



Appeal number: EA/2023/0019/V  
Neutral Citation Number: [2023] UKFTT 01036 (GRC)

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**STEPHEN POLLARD**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**Before:**

**HHJ MOIRA MACMILLAN  
MS EMMA YATES  
DR PHEBE MANN**

**Sitting remotely on 7 December 2023**

**Appearances:**

**Mr Stephen Pollard represented himself.  
The Information Commissioner was not represented.**

**DECISION**

**1. The appeal is allowed.**

2. Decision Notice dated 8 December 2022 is set aside and replaced by this Decision.

3. Royal Holloway, University of London must respond afresh to Mr Pollard's information request dated 10 October 2021 within 30 days of the date of this Decision in accordance with s.1(1)(b) Freedom of Information Act 2000, other than further relying on s.14, or must by the same date inform Mr Pollard why no further response is required.

## REASONS

### Mode of hearing

4. The hearing was convened remotely by CVP on 7 December 2023. All persons joined the hearing remotely. The Tribunal was satisfied that this constituted an open hearing in public within the meaning of rule 35A (3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

5. The Panel considered agreed electronic bundles consisting of:

- (a) An open bundle of evidence comprising pages 1 to 1057,
- (b) Additional, non-paginated documents sent by Mr Pollard as email attachments on 22 September and 1 & 6 October 2023, and
- (c) A closed bundle comprising pages 1 to 3.

6. The Panel also had the assistance of oral submissions from Mr Pollard, and written submissions and documents provided by Royal Holloway, University of London ('the College') which were contained within the open bundle of evidence. We are grateful for all of this assistance.

### Background to Appeal

7. Mr Pollard lives in an area in which a number of houses are privately rented to students attending the College. The number of students attending the College has increased steadily over recent years, with a corresponding increase in the number of students living in the local community. Mr Pollard has been raising concerns with the College about anti-social behaviour ('ASB') by students in residential areas since 2008.

### The request

8. On 18 October 2021 Mr Pollard made a request under s.1 of the Freedom of Information Act 2000 ('FOIA') addressed to the Second Respondent ('the MPS'). The information request was as follows:

*"In a recent document produced by Surrey Police, it claimed that, with regard to the problems of anti social behaviour caused by students of Royal Holloway College, Egham: 'Runnymede Specialist Neighbourhood Team are working with Environmental Health and Royal Holloway University to share reports of ASB. Where a location or individual is found to be having a disproportionate impact on the local community we will work in partnership to take appropriate action.'*

*In this regard, please provide the following information for each of the full calendar years 2018, 2019, 2020 and for the year to date in the case of 2021:*

*How many unique incidents of ASB were shared between all three of Surrey Police, Royal Holloway College and Runnymede Borough Council?*

*Of the unique incidents of ASB shared between all three parties, in how many cases was it found that the location involved had a disproportionate impact on the local community and what action was taken by each of Surrey Police, Royal Holloway College and Runnymede Borough Council in those cases?*

*Of the unique incidents of ASB shared between all three parties, in how many cases was it found that one or more individuals were found to be having a disproportionate impact on the local community and what action was taken by each of Surrey Police, Royal Holloway College and Runnymede Borough Council in those cases?*

*During the period in question, did Royal Holloway College provide any personal data to either (a) Surrey Police or (b) Runnymede Borough Council and, if so, what was the lawful basis for which the data was shared?*

*Also, has Royal Holloway College had a Data Sharing Agreement in place with either (a) Surrey Police or (b) Runnymede Borough Council at any time during the periods in question and if so, please provide a copy of each and every such agreement."*

9. The College responded to the request on 23 November 2021 by providing some information. Mr Pollard requested an internal review of the response, raising further queries and suggesting that the College's response was false and misleading. The College upheld the position adopted on 14 January 2022 and on 2 March 2022 Mr Pollard made a complaint to the Information Commissioner ('ICO').

#### The Decision Notice

10. In the course of the ICO investigation of Mr Pollard's complaint, the College reviewed its response to the 8 October 2021 request and decided that the request was in fact vexatious pursuant to s.14 FOIA. The College did not inform Mr Pollard of

that decision, which was upheld by the ICO on 8 December 2022 in Decision Notice IC-158370-K6W9 ('the DN').

11. As the DN is the only explanation before the Tribunal of why the ICO decided that it is open to the College to rely on s.14, it is appropriate to reproduce the relevant part in full:

*8. Access to information is an important constitutional right and so engaging section 14(1) is a high hurdle. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.*

*9. The themes the Commissioner considers when deciding whether a request can be categorised as vexatious are: the burden (on the public authority and its staff); the motive (of the requester); the value or serious purpose (of the request); and any harassment or distress (of and to staff). But those broad themes are not a checklist and are not exhaustive; the Commissioner takes into account all the circumstances in order to reach his decision.*

*10. In their complaint to the Commissioner, the complainant has advised that the context of their request is the "on-going issue of anti-social behaviour caused by a small, but significant, number of students at Royal Holloway college which, despite numerous complaints by residents ... over a period of well over 10 years, the college has failed to effectively address."*

*11. In its submission, the College has provided a general background and context to the request. The Commissioner does not intend to reproduce it in full in this notice, suffice to say that the complainant has been corresponding with the College since 2008, under FOIA and via other avenues of communication. The College also notes that the complainant is concerned about the presence and conduct of students in private rented accommodation in the local area.*

*12. The College's submission includes a discussion of the four broad themes referenced above, which the Commissioner has summarised as follows:*

*13. **Motive:** The College considers that the requester is seeking to compel it to action beyond its authority in respect of intruding into the private lives and activities of its students in the local area. In the College's view, the complainant's pursuit of this matter has now become highly personalised and has little benefit to the public.*

*14. **Value and purpose:** The College has acknowledged that questions and requests about student activity in the local area and its involvement in community wellbeing have a genuine purpose. At this point however, the College says, the cumulation of the complainant's requests and associated communications have moved from a genuine desire for information to the placing of pressure on the College to act*

outside its remit. The complainant is reluctant to accept that the College is not responsible for any wrongdoing and remains dissatisfied whatever response the College provides. The current request represents a highly personalised matter, has little value and is an example of 'vexatiousness by drift'.

15. **Burden:** The College says it has dealt with a large quantity of requests and communications from the complainant. And there have been occasions when the complainant has sent requests in quick succession before the College has had the opportunity to reply. The complainant has submitted requests over a period of years and, the College anticipates, will continue to be submitted into the future.

16. **Harassment or distress to staff:** The College says that the complainant's previous communications have, on occasion, contained personal criticisms and attacks on members of staff which have caused distress. Previous requests have also sought information which the College knows the complainant already possesses, as the College has previously provided it to them. The complainant does not seem to be satisfied with any of the actions or explanations the College gives to them. Communications with the complainant invariably expand and generate additional questions. The complainant often asks the College to further explain itself, or to provide justification or explanation for matters clearly beyond its ability to do so. For example, the complainant has asked the College to explain why students would cause a noise disturbance in the local area if the College makes them aware of its expectations of behaviour. The College says that the complainant also frequently seeks to escalate their dissatisfaction with College responses to their requests to senior members of staff, such as the Principal and Deputy Principal, and to external authorities such as the local MP.

17. In addition, the College says the complainant has disregarded the College's requests for them to submit their FOIA requests to the dedicated inbox. The College considers this may be an attempt by the complainant to 'catch out' its staff who respond to enquires as 'normal course of business', which the complainant has sent to other inboxes. The complainant will then be dissatisfied with the response and pursue an internal review through FOIA.

18. Having considered the College's submission and all the circumstances, the Commissioner has decided that, at this point in its long correspondence with the complainant, the College is entitled to apply section 14(1) of FOIA to the complainant's request.

19. With regard to motive, at the time of the request the complainant had been corresponding with the College about local student activity for approximately 13 years. At the point of the request, the subject of the information being requested had drifted from the substantive matter, which is of some value, to more extraneous matters. The Commissioner has the impression of an applicant who has a specific concern that is of interest to them, who has become frustrated at what they perceive

to be the College's lack of action and who continues to bombard the College with requests; the purpose of which may be to wear down the College.

20. The Commissioner is also satisfied that the burden to the College of complying with the request in this case is disproportionate to the value the request has at this point. Finally, and taking the wider history into account, the Commissioner considers that the cumulative effect of the complainant's requests is to harass College staff - given their volume over many years, the persistence of previous requests, the disparate information being requested at October 2021, and the tone that the College has advised the complainant has adopted in some of their previous communications.

21. FOIA was not introduced to enable members of the public to cause an undue burden to public authorities or to harass public authority staff. As such, the Commissioner's decision is that the College is entitled to rely on section 14(1) of FOIA to refuse to comply with the complainant's request as the request can be categorised as vexatious.

22. Under section 17(5) of FOIA a public authority must issue a refusal notice in respect of a reliance on section 14(1) within 20 working days following the date of receipt of a request.

23. In this case the College is effectively advising the complainant of its reliance on section 14(1) through this notice. It has therefore not complied with the duty under section 17(5) of FOIA. The Commissioner recommends that the College issues a section 14(1) refusal notice directly to the complainant. Under section 17(6) of FOIA, a public authority that has issued an applicant with a section 14(1) refusal is not obliged to issue a further section 14(1) refusal if it receives more requests from the applicant on the same matter or that evidence the themes discussed in this notice.

#### History of these proceedings

12. On 3 January 2023 Mr Pollard appealed to the Tribunal against the DN. His initial Grounds of Appeal focussed almost entirely on the process followed by the ICO in respect of the lack of opportunity afforded to him to respond to the College's decision to rely on s.14(1). As a consequence, the ICO Response to the appeal was to request that it be struck out on the basis that the Tribunal had no jurisdiction to determine issues of procedure.

13. On 19 May 2023, the Registrar struck out the appeal pursuant to rules 8(2)(a) & (3)(c) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. That decision was reviewed by a Judge at Mr Pollard's request, pursuant to rule 4(3), who decided that the Tribunal had jurisdiction to determine the 4<sup>th</sup> Ground of Appeal, since it encompassed the argument that the ICO was wrong to conclude that the 8 October 2021 request was vexatious and that the DN is therefore in error of law.

## Law

14. The obligation of a public authority to disclose requested information, if held, is contained in s.1(1)(b) FOIA. Part II FOIA sets out a number of exemptions to the obligation, some of which are subject to a public interest balancing exercise.

15. However, section 14(1) of FOIA provides:

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

16. The proper interpretation of this provision has been considered authoritatively by the Upper Tribunal and Court of Appeal in the *Dransfield* case ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454) and by the Upper Tribunal in *CP v Information Commissioner* [2016] UKUT 427 (AAC) and *Cabinet Office v IC and Ashton* [2018] UKUT 208 (AAC). The following propositions are well established:

- i. The issue is whether the request is vexatious and not whether the requester is vexatious.
- ii. Parliament has not defined the word “vexatious”: it is an inherently flexible concept; it connotes a “manifestly unjustified, inappropriate or improper use of a formal procedure”;
- iii. In considering whether such misuse of the procedure is established in any case all relevant circumstances must be considered and a balanced conclusion reached based on an objective standard;
- iv. In deciding whether a request is vexatious four factors are likely to be relevant: (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; but this is not an exhaustive list of relevant factors and should not be treated as a formulaic check list;
- v. The previous behaviour of the requester and the number, breadth and pattern of previous FOIA requests may be relevant in considering whether a request is vexatious by, for example, throwing light on the requester’s motivation for making the request in question or by placing the burden involved in answering that request in its proper context;
- vi. A clear public interest in the subject matter of the request is a consideration which needs to be balanced against other factors, but it is not a “trump card” which always tips the balance against a finding of vexatiousness (see: in particular, paras [25] and [26] of the *Cabinet Office* case).

17. S.57 provides a right of appeal to the Tribunal against a s.50 Decision Notice. The Tribunal’s powers are set out in s.58:

*If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.*

18. We note that the burden of proof in satisfying the Tribunal that the ICO's decision was wrong in law or involved an inappropriate exercise of discretion rests with an Appellant.

#### *The College's submissions*

19. Although no further submissions have been received from the ICO in relation to its decision to uphold the College's reliance on s.14, the Tribunal has been provided with the material the College sent to the ICO, together with a covering letter provided to the Tribunal by the College as a 3<sup>rd</sup> party to these proceedings.

#### *Consideration*

20. The context in which the 8 October 2021 request was made is not in dispute. Mr Pollard is a resident in the area where a number of the College's students have resided in recent years, often in houses of multiple occupancy. It further appears to be common ground that there have been ongoing issues of anti-social behaviour ('ASB') by some of these students over time. Mr Pollard has been communicating with the College about this issue for many years.

21. **Burden.** The College contends that Mr Pollard has made approximately 51 FOIA requests over the preceding 9 years and has:

*"pursued the University and some of its students, through every conceivable route over a period of around 15 years... [with communications often sent in quick succession].*

*Repeatedly [written to the] Community Team with various complaints about living near students (who live in private accommodation away from campus).*



*[And] previously adopted a manner of approach which seemed to be deliberately designed to 'catch out' the University in terms of FOIA compliance, which goes against the spirit of the Act. The University has had to implement processes to centralise communications from the requester, so it can be determined whether they should be actioned under the FOIA. On occasion it is still necessary to confirm with Mr Pollard whether or not he wishes items of correspondence to be actioned under the FOIA because he is not always clear in his requests."*

22. At the hearing, Mr Pollard told the Panel that he had made only 4 or 5 FOIA requests over the previous 15 years, and that the majority of his correspondence with the College were complaints, directed to the Community Team email address because that was the address to which the College website directed complaints from local residents. He submits that the College has conflated his complaints with his information requests and questioned whether the College had done so in relation to all complaints received from local residents.

23. In support of his first submission, Mr Pollard directed the Panel to pages A631-634 of the bundle. This comprises an email sent by Mr Pollard on 31 March 2022 and the College's response, sent on 3 May 2022. This email primarily follows up on 18 complaints made by Mr Pollard to the community team in light of a reported introduction of 'complaint closure emails' but also asks for the date upon which closures emails were introduced and a sample of the wording.

24. Although Mr Pollard's initial view before the Panel was that the College had wrongly conflated his 31 March 2022 email with a FOIA request, he subsequently conceded that the email both followed up on earlier complaints and requested additional information.

25. In support of his second submission, Mr Pollard directed the Panel to page D925 in the bundle, which contains the following:

#### *HOW TO REPORT COMMUNITY CONCERNS*

##### *Noise, Crime, Anti-social behaviour and Parking*

*Runnymede Borough Council, Environmental Health, Surrey Police and Royal Holloway, University of London continue to work in partnership. We would like to take this opportunity to remind residents of what each organisation can tackle and to reiterate that we will continue to work together on community concerns. • When a crime is suspected to have taken place the complaint should be made to the Police. • If noise nuisance is coming from domestic or commercial premises the enforcement responsibilities lie with Runnymede Borough Council Environmental Health. • If you have evidence the concern involved students from Royal Holloway, please **also** report it to their*

*Community Wellbeing team. They can be contacted by email at community@royalholloway.ac.uk*

**26. Motive, Value and Purpose.** The College submits that Mr Pollard is using repeated requests for information as a means of forcing the College to act outside its remit and that, due to Mr Pollard's reluctance to accept the College's responses and continued argument over various points, his requests have become a highly personalised matter.

27. Mr Pollard submits the purpose of his previous requests for information has been to obtain data relating to what has become a chronic problem in the local area. The 8 October 2021 request was for the purpose of obtaining data relating to a new initiative, Royal Holloway University Memorandum of Understanding, namely an MOU between the College, the local authority and the local police designed to share information about student ASB. He contends that the purpose of this request was to obtain baseline data that would enable the community to monitor the efficacy of this new initiative.

28. Mr Pollard directed the Panel to D1030 and D1007, which are campaigning leaflets produced by two recently success candidates for local councillor vacancies, both of whom were previously unknown to Mr Pollard and whose campaigns included promises to tackle ASB by students of the College resident in the local community.

**29. Harassment or distress to staff.** The College submits that some of Mr Pollard's previous correspondence contained personal criticism and attacks on members of staff which have caused distress. The College referred to some specific pieces of correspondence in this context. The College contend in addition that Mr Pollard expands on issues and escalates issues to senior members of staff in such a way as to increase the administrative burden on staff and cause unwarranted distress.

30. Mr Pollard submits that his correspondence with the College staff have always been businesslike, and he challenges whether there is any evidence before the Tribunal of distress being caused. Mr Pollard contends that he has sought to avoid placing an unnecessary administrative burden on any one member of staff by seeking to direct individual pieces of correspondence to the correct department.

### Conclusions

31. Having considered all of the material presented to the Tribunal, the Panel concluded that the ICO was in error of law to conclude that it was open to the College to rely on s.14(1) in response to Mr Pollard's request for information on 8 October 2021. This was for the following reasons:

**32. Burden.** It appears from the information available to the Panel that the College has asked local residents to direct complaints about ASB by students to the

community team, via a dedicated email address. As such, absent any evidence that Mr Pollard has made a significantly greater number of complaints than other local residents, or that his complaints have been investigated and found unwarranted, the Panel concluded that caution must be exercised before concluding that the submission of complaints was previous behaviour relevant to the assessment of vexatiousness.

33. In the absence of further assistance from the Respondent, and/or any more specific information from the College, the Panel could not determine exactly how many FOIA requests Mr Pollard had made over the preceding 15 years. There is some evidence that Mr Pollard has previously included requests for information within correspondence about a complaint without realising that these were requests under FOIA. This is something Mr Pollard recognised, on reflection, during the hearing. However, it appeared to be the first time Mr Pollard had considered his correspondence from this perspective. His view before the hearing appeared to be that a request for information had to be specifically submitted as a FOIA request, and that a decision by the College to provide him with information outside of the FOIA regime (as for example the College when responding on 3 May 2022) acted as confirmation that no information request had been made.

34. Mr Pollard also appeared to be genuinely unaware that the College were required to respond to the additional questions he raised in correspondence about complaints as requests for information under FOIA. This can no longer be the case. Mr Pollard's lack of prior understanding was felt by the Panel, to explain in part why some of his information requests had been wrongly sent to addresses other than the College FOI address.

35. The Panel concluded that the conflation of information requests and complaint correspondence had come about through Mr Pollard's own actions, and that this was likely to have added to the burden on the College when responding to the requests. However, the Panel concluded on the balance of probabilities that this had been an inadvertent mistake.

36. However, should this practice continue, the Panel noted that the College would be entitled to point out on each occasion to Mr Pollard that his correspondence contained a request for information that had been misdirected, and that a requirement to do so regularly might constitute an unnecessary burden on the College's staff and resources.

37. **Motive, Value and Purpose.** The Panel noted that the consistent topic of Mr Pollard's requests to the College was ASB by students resident in the local community. This was apparently a matter of sufficiently prevalent concern to merit inclusion in the campaigns for election of two candidates to the local council. As such, the Panel concluded that the topic of Mr Pollard's repeated information requests was not solely a highly personalised matter. As a matter of common sense,

ASB by students must have been a matter of general public concern, to give rise to the new MoU between the College, the local authority and the police.

38. However, the Panel felt that the volume and frequency of Mr Pollard's correspondence with the College indicated a high level of personal investment in this issue. Further, Mr Pollard's replies to the College's responses have quite often been argumentative in tone and expressed personal dissatisfaction with the steps taken.

39. Mr Pollard directed the Panel to pages A199 and D898 in the bundle, which he described as statements by the College promising to take action in relation to ASB by students, which steps he submits the College has failed to take. Determination of whether the College has done so is not a matter within this Tribunal's jurisdiction. However, the Panel noted that the College document at page A199 states that steps will be taken by the College on receipt of actionable information from the local authority and the police, and the document at D898 refers to action being taken by the College once the local authority has issued a noise abatement notice. There is no evidence before the Tribunal as to whether Mr Pollard has pursued his concerns about student ASB as vociferously with the local authority.

40. The Panel concluded the subject matter of Mr Pollard's repeated requests related to a matter of general public interest, and to that extent were of value and for a proper purpose. However, the manner in which Mr Pollard has pursued this concern has on occasion become personalised, mainly due to Mr Pollard's decision to continue to argue specific points in correspondence if he remains unhappy with the outcome of a complaint. Some of the matters pursued by Mr Pollard in this manner appeared to the Panel to suggest either a misunderstanding on his part of the extent of the College's responsibilities in relation to ASB, or a refusal by Mr Pollard to accept that the steps he was arguing the College should take could only be triggered by 3<sup>rd</sup> party actions.

41. However, the Panel was satisfied that the 8 October 2021 request for information about the MOU was an appropriate request for data relating to a new step taken in relation to a longstanding general concern, and that it contained no evidence of a purpose other than the furtherance of a general public interest.

42. **Harassment or distress to staff.** The Panel looked at the correspondence specially identified by the College in this context but concluded that this did not provide clear evidence of Mr Pollard's repeated requests for information, or his general behaviour, causing distress to members of staff. The Panel acknowledged that frequent, argumentative correspondence received by one or more members of staff was capable of constituting harassment, but given the conclusions already reached in relation to Mr Pollard's complaints, decided that there was insufficient evidence before the Tribunal to determine, on the balance of probabilities, that Mr Pollard's conduct requests for information amounted to harassment of College staff.

43. The Panel felt that, overall, the question of whether Mr Pollard's requests for information met the test for vexatiousness was finely balanced. However, given that Mr Pollard appeared to be unaware of the extent to which his correspondence raised new matters that the College were obliged to treat as requests under FOIA, the Panel decided that his conduct could not properly be described as manifestly unjustified, inappropriate or an improper use of a formal procedure.

44. The College is therefore required to respond to Mr Pollard's 8 October 2021 FOIA request afresh, or to set out in writing the extent to which it has already complied with s1 obligations, within 30 days of the date upon which this Decision is promulgated.

Additional matters

45. It seemed to the Panel that there was a history of miscommunication between the College and Mr Pollard, at least in respect of Mr Pollard's understanding of the steps that must precede certain types of action being taken by the College in relation to student ASB. As such, the position and understanding of both parties might benefit from a short course of mediation.

**(Signed)**

**HHJ Moira Macmillan**

**DATE: 12 December 2023**

**Promulgated:**

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