



**Appeal Number: EA/2023/0230**

**Neutral Citation Number: [2023] UKFTT 00877 (GRC)**

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

**Between:**

**PHILIPPE BENFELL**

**Appellant:**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent:**

**Heard:** on the papers and deliberations on 4<sup>th</sup> October 2023.

**Panel:** Brian Kennedy KC, Kate Grimley Evans, and David Cook:

**Representation:**

**For the Appellant:** Phillippe Benfell as a Litigant in Person in undated Final Written Submissions.

**For the Respondent:** Daniel Roberts of the ICO in a written Response to the Grounds of Appeal dated 20 July 2023.

**Decision:** The Appeal is Dismissed.

## **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 30 March 2023 (reference IC-217776-X0S2) which is a matter of public record.
2. The Tribunal Judge and specialist members sat to consider this case on 4 October 2023.

### **Factual Background to this Appeal:**

3. Full details of the background to this appeal, the Appellant’s request for information and the Commissioner’s decision are set out in the DN much of which is repeated here as the appeal concerns the refusal by a public Authority, the Brighton, and Hove City Council (“the Council”) to disclose the requested information on under section 14(1) of the FOIA [as a vexatious request].

### **Chronology:**

4. On 3 October 2022, the Appellant submitted a multi-part request for information in respect of Court Farm. The public authority responded on 31 October 2022. It refused the request citing section 14(1) on the basis that the request was vexatious, stating that compliance with the request represented a disproportionate burden of its resources. The Council’s original response informed the Appellant that it considered the request represented a

disproportionate burden on its resources when taking into consideration the past pattern of behaviour, the repeat of numerous follow up enquires no matter what information had been supplied and the repeated accusations of dishonesty aimed at Council staff. The Council upheld this position at the internal review dated 19 December 2022 and in addition to its reliance upon legal precedent and the Commissioners' guidance, the Council explained to the Appellant in respect of the burden on its resources, that even though there had been a relatively small number of FOI requests over the years, that the contact with the Council regarding Court Farm began in 2018 and has continued to date with allegations that the Council is complicit in fraud. The Council also indicated that this had involved the Property & Design and Legal Team, senior managers and directors, Leaders of the Council and the Chief Executive. The Council added that over the past four years it had provided responses to the queries, which has led to numerous follow up questions, often repeating topics previously detailed and responded to. The Council referred to the Commissioner's guidance (previously referenced), in that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. The Council added that it is also reasonable for it to take into consideration the anticipated burden of future requests. It stated that hundreds of hours have been spent by officers in providing responses to the Appellants emails and FOI requests, and its experience of dealing with their previous requests, suggested that the Appellant would not be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied. The internal review, also referred to the motive of the Appellant, suggesting that the motive appeared to be an attack on the Council and its staff through unsubstantiated allegations and threats rather than a genuine attempt to obtain information. It added that the Appellant's underlying grievance had been exhaustively considered and addressed via both FOI requests and email

exchanges with members of staff setting out its position, which remained unchanged. The Council argued that this refusal to accept that the matter is closed, demonstrated an unreasonable persistence. The Council also expanded on its assertion from its original response that the requests were causing harassment and distress to its staff. The Council informed the Appellant that a request, or series of requests which make unsubstantiated allegations of criminal behaviour or wrongdoing can be (and effectively in this was) vexatious. As can the tone or content of the requests. The Council referred to previous communications where it had informed the Appellant that both the tone and content of the emails were unhelpful, unacceptable and inaccurate. It used the following examples of previous communications from the Appellant as supporting evidence for their assertions: "All those who knowingly used or facilitated the use of stolen and defrauded money and stolen wages to fund the renovations at Court Farm... will be punished. All those who callously and uncaringly contributed to the severe damage to the mental health of the victims of that fraud will be punished. All those who have profited from the suffering of those victims will be punished" – and further - "All those who have either perpetrated, or knowingly enabled or facilitated those crimes should realise that they alone are responsible for any harm that comes to them" – and further - "Everyone should be aware why any harm they suffer will be inflicted. It is not only punishment but a deterrent against future unethical, moral or unlawful conduct. If they are prepared to inflict or help inflict harm on others, then they should not expect any consideration to be shown for their own well-being by those who they callously caused to suffer" (Our emphasis).

5. The Council informed the Appellant that its legal team have previously advised that the threats against its staff could be considered a criminal matter and argued that the examples quoted above are evidence that the Appellant has not accepted the position of the Council and that the Appellants' attitude is hostile and causing significant distress to officers. The Council's internal

review further explained that its decision has been based on the Commissioner's guidance which confirms that where a requester pursues personal grudges by targeting their correspondence to a particular employee or office holder, this again may be evidence that the request is vexatious. The Council considered that the Appellant's repeated targeting of one individual including unsubstantiated claims to senior managers, the Chief Executive, Leader of the Council and Members, to publicly humiliate and cause them distress, provides further evidence that the request is vexatious. The Council added that within their internal review request the Appellant had even acknowledged that their requests: *"may be causing staff members distress"* and used justification that this *"is no different to the distress caused to any individual required to account for their unlawful or criminal conduct"* and indeed to make further unsubstantiated allegations against an individual." The Council also referred to situations when a requester seeks information already in their possession as further evidence the intention of the request is to cause annoyance and to vent anger at a particular decision. The Council added that such requests demonstrate a link between serious purpose, motive and harassment and confirmed that this applies in the instant case. The Council also argued that the request itself is of limited value, stating that the Appellant often argues points rather than request new information or asks hypothetical questions which fall outside the scope of the FOIA. The Council also considered the Appellant's continued allegations of wrongdoing without any clear and logical basis for doing so as further evidence that the request is of limited value.

**Relevant Legislation:**

6. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. The word

“vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1) states, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. FOIA gives individuals a greater right of access to official information to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle. The Commissioner however 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.

7. The emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) (“Dransfield”)2. Although the case was subsequently appealed to the Court of Appeal, the UT’s general guidance was supported, and established the Commissioner’s approach.
8. Also, particularly relevant to this appeal: Rule 2 of the 2009 No. 1976 The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, which states as follows:

*“Overriding objective and parties' obligation to co-operate with the tribunal.*

*2. – (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*

*(2) Dealing with a case fairly and justly includes –*

*(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;*

- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;*
- (d) using any special expertise of the Tribunal effectively; and*
- (e) avoiding delay, so far as compatible with proper consideration of the issues.*
- (3) The Tribunal must seek to give effect to the overriding objective when it –*
  - (a) exercises any power under these Rules; or*
  - (b) interprets any rule or practice direction.*
- (4) Parties must –*
  - (a) help the Tribunal to further the overriding objective; and*
  - (b) co-operate with the Tribunal generally.”*

**The Commissioner’s Decision Notice:**

9. The Commissioner took into consideration the length, tone, and content of the request. In terms of its length, (and referring to the Annex at the end of the DN), the Commissioner indicates that the request is approximately 9 pages in length, containing 13 questions, with some of the questions including further sub-questions. Detailed background information also preceded several of the questions raised and while conceding that although not privy to the Council’s record keeping, the Commissioner considered that the burden of complying with this request in isolation would be considerable. The Tribunal notes the material detail and depth of the information and analysis of the request contained in the significant and pertinent Annex attached to the DN.
10. The Commissioner also noted that the tone of the request was hostile, with much of the content containing allegations against the Council of fraud and both its tone and content were therefore indicative of a vexatious request.
11. The Commissioner referred to its own guidance in respect of section 14(1) FOIA, whereby consideration of the background and history to the request can also be pertinent. He has considered the very detailed and comprehensive

internal review and was mindful that the Appellant had corresponded with the Council on the matter of Court Farm since 2018 either via FOI requests or more general correspondence (and/or emails). This appeared to the Commissioner to be indicative of an unreasonable persistence in respect of a matter that has been fully investigated and addressed.

12. It appeared to the Commissioner that the root of the correspondence was the belief by the Appellant that the Council has been complicit in, and benefited financial from, wrongdoing in respect of Court Farm, and nothing the Council can say will alter the complainant's position. It therefore appeared to the Commissioner that the Appellant was pursuing a personal grievance and was in the process making unsubstantiated allegations of criminal behaviour against Council personnel.

13. In addition, the Commissioner has taken into consideration the extracts referred to in paragraph 15 of the DN and pointed out that regardless of whether there was any substance to the allegations, such threats to the Council's staff are inappropriate with the potential to cause distress to all concerned.

14. Taking all factors into consideration, the Commissioner was satisfied that the request was vexatious, and that the Council was entitled to rely section 14(1) to refuse the request.

### **The Grounds of Appeal:**

15. The Tribunal do not intend to set out the detail provided by the Appellant in his Grounds of Appeal as while they are relevant and indicative, they contained unsubstantiated and/or unproven allegations of wrongdoing against an individual or individuals and in the circumstances, it would be inappropriate to do so.



16. When asked what outcome he was seeking from his appeal the Appellant stated:

*“I am merely asking that BHCC be obliged to respond to my perfectly legitimate FOI request which in light of what I have told you is based on genuine and legitimate concerns. As a publicly accountable body BHCC should not be permitted to evade having to account for its actions and the consequences of its actions, especially when those actions have caused significant harm, loss and emotional distress to innocent victims and is furthermore connected to unlawful conduct. BHCC especially should play no part in helping to deprive people of their wages. It is absolutely astounding that they consider that conduct acceptable.”*

**The Commissioners’ Response:**

17. In essence the Commissioner relies on the DN and further states;

*“The Commissioner submits that in all the circumstances of this case the request was vexatious further to the binding case law set out by the Court of Appeal in Dransfield v Information Commissioner & Devon County Council [2015] EWCA Civ 454 (and which did not depart from the Upper Tribunal findings in Information Commissioner v Dransfield [2012] UKUT 440 (AAC))”*

18. The Tribunal are considering this appeal afresh and not deferring to the Commissioners reasoning having decided to come to our own conclusions on the evidence before us. In that regard we are conscious of the complex issues on what is or can become a vexatious request. We are aware that this can be a difficult area to ensure fairness to the parties and are conscious of the holistic context that can be so determinative in the complex factual matrix as occurs in this case. Accordingly, we commence by setting out some observations and analysis on useful precedents on section 14(1) – Vexatious requests.

**The Upper Tribunal’s analysis of section 14 (set out in Dransfield and applied also in Ainslie and Craven)**

19. *“What is a “vexatious” request under section 14 of FOIA? Vexatious” is a protean word, i.e., one that takes its meaning and flavour from its context therefore the*

term in section 14 carries its ordinary, natural meaning within the statutory context of FOIA. It follows that the ordinary dictionary definition of “vexatious” as “causing, tending or disposed to cause ... annoyance, irritation, dissatisfaction, or disappointment” can only take us so far. As a starting point and depending on the circumstances, a request which is annoying or irritating to the recipient may well be vexatious – but it all depends on those circumstances.

20. We must also not forget that one of the main purposes of FOIA is to provide citizens with a (qualified) right to access to official information and thus a means of holding public authorities to account. It may be both annoying and irritating (as well as both dissatisfying and disappointing) for politicians and public officials to have to face FOIA requests designed to expose possible or actual wrongdoing. However, that cannot mean that such requests, properly considered in the light of all the circumstances and the legislative intention, are *necessarily* to be regarded as vexatious. The vexed issue of MPs’ expenses, a scandal the full extent of which only emerged following persistent use of FOIA by an investigative journalist (see Heather Brooke, *The Silent State*, chapter 8), as an obvious example. We note that the FTT in *Lee v Information Commissioner and King’s College Cambridge* expressed the same view at [64].

21. With that qualification in mind, we consider that the Commissioner’s Guidance that “the key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause” provides a useful starting point, so long as the emphasis is on the issue of justification (or not). The fact that the OED definition omits any reference to “distress” or “disruption” in quite those terms is no bar. This is because the inclusion of these terms in the Commissioner’s Guidance is justified by extension, given that the purpose of section 14 is to protect public authorities and their employees in their everyday business – thus consideration of the effect of a

request on them is entirely justified, adopting a purposive approach. Hence a single abusive and offensive request may well cause *distress*, and so be vexatious within section 14, applying the ordinary meaning of the word. A torrent of individually benign requests may well cause *disruption*, so one further such request may also be vexatious in the FOIA sense. However, for the reason noted in the previous paragraph, it may be more difficult to construe a request which merely causes *irritation*, without more, as vexatious under section 14. Thus, an important aspect of the balancing exercise may involve consideration of whether there is an adequate or proper justification for the request.

22. The common theme underpinning section 14(1), at least insofar as it applies based on a past course of dealings between the public authority and a particular requester, has been identified by Judge Jacobs as being a lack of proportionality (in his refusal of permission to appeal in *Wise v Information Commissioner* GIA/1871/2011).

*Judge Jacobs said in that decision:*

*“Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request, and the time and other resources that would be needed to provide it. As I have told Mr Wise before, his requests have become disproportionate to his original aim. There are numerous ways in which requests can become vexatious. The background that I have outlined shows what might be called a classic example of vexatiousness by drift....”*

23. This issue was also identified by the FTT in *Lee v Information Commissioner and King's College Cambridge* at [73] as a relevant consideration. It is to be noted that the FTT in *Lee* referred to the use of the term “vexatious” in legal parlance, citing some of the many uses of that adjective in legislation controlling access to proceedings or rights (see especially at [65]-[68]). We agree with the overall conclusion that the FTT in *Lee* reached, namely that “vexatious” connotes “manifestly unjustified, inappropriate or improper use of a formal procedure” (at [69]).
24. Such misuse of the FOIA procedure may be evidenced in several different ways. It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes – (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff). However, these four considerations and the discussion that follows are not intended to be exhaustive, nor are they meant to create an alternative formulaic checklist. It is important to remember that Parliament has expressly declined to define the term “vexatious”. Thus, the observations that follow should not be taken as imposing any prescriptive and all-encompassing definition upon an inherently flexible concept which can take many different forms.

### **The Burden:**

25. First, the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus, the context and history of the request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular,

the number, breadth, pattern and duration of previous requests may be a telling factor.

26. As to the *number*, 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. Volume, alone, however, may not be decisive. Furthermore, if the public authority in question has consistently failed to deal appropriately with earlier requests, that may well militate against such a finding that the new request is vexatious.
27. As to their *breadth*, a single well-focussed request for information is, all other things being equal, less likely to run the risk of being found to be vexatious. However, this does not mean that a single but very wide-ranging request is necessarily more likely to be found to be vexatious – it may well be more appropriate for the public authority, faced with such a request, to provide advice or guidance on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked.
28. As regards the *pattern*, a requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request.
29. Likewise, as to *duration*, the period of time over which requests are made may be significant in at least two ways. First, a long history of requests e.g. over several years may make what would otherwise be, taken in isolation, an entirely reasonable request, wholly unreasonable in the light of the anticipated present and future burden on the public authority. Second, given the problems of storage, public authorities necessarily have document retention and destruction policies in place, and it may be unreasonable to expect them to e.g.

identify whether particular documents are still held which may or may not have been in force at some perhaps now relatively distant date in the past.

**The Motive:**

30. Second, the motive of the *requester* may well be a relevant and indeed significant factor in assessing whether the *request* itself is vexatious. The FOIA mantra is that the Act is both “motive blind” and “applicant blind”. There is, for example, no need to provide any reason for making a request for information under section 1; nor are there any qualifying requirements as regards either the identity or personal characteristics of the requester. However, the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request. What may seem an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority. Thus, vexatiousness may be found where an original and entirely reasonable request leads on to a series of further requests on allied topics, where such subsequent requests become increasingly distant from the requester’s starting point and may become obsessive in an unacceptable or disproportionate manner.

31. In this context it is important to bear in mind that the right to information under FOIA is a significant but not an overriding right in a modern democratic society. As has already been noted, it is a right that is qualified or circumscribed in various ways. Those restrictions reflect other countervailing public interests, including the importance of an efficient system of public administration. Thus section 14 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. In that context it must be

relevant to consider the underlying motive for the request. As the FTT observed in *Independent Police Complaints Commission v Information Commissioner* (EA/2011/0222) (at paragraph 19):

*“Abuse of the right to information under s.1 of FOIA is the most dangerous enemy of the continuing exercise of that right for legitimate purposes. It damages FOIA and the vital rights that it enacted in the public perception. In our view, the ICO and the Tribunal should have no hesitation in upholding public authorities which invoke s.14(1) in answer to grossly excessive or ill-intentioned requests and should not feel bound to do so only where a sufficient number of tests on a checklist are satisfied.”*

32. This approach should not be seen as giving licence to public authorities to use section 14 as a means of forestalling genuine attempts to hold them to account. For example, an investigative journalist may make a single request which produces certain information, the contents of which in turn prompts a further request for more information, and so on. Such a series of requests may be reasonable when viewed both individually and in context as a group. The same may also be true of a request made by a private citizen involved in a long-running dispute or exchanges with the public authority (see e.g. *Ainslie*). As the IC’s Guidance for public authorities helpfully advises (p.3):

*“Many previous cases of vexatious requests have been in the context of a longstanding grievance or dispute. However, a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily.”*

33. However, in other circumstances a series of requests may suggest that later requests have become disproportionate to whatever the original inquiry was. Mr Cross, in the course of argument in *Ainslie*, described this phenomenon as

“spread”. One may prefer the term used by Judge Jacobs in *Wise*, namely “vexatiousness by drift” (see paragraph 22 above). The background to that application for permission to appeal was that entirely unsubstantiated allegations had been made to the police and social services about Mr Wise. In particular, Mr Wise was unhappy about the way that the police handled the matter. He then made a series of successive FOIA requests to different public authorities about a wide range of different matters, which became wholly disproportionate to his original aim. However, “drift” is not a prerequisite to a finding that section 14 applies, as by definition it may only arise where there is a previous course of dealings – a single well-defined and narrow request put in extremely offensive terms, or which is expressly made purely to cause annoyance or disruption to the public authority rather than out of a genuine desire for the information so requested, may be vexatious in the complete absence of any such drift.

**The value or serious purpose:**

34. Third, and usually bound up to some degree with the question of the requester’s motive, is the inherent value of the request. Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases, the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests (especially where there is “vexatiousness by drift”) may not have a continuing justification. In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone



provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident.

**Causing harassment of, or distress to staff:**

35. Fourth, vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive (e.g. the use of racist language). As noted previously, however, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within section 14.”

**Conclusions and Reasons:**

36. The Tribunal are of the view that the request dated 3 October 2022 and resulting exchanges, including the Internal Review, with the Council (as set out in the annex- see Open Bundle from Pages D191 – D244) demonstrate some of the more significant difficulties the Council had with this request. Similarly in his Grounds of Appeal the Appellant demonstrates a serious misconception of the FOIA and a clear failure to understand the nature of a section 14(1) refusal.

37. The Appellant argues in essence that he and his wife have a longstanding dispute with the Council which he had communicated with them about, at length over a considerable period of time and alleges wrongdoing on the part of the Council which can be summarised succinctly in his own words as per his Grounds for Appeal thus: *“My FOI request was merely holding BHCC to*

*account for their wrongdoing when they decided to provide dishonest responses to my previous FOI request. BHCC made the decision to do that of their own volition knowing it was a criminal offence.”* If he is correct about this, he has no doubt alternative remedies which should provide himself and his wife with redress.

**38.** In his undated Final Written Submissions, the Appellant in 164 paragraphs provides a detailed history and chronology of a longstanding dispute between himself and his wife with the Council. At Paragraph 2 therein he states:

*“This account together with the various exhibits will demonstrate two points: i) that my FOI request to Brighton and Hove City Council (BHCC) was based on legitimate concerns ii) that my FOI request was therefore not vexatious.”* The Tribunal do not dispute the Appellants request was based on legitimate concerns, but we do not accept that this necessarily means the request was not vexatious.

**39.** After careful consideration of all the evidence before us we have come to the following conclusions. The request as reproduced in the DN extends to just over nine A4 pages. The request does not just ask for information but contains voluminous background information including many unsubstantiated allegations. This has been used to air grievances and present further arguments. Many of the questions contain references to 'false' information and allegations of dishonesty against the Council and its staff members. The use of 'reminders' that providing dishonest responses will be a criminal offence is, we find menacing and intimidating and does not constitute requests for information as such. The questions are asking for very detailed information about lease arrangements and the decision by Council staff not to take enforcement action and are more about seeking debate or answers rather than recorded information which is the intended purpose of a FOIA request. The Council had already made its stance clear. This in our unanimous view amounts to unreasonable persistence of an obsessive and unacceptable nature.

The information sought is about the Appellant's private matter. It is not of wider public interest. On the evidence before us, even if the Appellant obtained more information, it would, in our view be unlikely to satisfy his angst and further requests of a similar adversarial nature would follow. This, we find is apparent from his detailed Grounds of Appeal referred to above.

**40.** Public authorities necessarily face a high hurdle in establishing that a request is vexatious. The starting point, as per Dransfield, is that vexatiousness, "*primarily involve making a request which has no reasonable foundation, that is no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public*". The Dransfield case refers to four factors that we have referred to above and while not determinative, are indicative and are relevant here. The Tribunal, with the assistance of the precedents we have referred to have unanimously agreed the following apply in this appeal:

**41.** On Burden, considering the present and future burden is relevant as part of analysing the context and history. The Appellant has exerted a heavy burden on the public authority historically. The request is just over 9 pages in length, consisting of 13 numbered questions each with sub-questions, comments, assertions and allegations and in our considered view is plainly, of itself, vexatious. It is in our view most likely that the Appellant will, unchecked, continue with this course of conduct and impose a heavy burden on the public authority by way of further requests around this single narrow and mostly personal subject matter.

**42.** On Motive, it is our considered and unanimous view the nature and burden of the current set of questions as set out in the request is wholly disproportionate to the original inquiries and is more of a personal nature than of Public Interest.

**43.** On Value or serious purpose, it is our considered and unanimous view that on an objective assessment, there is no continuing public interest to the request and the Appellant has other more fitting legal or other means to seek the information he requires. It is all about personal arrangements and not a matter of significant Public Interest such that it justifies the intervention of this Tribunal, even if it was practicable or reasonable to expect the Council to do more. We are of the view that the concept of Vexatiousness by Drift otherwise described in precedent as “Spread” applies here.

**44.** On Harassment or distress to staff, the Appellant displays considerably obsessive conduct and makes wide ranging and unsubstantiated allegations of criminal conduct which cannot be denied would cause harassment and distress to Council staff.

**45.** Vexatiousness is a flexible concept and, while the above factors do not have to all be made out to indicate vexatiousness, we are satisfied that looking at the holistic view pertaining, they are all made out here and we find the subject request manifestly unjustified, inappropriate and/or improper use of a formal procedure.

**46.** Accordingly, we dismiss this appeal.

Brian Kennedy KC

16 October 2023

Promulgated: 18 October 2023