of Information Act 2000.

Requests: The requests for information under FOIA made by the Appellant dated 26 February 2020, as referred to in paragraphs 9 to 15 (inclusive).

Tribunal Rules: The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

2. We refer to the Information Commissioner as ‘she’ and ‘her’ to reflect the fact that the Information Commissioner was Elizabeth Denham CBE at the time of the Requests and the Decision Notice, whilst acknowledging that the Information Commissioner is John Edwards at the time of the hearing and this decision.
3. Unless the context otherwise requires (or as otherwise expressly stated), references to numbered paragraphs are to paragraphs of this decision so numbered.

Introduction

4. This is an appeal against the Decision Notice, which held that the Council was entitled to consider that the Requests were vexatious and accordingly was entitled to rely on section 14(1) of FOIA in refusing to provide the information requested in the Requests.
5. The Decision Notice did not require the Council to take any steps.

Mode of Hearing

6. The parties consented to this appeal being determined by the Tribunal without a hearing.
7. The Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of the Tribunal Rules and was satisfied that it was fair and just to conduct the hearing in this way.

Background to the appeal

8. The background to this appeal is as follows.

The Requests

9. On 26 February 2020, the Appellant sent an email to the Council, requesting the following information:

“Under the Freedom of Information Act I would like Council to provide full details of the following, for the period 1 April 2017 to 31 March 2018:

Please provide full details of all Procurement activity (procurement spend, contracts arranged) arranged or conducted by the Head of Service (HoS) that has not been conducted or managed by the Procurement Team below the HoS.

If there was no Procurement Activity conducted/arranged outside of the Procurement Team

below the HoS then answer “All Procurement contract/spend activity arranged/conducted via the Procurement Team below the HoS within Mid & East Antrim Council”.

If there was procurement activity conducted/arranged outside of the Procurement Team below the HoS then, please provide the following:

Name of the Procurement activity (Procurement spend or name of contract)

Details what the Procurement Activity was for

The indicative budget for the procurement / amount being spent (not the contract value)

Date(s) the procurement was for, from & to

The name(s) of the contractor the contract(s) was awarded to

Details of how the procurement(s) were agreed. For example Date of Senior Management Team meeting or Date of Council Committee meeting

Details why the procurement(s) were not managed by the Procurement Team

Position name that arranged / conducted the Procurement activity, e.g. Head of ICT and Procurement”.

10. On 26 February 2020, the Appellant sent an email to the Council, requesting the same information as set out in paragraph 9, but for the period 1 April 2018 to 31 March 2019.
11. On 26 February 2020, the Appellant sent an email to the Council, requesting the same information as set out in paragraph 9, but for the period “1 April 2019 to date/ 31 Jan 2020”.
12. On 26 February 2020, the Appellant sent an email to the Council, requesting the following information:

“Under the Freedom of Information Act I would like Council to provide full details of the following, for the period 1 April 2017 to 31 March 2018:

Please provide full details of all Information Technology (IT) activity (IT spend, contracts arranged) arranged or conducted by the Head of Service (HoS) that has not been conducted or managed by the IT Team below the HoS.

If there was no IT Activity conducted/arranged outside of the IT Team below the HoS then answer “All IT Contract/Spend activity arranged/conducted via the IT Team below the HoS within Mid & East Antrim Council”.

If there was IT activity conducted/arranged outside of the IT Team below the HoS then, please provide the following:

Name of the IT activity (IT spend or name of contract) Details what the IT Activity was for

The indicative budget for the IT activity / amount being spent (not the contract value)

Date(s) the IT activity was for, from & to

The name(s) of the contractor the contract(s) was awarded to

Details of how the IT activity was agreed. For example Date of Senior Management Team meeting or Date of Council Committee meeting

Details why the IT activity was not managed by the IT Team

Position name that arranged / conducted the IT activity, e.g. Head of ICT and Procurement”.

13. On 26 February 2020, the Appellant sent an email to the Council, requesting the same information as set out in paragraph 12, but for the period 1 April 2018 to 31 March 2019.
14. On 26 February 2020, the Appellant sent an email to the Council, requesting the same information as set out in paragraph 12, but for the period “1 April 2019 to date/31 January 2020”.
15. On 26 February 2020, the Appellant sent an email to the Council, requesting the following information:

“Under the Freedom of Information Act I would like Council to provide full details of the following, for the periods 1 April 2017 to 31 March 2018, 1 April 2018 to 31 March 2019 and 1 April 2019 to-date / 31 Jan 2020:

Please provide full details of all Press Office / Communications Team spend, showing:

Internal Staff numbers and staff costs. Internal Non-Staff costs.

External / procured staff numbers and staff costs. External / procured non-staff costs.

Any other related costs should be provided and explained.

If costs have increased by more than 10% please justify the reason(s) for the increased costs / staff numbers”.

16. The Requests therefore comprised a total of seven separate requests, each sent by the Appellant to the Council by email on 26 February 2020.

The Council’s reply and subsequent review

17. The Council responded to the Requests on 13 March 2020, separately addressing each of the seven emails comprising the Requests and giving each a separate reference number.
18. In each case, the Council refused to provide the requested information, citing section 14(1) of FOIA as its basis for doing so. The Council stated that it was of the opinion that each request, in addition to previous requests, was “*part of a wider campaign against Council*” (sic).
19. The Appellant contacted the Council on 23 March 2020 requesting an internal review

of each of the Council's responses.

20. Following an internal review, the Council wrote to the Appellant on 23 July 2020, maintaining its view that all of the seven Requests were vexatious.
21. The Appellant contacted the Commissioner on 6 August 2020 to complain about the Council's responses to the Requests. The Appellant disagreed with the Council's refusal to provide the requested information. He considered that the Council should provide the requested information to ensure transparency over how public money has been spent, to ensure compliance with the 'Nolan principles' (otherwise known as the 'Seven Principles of Public Life') and to ensure good governance. He also stated that not answering the Requests "*would lead an average person to assume that the Council has something to hide*".

The Decision Notice

22. The Commissioner decided, by way of the Decision Notice, that the Council correctly applied section 14 of FOIA. The Commissioner stated that she was satisfied that the Council was entitled to consider that the Requests were vexatious.

The appeal

23. The Appellant appealed the Decision Notice and accordingly this appeal is about the Decision Notice relating to the Requests, which was given in response to the Appellant's complaint made under section 50 of FOIA.

Grounds of appeal

24. Whilst acknowledging all of the contents of the Appellant's grounds of appeal, we consider that, for current purposes, they can fairly be summarised as follows:
 - a. The Appellant was entitled to make the Requests.
 - b. The purpose for the Requests was to hold the Council to account for how it spends public money. This is linked to concerns that the Appellant holds that the Council has previously mis-used public money.
 - c. The Requests were reasonable and were made in connection with the Appellant being informed by third parties that the Council is potentially trying to hide how it has spent public money and that it has potentially not followed due process. In this respect, the Appellant was, in his words: "*asking the FOIs to bring clarity to the situation and to look for facts*".
 - d. The status of the Appellant as a previous employee of the Council should not have been a factor in the Council's decision not to provide the requested information.
 - e. The Council was deliberately using section 14 of FOIA to hide information.
 - f. There were no reasonable grounds for refusing the Requests. Linked to this, the Appellant implies (by way of a rhetorical question) that the Council would not

have refused the Requests had they been made by an Elected Member or Councillor.

- g. It was wrong for the Commissioner to agree with the version of events portrayed by the Council.
25. For completeness, we should add that we do not entirely agree with the Commissioner's summary of the Appellant's grounds of appeal (see paragraph 28), as we consider that they are more nuanced than is perhaps so summarised. We have considered this appeal on the basis of our assessment of the Appellant's grounds of appeal.
26. We should also note that, whilst this was not expressly stated in the Appellant's grounds of appeal, we consider that all of the Appellant's grounds relate to the premise that, in his view, the Decision Notice was wrong in law.

The Commissioner's response

27. We do not set out here the full detail of the Commissioner's response to the appeal, whilst acknowledging its contents.
28. The Commissioner's response to the appeal sets out her understanding of the Appellant's grounds of appeal as being the following three points (page A28 of the open bundle):

"(a) The purpose for the Requests is to hold the Council to account for how it spends public money;

(b) The Requests are reasonable and the Commissioner erred in considering the Appellant, as opposed to the Requests, to be vexatious contrary to FOIA; and

(c) The Commissioner erred in accepting the Council's position as the Council has more resources than the Appellant."

29. For current purposes, we consider that the core elements of the Commissioner's response to those three grounds of appeal, as set out by the Commissioner, can fairly be summarised as follows (taking each ground in turn):

- a. The Appellant's allegations against the Council could not be taken into account as they were unparticularised and unevicenced. However, the Commissioner had rejected the Council's submissions that the Requests had no serious purpose or value and therefore this ground did not impugn the Commissioner's decision.

In any event, a substantial public interest underlying the requests for information would not necessarily override the question of burden on the Council's resources. Dealing with the Requests would place a burden on the Council's resources and the Commissioner (whilst acknowledging that the Requests relate to matters of public interest) was not satisfied that their purpose and value was sufficient to justify the detrimental impact on the Council.

In connection with the question of the burden on the Council, the Commissioner

was correct to determine that the Requests were vexatious, given that the Appellant's previous dealings with the Council and that the Commissioner accepted that the Requests were linked to a wider campaign to disrupt the Council's work and resources.

Further, factors other than the burden (including, as she referred to, the 'scattergun approach' and 'no obvious intent to obtain information') had also been taken into account in coming to the conclusion that the Requests were vexatious, even though it was not necessary to take those other factors into account.

- b. The Commissioner was correct to determine that the Requests were vexatious given the Appellant's previous dealings with the Council and it was appropriate to consider the Appellant's relationship with the Council as a former employee.

Neither the Council nor the Commissioner have deemed the Appellant 'vexatious', but only the Requests.

The Council's staff would be placed under additional pressure at work as a result of dealing with the Requests, particularly when considering other complaints and relevant requests from third parties as part of a campaign against the Council and its Chief Executive.

- c. The Decision Notice was not biased in favour of the Council. The Commissioner was entitled to uphold the Council's reliance on section 14(1) of FOIA, given her submissions, the evidence and the application of the law.

- 30. In essence, the Commissioner's position is that she was correct in her assessment that the Requests were vexatious and accordingly that the Decision Notice was in accordance with the law in allowing the Council to rely on section 14(1) of FOIA in refusing to disclose information pursuant to the Requests.

The Appellant's reply

- 31. In reply to the Commissioner's response, the Appellant disputed many aspects of that response, stating that they were neither accurate nor relevant. We note in particular that the Appellant:
 - a. considered that a previous personal injury claim he made against the Council was not relevant to the Requests;
 - b. denied knowledge of any other complaints or Subject Access Requests (other than a specific Subject Access Request which he had submitted);
 - c. denied having any involvement in any campaign against the Council and asserted that there was no evidence to support this allegation;
 - d. questioned (albeit this may have been a rhetorical question) whether his previous employment with the Council restricted him in law from making any or multiple reasonable requests for information under FOIA; and

- e. considered that the Decision Notice was biased in favour of the Council, alleging that this was demonstrated by (amongst other things) the Commissioner accepting information provided by the Council without evidence.
- 32. In his reply to the Commissioner's response, the Appellant stated that he wished to be treated as a whistleblower in connection with the Requests. In this regard, he asked to be (in his words): "*afforded the proper protections given the fact the Council is attempting to link these FOI requests to my previous employment and alleging 'a campaign against the Council and its Chief Executive'*".
- 33. The Appellant also drew the Tribunal's attention to various media reports relating to the Council, which appeared around the week in which he sent his reply. He asserted that that these (and others) were "*very relevant*" to this appeal, on the basis that "*the potential investigation by the Police Service of NI may lead to issues around how the Council has responded (or not responded) to FOIs and as a result how the Commissioner has relied on responses from the Council*".

The Tribunal's powers and role

- 34. The powers of the Tribunal in determining this appeal are set out in section 58 of FOIA, as follows:

"(1) 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.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based."
- 35. In summary, therefore, the Tribunal's remit is to consider whether the Decision Notice was in accordance with the law, or whether any applicable exercise of discretion by the Commissioner in respect of the Decision Notice should have been exercised differently. In reaching its decision, the Tribunal may review any findings of fact on which the Decision Notice was based and the Tribunal may come to a different decision regarding those facts.
- 36. Accordingly, the primary issue for the Tribunal to determine in this appeal is essentially whether or not the Requests were vexatious within section 14 of FOIA.

The law

The statutory framework

- 37. Section 1 of FOIA provides individuals with a general right of access to information held by public authorities. It provides:

“(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.”

38. Accordingly, under section 1(1) of FOIA, a person who has made a request to a ‘public authority’ (such as the Council) for information is entitled to be informed in writing whether it holds the information requested. If the public authority does hold the information, that person is entitled to have that information communicated to him. However, these entitlements are subject to the other provisions of FOIA, including some exceptions and qualifications which may apply even if the requested information is held by the public authority.

39. It is therefore important to note that section 1(1) of FOIA does not provide an unconditional right of access to any information which a public authority does hold. The right of access to information contained in that section is subject to certain other provisions of FOIA. As applicable for the purposes of this appeal, section 1(2) of FOIA provides that such right is subject to section 14 of FOIA.

40. Section 14(1) of FOIA states that:

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

41. The term ‘vexatious’ is not defined in FOIA, but it is evident from section 14 of FOIA that it applies to the request itself (and not to the person making the request). This point was also confirmed in the case of *Dransfield*, which we refer to below.

42. For completeness, we also note that section 14(2) of FOIA deals with repeated requests, as follows:

“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.”

43. Section 14(2) of FOIA was not relied on in the Decision Notice. We also do not consider it relevant to this appeal on the basis that the Requests were not repeated but constituted several distinct but overlapping requests for different information.

Case law

44. As we have noted, the term ‘vexatious’ is not defined for the purposes of section 14(1) of FOIA. However, guidance on applying that section is given in the decisions of the Upper Tribunal and the Court of Appeal in the case of *Information Commissioner vs Devon County Council & Dransfield* ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454, respectively).

45. The judgment of the Upper Tribunal in the case of *CP v Information Commissioner* [2016]

UKUT 427 (AAC), helpfully summarises the main principles in *Dransfield* and relevant extracts from that summary are as follows (omitting, for ease of reference, the paragraph numbers in that summary and the cross-references to the paragraphs in *Dransfield*):

“(i) The Upper Tribunal in Dransfield

In the Upper Tribunal decision of Dransfield..., the Upper Tribunal gave some general guidance on the issue of vexatious requests. It held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA. That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if ‘the high standard set by vexatiousness is satisfied’...

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

Four broad issues or themes were identified by Upper Tribunal Judge Wikeley as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations were not exhaustive and were not intended to create a formulaic check-list. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal’s decision.

As to burden..., the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. However if the public authority has failed to deal with those earlier requests appropriately, that may well militate against holding the most recent request to be vexatious. Equally a single well-focussed request for information is, all things being equal, less likely to run the risk of being found to be vexatious. Wide-ranging requests may be better dealt with by the public authority providing guidance and advice on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked.

A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request.

Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests.

(ii) The Court of Appeal in Dransfield

There was no challenge to the guidance given by the Upper Tribunal in the Court of Appeal. In the Court of Appeal, the only issue relevant to this appeal was the relevance of past requests. Arden LJ rejected the submission that past requests were relevant only if they tainted or infected the request which was said to be vexatious. She held that a rounded approach was required which did not leave out of account evidence which was capable of throwing light on whether the request was vexatious. In the Dransfield case the FTT had erred by leaving out of account the evidence in relation to prior requests that had led to abuse and unsubstantiated allegations directed at the local authority's staff. That evidence was clearly capable of throwing light on whether the request directed to the same matter was not an inquiry into health and safety but a campaign conducted to gain personal satisfaction out of the burdens it imposed on the authority.

Arden LJ gave some additional guidance....:

'In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...'

Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor."

46. It should also be noted that the Upper Tribunal in *Dransfield* concluded that the purpose of section 14 of FOIA was "to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA" [paragraph 10].
47. The Upper Tribunal also took the view in *Dransfield* 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. As the Upper Tribunal 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.” [paragraph 82]

48. In the case of *Cabinet Office v Information Commissioner and Ashton* [2018] UKUT 208 (AAC), the Upper Tribunal stated:

“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”. [paragraph 27]

49. That view echoes that of the Court of Appeal in *Craven v Information Commissioner & Department for Energy and Climate Change* [2015] EWCA Civ 454 (which was conjoined with the *Dransfield* case), where Arden LJ stated:

“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”. [paragraph 85]

50. Accordingly, section 14(1) of FOIA can apply purely on the basis of the resource burden placed on the public authority by a request, even if there is a significant public interest in the information requested and there is a ‘reasonable foundation’ for the request.
51. The *Ashton* case also confirmed the approach in *Dransfield* to the effect that the Tribunal should, in assessing the application of section 14 of FOIA, undertake a holistic assessment of all the circumstances. Accordingly, the Tribunal should adopt a rounded approach, taking into account all the relevant factors, in order to reach a balanced conclusion as whether a particular request is vexatious.

Evidence

Hearing bundles

52. The Tribunal read and took account of an open bundle of evidence comprising a total of 126 pages (excluding cover sheets and index pages). The Tribunal also read and took account of a closed bundle comprising a total of 10 pages (excluding cover sheets and index pages). No additional material was provided in the closed bundle, but rather it contained some unredacted material which had been redacted in the open bundle.

Additional evidence

53. In addition to his reply to the Commissioner’s response (referred to in paragraph 31), the Appellant sent to the Tribunal, after the deadline for the Appellant’s reply to the

Commissioner's response, a link to a BBC television programme (on the BBC's iPlayer platform). The Appellant requested that the Tribunal watch that programme as it related to the Council and he considered this was also relevant to our considerations in respect of the appeal.

54. The Commissioner subsequently made submissions in connection with the sending of that link, as well as regarding other media reports which the Appellant had included in his reply to the Commissioner's response.

Discussion and conclusions

General discussion

55. Given the legal framework which we have outlined above, we consider that the consideration of the four broad issues or themes outlined in *Dransfield* are a useful starting point for our consideration of the primary issue of whether or not the Requests were vexatious.
56. We acknowledge that those issues or themes are not exhaustive and are not intended to create a formulaic checklist for the Tribunal to address when considering whether or not the Requests were vexatious for the purposes of section 14 of FOIA.
57. However, we recognise that those issues or themes are a helpful tool for the Tribunal in considering potentially relevant issues as part of its broad assessment of all the circumstances. In that regard, we considered those issues or themes in our deliberations, but we should stress that we have not been constrained or confined in any way by considering them. On the contrary, we have adopted a holistic approach and we have been mindful that fundamentally we were considering whether or not the Requests were vexatious as a manifestly unjustified, inappropriate or improper use of FOIA.
58. The first issue or theme we considered was that of the burden placed on the Council and its staff by the Requests. In considering the question of that burden, our preliminary observation is that the Requests were all made within one minute of each other. In fact, six of the seven Requests were made at exactly the same minute (the emails being timed at 22:19 hours on 26 February 2020), with the seventh and final of the Requests being made the following minute (the email being timed at 22:20 hours on 26 February 2020).
59. Therefore there were seven separate requests for information from the Appellant made at, essentially, the same time. The various Requests, whilst separate, were overlapping in terms of the obligation on the Council to respond to them. In our view, there would be a significant burden on the Council in dealing with any one of the requests that were made, given the nature and breadth of the information requested in each. In this case, of course, there were seven separate overlapping requests made simultaneously, which were required to be logged and dealt with separately by the Council. Even if such requests had each been separately made over greater intervals (say, by way of example, six weeks to two months), we consider that those separate requests could still have created a significant burden for the Council and potentially met the threshold for

vexatiousness. However, the fact that the Requests were all made within one minute, leads us to the conclusion that the Requests were vexatious because of the burden they would place on the Council at the outset.

60. The bundles did not contain any information from the Commissioner regarding the size of the Council or its resources, nor any detail as to the level of burden that the Requests, if handled, might be expected to place on it. This information would have been helpful to our considerations but its absence was ultimately not material, for the following two reasons. First, in bringing the appeal and hence in seeking to demonstrate that the Requests were not vexatious, the Appellant did not put forward any evidence to support a view that the requests would not place a substantial burden on the Council. This is so even though the Appellant was familiar with the Council, given his status as a former member of the Council's Senior Management Team. In this regard, we note that (in contrast) the Council stated that it had "*never received seven requests for information, on the same day, from one individual*" [Decision Notice paragraph 42]. Second, we consider that it is probable that any public authority would find it considerably burdensome to be subjected to seven overlapping but separate requests for a substantial amount of information from one individual on the same day.
61. We did contemplate the possibility that the Requests had been split into several different requests in order to either: (a) make each one more manageable for the Council; or (b) seek to avoid the exemption under section 12 of FOIA (which permits a public authority to not respond to a request for information where the cost of compliance exceeds the appropriate limit), which might have applied had the Requests comprised one single request for all of the information contained within them. However, there was no evidence to support or refute either of these possibilities. The Appellant also did not assert that either of those potential scenarios was the reason for the multiple separate requests.
62. Irrespective of the above, we considered that any determination on the issue of why the Requests might have been split into multiple requests would take things no further forward, in that it would not detract from the fact that the Requests were made and the Decision Notice applied to the Requests as made. In addition, we considered that splitting the Requests would not lessen the burden that would be placed on the Council (and arguably might add to it, partly for the reasons we have referred to). We also considered that, for similar reasons, separate multiple requests might fall within the realm of vexatiousness in accordance with the relevant guidance issued by the Upper Tribunal in *Dransfield* in any event. However, for the reasons given, these were not factors which the Tribunal needed to determine in this appeal.
63. We are, though, also mindful of the point made by the Upper Tribunal in *Dransfield* that a person "*who consistently submits multiple FOIA requests or associated correspondence within days of each other.... is more likely to be found to have made a vexatious request*" [paragraph 32]. As we have noted, in this appeal the Requests were all submitted at essentially the same time - with six of them being made at exactly the same minute and the seventh being made the following minute.
64. As we have mentioned (paragraphs 48 and 49), it was stated in *Ashton* that: "*a substantial public interest underlying the request for information does not necessarily trump a*

resources argument” and likewise in *Craven*: “*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*”. In other words, even if there is considerable public interest in the information which is the subject of a request, that does not (of itself) take precedence over, or override, any consideration that there is a such a burden placed on a public authority by the request that it might be vexatious wholly or partly because of that burden.

65. Moreover, we considered that the fact that multiple requests had been made at the same time possibly showed no intention on the part of the Appellant to engage in any genuine meaningful ‘dialogue’ with the Council in respect of the requested information. The timing and nature of the Requests meant that there was no opportunity for the Appellant to ascertain whether or not any of the requested information was helpful to his stated reasons for seeking the information. By this, we mean that had the Appellant indeed wanted (in his words) “*to look for facts*” then one alternative (and perhaps more appropriate) way to do this would be to first make a more moderate request - which could target sources of information based on what the Appellant had been told by others - and see what potentially came to light as a result. In turn, he could then (if necessary) submit subsequent, more focussed, requests based on the information he received. As it was, the Appellant simply directed multiple overlapping requests to the Council at exactly the same time. This is, effectively, what the Council have referred to as “*fishing for information*” and what the Commissioner has referred to as the “*scattergun approach*” in assessing vexatiousness [Decision Notice paragraph 42].
66. We also note the Upper Tribunal’s words in *Dransfield* (albeit made in the context of the issue or theme of ‘motive’) that section 14 of FOIA: “*serves the legitimate public interest in public authorities not being exposed to irresponsible use of FOIA, especially by repeat requesters whose inquiries may represent an undue and disproportionate burden on scarce public resources*”. [paragraph 35]
67. Accordingly, we accept the Commissioner’s position that she must have regard to the resources available to public authorities for dealing with requests for information, regardless of any potential links to other requests which may or may not have been made by the Appellant [paragraph 70 of the Decision Notice]. Likewise, we agree with the Commissioner’s assessment that even though the Requests related to matters of public interest, the impact of the Requests on the Council’s resources must also be taken into account.
68. For the reasons given, we find that the burden of the Requests meant, in and of itself, that the Requests were vexatious for the purposes of section 14(1) of FOIA. Therefore we agree with the ultimate conclusion reached by the Commissioner in determining that the Requests were vexatious. It follows from this that we agree that the Decision Notice was correct in determining that the Council was entitled to refuse to provide the requested information pursuant to section 14(1) of FOIA.
69. We did also consider the other broad issues or themes from *Dransfield* in our deliberations but, having reached the above conclusion, our views on those would have no effect on the outcome of our decision either way. We therefore consider it

unnecessary to set out our thoughts on those other issues or themes in respect of this appeal. We would, though, just offer some additional comments of particular note.

70. First, we would observe that we have some doubts as to the merits of taking into account the existence of previous Subject Access Requests, as happened (to some degree, at least) in the Commissioner's assessment of vexatiousness. Subject Access Requests are the subject of a separate regime to FOIA and, in our view, it would generally be unsatisfactory to factor in the exercise of an individual's separate statutory right to make a Subject Access Request when assessing vexatiousness for the purposes of section 14 of FOIA. That said, we recognise that there may be circumstances where the making of Subject Access Requests could (depending on the circumstances and any applicable context) potentially form part of the relevant background to the course of dealings between a requester and a public authority and which could be beneficial in determining the question of vexatiousness. However, this is not something we have had to decide for the purposes of this appeal, based on the findings we have made based on the burden imposed on the Council by the Requests in their own right.
71. Second, we do acknowledge (as did the Commissioner in the Decision Notice) the potential public value in the information which was the subject of the Requests. However, as we have noted, a compelling public interest in the disclosure of information held by a public authority does not necessarily prevail over the issue of the resource burden involved in complying with a request for the disclosure of that information. In the context of this appeal, we find that the burden of the Requests was sufficient to make the Requests vexatious for the purposes of section 14 of FOIA, irrespective of the potential public value or any serious purpose behind the Requests.
72. Third, given our conclusions in respect of the burden imposed by the Requests, we have not considered it necessary to take account of the media reports (including the BBC programmes) which the Appellant has referred us to. Such media reports are, essentially, tantamount to hearsay for current purposes and no direct evidence has been given to the Tribunal regarding any specific alleged wrongdoing on the part of the Council. In addition, the media reports only relate to allegations; therefore even if we accepted (for example) that the police had attended the Council's offices to collect potential evidence, that of itself does not mean there has been any wrongdoing. We acknowledge that rule 15(2)(a) of the Tribunal Rules entitles the Tribunal to admit evidence even if that evidence would not be admissible in a civil trial and that, accordingly, it would be open to the Tribunal to accept the evidence in respect of the media reports if the Tribunal considered it appropriate to do so. However, for the reasons given, we have not taken that evidence into account and in any event it would have no bearing on the outcome of our decision.

Summary

73. We conclude our analysis of the Requests by noting the Upper Tribunal's view in *Dransfield* that, when considering vexatiousness, ultimately the question is whether the Requests were a "*disproportionate, manifestly unjustified, inappropriate or improper use of FOIA*". [paragraph 82]

74. In considering this, we have adopted a broad approach and considered all of the circumstances in respect of the Requests, including the evidence before us in this appeal. We have concluded that the Requests did satisfy that ultimate question – namely that the nature, extent and timing of the seven Requests were such that the Requests constituted a disproportionate, unreasonable and manifestly inappropriate use of FOIA.

The Appellant's grounds of appeal

75. Turning now to the Appellant's grounds of appeal (as we have summarised them in paragraph 24), we address each in turn as follows:

a. 'The Appellant is entitled to make the Requests.'

This is a correct view and we accept this. However, the Decision Notice did not decide that the Appellant had no basis for making a request under FOIA. This point therefore does not constitute a valid ground of appeal.

We also note that the Appellant appears to believe that he has an unrestricted right to receive information from a public authority under FOIA. If so, that is a mistaken belief. As we have referred to, there are some exceptions and qualifications in FOIA to the general duty of a public authority to provide, on request, information which it holds. Consequently, in some circumstances a public authority can refuse to provide requested information which is held by the public authority. As we have explained, under section 14 of FOIA a public authority can refuse to supply information if a request is vexatious (within the meaning of the law as we have outlined).

b. 'The purpose for the Requests was to hold the Council to account for how it spends public money. This is linked to concerns that the Appellant holds that the Council has previously mis-used public money.'

We have discussed above our views on the stated purpose for the Requests and the concerns held by the Appellant, as well as the issue of the potential public value in the requested information.

c. 'The Requests are reasonable and were made in connection with the Appellant being informed by third parties that the Council is potentially trying to hide how it has spent public money and that it has potentially not followed due process. In this respect, the Appellant was, in his words: "*asking the FOIs to bring clarity to the situation and to look for facts*".'

Again, we have discussed above our views on the stated purpose for the Requests and the concerns held by the Appellant, as well as the issue of the potential public value in the requested information.

d. 'The status of the Appellant as a previous employee of the Council should not have been a factor in the Council's decision not to provide the requested information.'

We have explained the legal framework underlying an assessment of whether or not a request is vexatious for the purposes of section 14 of FOIA. For those reasons, we do not consider that it was inappropriate for the Commissioner (or the Council) to have taken into consideration the Appellant's background and previous dealings with the Council as a factor in its assessment of vexatiousness. In any event, these issues (nor any associated issues, such as the alleged involvement of the Appellant in a campaign) have not had any bearing on the outcome of our decision, for the reasons we have given.

- e. 'The Council was deliberately using section 14 of FOIA to hide information.'

There was no evidence before us to support this view. We have explained the legal framework regarding the entitlement of a public authority to refuse to provide information in respect of a request which is vexatious for the purposes of section 14 of FOIA. For the reasons we have given, we consider that the Council was entitled to rely on section 14 of FOIA in refusing to provide the information which was the subject of the Requests (and accordingly that the Commissioner was correct in confirming this in the Decision Notice).

- f. 'There were no reasonable grounds for refusing the Requests. Linked to this, the Appellant implies (by way of a rhetorical question) that the Council would not have refused the Requests had they been made by an Elected Member or Councillor.'

Again, we have explained the legal framework underlying an assessment of whether or not a request is vexatious for the purposes of section 14 of FOIA and accordingly to determine whether or not there are valid grounds for refusing to provide information pursuant to that section. For the reasons we have given, we accept the Commissioner's view that there were valid grounds for the Council to refuse to provide the requested information, in accordance with section 14 of FOIA.

We consider that the parallel drawn by the Appellant, to a situation where the information is requested by an Elected Member or Councillor, is misplaced. By definition, any other means of potentially securing information is, of course, outside of the scope of FOIA. It follows that the exceptions and qualifications in FOIA to the right to information do not necessarily apply to any other regime or means of finding information. We can only apply the law as applicable to the Requests and in accordance with the remit of the Tribunal in this appeal.

- g. 'It was wrong for the Commissioner to agree with the version of events portrayed by the Council.'

We acknowledge that the Appellant has denied being part of any campaign and has denied making the pseudonymised requests that the Council believed may be linked to the Appellant. Aside from those assertions, no evidence or specific submissions were provided to support any contention that any other information provided by the Council was incorrect.

We have set out our views on the Commissioner taking into account matters relating to the Appellant's background and previous dealings with the Council, including with regard to the consideration of any alleged campaign against the Council. For the reasons we have given, any conclusions which we may have reached regarding those matters would not have had any bearing on the outcome of our decision in upholding the Decision Notice.

In this regard, we would reiterate that our findings in this appeal are fundamentally linked to the nature, extent and timings of the seven Requests in their own right and our assessment of the burden that the Requests would place on the Council. The Requests, of course, emanate from the Appellant himself.

76. We now turn to the remaining points from the Appellant's reply to the Commissioner's response (as we have referred to in paragraph 31) which we have not otherwise addressed:
- a. The status of the Appellant's previous employment with the Council did not (and does not) restrict him from making requests for information under FOIA. However, even if requests for information under FOIA are ostensibly 'reasonable', those requests are subject to the application of the law and could be treated as being vexatious depending on the circumstances (including any relevant background) and the nature and extent of those requests.
 - b. We do not agree that the Decision Notice was biased in favour of the Council. We have set out our reasons as to why we consider the Decision Notice to be correct, as a matter of law. We have also set out our views relating to background information pertaining to the Appellant and any alleged campaign which the Commissioner may have taken into account. Moreover, we have explained the Tribunal's powers and role for the purposes of this appeal and accordingly we agree with the Commissioner's contention that the conduct of her investigation is beyond the Tribunal's jurisdiction in any event.

The Commissioner's position

77. We turn briefly now to the Commissioner's position in this appeal. As we have explained, we have some doubts regarding the merits of certain matters being taken into account in the assessment of vexatiousness. However, these relate to some discrete issues addressed in the Decision Notice and this does not alter our decision in agreeing with the ultimate conclusion reached by the Commissioner that the Requests were vexatious for the purposes of section 14(1) of FOIA.
78. We would also note that, in her response to the appeal, the Commissioner stated her understanding of one of the Appellant's grounds of appeal to be that the Commissioner had erred in considering the Appellant, as opposed to the Requests, to be vexatious contrary to FOIA (see paragraph 28). Whilst we understand why the Commissioner might have thought that to be the case, in our view that was not what the Appellant was saying but rather (in essence) that he considered that certain aspects of his background and previous dealings with the Council were erroneously factored into the assessment of the vexatiousness of the Requests. However, our differing view

on this issue to that of the Commissioner does not alter the outcome of our decision. As we have explained, we do not consider that it was inappropriate for the Commissioner to have taken those matters into account, for the reasons we have outlined regarding the broad and holistic approach to be taken in assessing the issue of vexatiousness, including with regard to the four broad issues or themes set out in *Dransfield*.

Final conclusions

79. For all of the reasons we have given, we conclude that the Commissioner was correct in determining that the Council was entitled to refuse to provide the requested information pursuant to section 14(1) of FOIA and therefore that the Decision Notice was in accordance with the law. We also do not consider that the exercise of any discretion by the Commissioner in respect of the Decision Notice should have been exercised differently.
80. We therefore dismiss the appeal.

Signed: Stephen Roper
Judge of the First-tier Tribunal

Date: 21 October 2022