



Case Reference: EA/2023/0316  
Neutral Citation Number: [2024] UKFTT 001049 (GRC)

First-tier Tribunal  
General Regulatory Chamber  
Information Rights

Heard : Determined on the papers  
Heard on: 2 January 2024  
Decision given on: 4 November 2024

Before

TRIBUNAL JUDGE JACQUELINE FINDLAY  
TRIBUNAL MEMBER DAVID COOK  
TRIBUNAL MEMBER EMMA YATES

Between

MARK TULLY

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

## Decision

1. The appeal is dismissed.

## REASONS

### Background and Request

2. This appeal is brought under section 57 of the Freedom of Information Act 2000 (FOIA) against the Commissioner's Decision Notice (the DN) dated 1 June 2023 with reference IC-217458-F7W5 which is a matter of public record.

3. The parties opted for a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within Rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009, as amended (the Rules).
4. In reaching its decision the Tribunal took into account all the evidence before it in an open bundle and made findings on the balance of probabilities.
5. The full details of the background to this appeal, Mr Tully's request for information (the Request) and the Commissioner's decision are set out in the DN.
6. The internal review (references IR2022/12820 and FOI2022/03927) referred to by Mr Tully dated 25 July 2022 appears at pages 105 to 111 of the bundle.
7. This appeal is linked to the appeal with reference EA/2023/0201 which was determined, also, by this Tribunal and for which a separate Decision is issued.
8. On 29 July 2022, Mr Tully made a request (the Request) to HM Treasury in the following terms:

“Please disclose all metadata relating to FOI2022/03927 and IR2022/12820, which must include (but is not limited to) all recorded communications of any type, in any form (including smartphone exchanges), which provides evidence of internal discussions within HM Treasury, and any decisions which were taken with regard to this Freedom of Information request and the associated internal review.”

9. On 19 August 2022 HM Treasury responded citing section 14(1) of FOIA explaining this was due to the disproportionate effort that would be required to comply with the request, suggesting a narrowing of the request may enable it to deal with a future request.

10. On 3 October 2022, Mr Tully sent a response requesting an internal review. After further correspondence between Mr Tully and HM Treasury, HM Treasury's internal review was produced on 21 November 2022 this upheld its original response citing section 14(1) of FOIA.
11. Mr Tully contacted the Commissioner on 20 February 2023 to complain about the way their request for information had been handled.

### **The Decision Notice**

12. On 1 June 2023 the Commissioner issued the DN finding that the Request for metadata to HM Treasury for all internal and external correspondence and communications about the handling of a previous information request was vexatious and HM Treasury was entitled to rely on section 14(1) of FOIA. The Commissioner did not require any steps to be taken as a result of the decision.
13. Mr Tully lodged an appeal dated 28 June 2023.

### **Legal Framework**

14. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information under section 1(1)(a) of the FOIA and to have that information communicated to him if the public authority holds it under section 1(1)(b) of the FOIA.
15. When determining whether or not the information is held the Commissioner and Tribunal should apply the normal civil standard of proof, on the balance of probabilities.

16. The powers of the Tribunal in determining this appeal are set out in section 58 of the 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.
17. Section 14(1) FOIA provides that section 1(1) does not oblige a public authority to comply with a request for information if the request is 'vexatious'. The term 'vexatious' is not defined in FOIA.
18. The Upper Tribunal (the UT) considered the purpose of section 14(1) and the meaning of the term 'vexatious' in this context in detail in its decision *The Information Commissioner v Devon CC & Dransfield* [2-12] UKUT 440 (AAC) ("Dransfield"). The UT stated: "the purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..." (paragraph 10).
19. The UT placed particular emphasis on the issue of whether the request had adequate or proper justification. In doing so it approved a First-tier Tribunal's conclusion in an earlier case that 'vexatious' could be defined as the: "... manifestly unjustified, inappropriate or improper use of a formal procedure." (Paragraph 27 of Dransfield). Accordingly, the Tribunal has borne in mind that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.

20. The Commissioner in the published guidance on dealing with vexatious requests, considers the key question the public authority must ask itself, namely whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
21. This task involves the weighing of the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible, namely, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this would involve the need to take into account wider factors such as the background and history of the request.
22. In Dransfield, the UT found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.
23. The UT stated that these considerations were not meant to be exhaustive. The UT emphasised a holistic approach:

“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”
24. The Tribunal stands in the shoes of the Commissioner and takes a fresh decision on the evidence. The Tribunal does not undertake a review of the way in which the Commissioner’s decision was made.

## **Grounds of Appeal**

25. The Mr Tully submits long and expansive grounds of appeal. Many of his assertions are not relevant to the issues before the Tribunal and accordingly, the Tribunal does not consider it necessary to reproduce all that he has written and sets out below a summary.

### **Ground 1**

26. Mr Tully submits that this Request was made to assist him in understanding HM Treasury's handling of a previous request dated 21 February 2022.

### **Ground 2**

27. Mr Tully considers there is a serious purpose and value in understanding HM Treasury's handling of his FOIA request date 21 February 2022 due to the public interest in transparency surrounding the Loan Charge Review, HM Treasury's "abysmal" record on information disclosure and due to a drop in wider government transparency.

### **Ground 3**

28. Mr Tully submits that the Request would not impose a disproportionate level of disruption and is not aggressive so was not correctly categorised as vexatious. Mr Tully asks why if the contents of the requested information is anodyne it has not been disclosed by HM Treasury.

### **Ground 4**

29. The Annex A to the DN seeks to reduce the scope of his metadata request.

### **Ground 5**

30. Mr Tully seeks to rely on the case of *Home Office and Ministry of Justice v Information Commissioner's Office* [2009] EWHC 1611 (Admin). Meta requests should be treated in the same way as any other information request and relying on the Commissioner's guidance his Request and meta requests are not inherently vexatious.

## **Ground 6**

31. In the last year the number of complaints made to the Commissioner regarding HM Treasury's handling of FOIA requests which the Commissioner has upheld has dropped.

## **The Commissioner's Response**

32. The Commissioner submits that the appeal should be dismissed.
33. Mr Tully's point in relation to HM Treasury's handling of his 21 February 2022 request are currently under investigation by the Commissioner and these points will therefore be investigated by the Commissioner.
34. The HM Treasury's handling of other previous requests are dealt with in appeal with reference EA/2023/0201.
35. The previous dealings of the requests and complaints by Mr Tully undermines the serious purpose and value behind making this Request. Mr Tully from previous dealings must have understood that there are more targeted routes to address his concerns.

## **Ground 2**

36. The public interest in transparency surrounding the Loan Charge Review is more relevant to the serious purpose and value behind the 21 February 2022 request than the meta request which is the subject of this appeal. Understanding how the 21 February 2022 FOIA request was handled due to Mr Tully's concerns regarding HM Treasury and wider government transparency does however demonstrate some serious purpose and value behind the request.

## **Ground 3**

37. HM Treasury has confirmed to the Commissioner, that following searches it had located over 100 emails (references FOI2022/03927 and IR2022/12820) and further searches would be required of its FOI request logging system and its electronic records management system. It has said that:

“Considerable time would need to be taken to extract and collate the information and as the information is largely contained in emails that form parts of chains, we would have to spend time extracting duplicates and ensuring chains were complete etc. Some of the emails also contain attachments, the majority of them being within scope in various stages of redaction – information that had already been released to Mr Tully – with the exception of s40 redactions for the names of junior staff, the information was released in full to Mr Tully.”

38. HM Treasury asserted that its policy team responsible for the loan charge policy would have to conduct the same exercise.

39. Whilst HM Treasury is a large central government organisation, it has argued that its information rights team and its Loan Charge policy team are small teams with limited resources.

40. Given the volume of information located by initial searches and the fact that it is likely this would have to be reviewed and redacted as it contains the information disclosed in relation to the 21 February 2022 request at various stages of redaction, complying with this Request would impose a significant burden upon HM Treasury and this would divert the resources of two particular teams within HM Treasury.

41. HM Treasury asserted in its submissions to the Commissioner that the language used by Mr Tully within his internal review request provides evidence that the request was correctly categorised as vexatious as it would cause distress to the team responsible for processing the request.



42. The Commissioner submits that the language used in the Request for internal review was not a relevant consideration in his determination that the Request was vexatious.
43. Taking a holistic view in accordance with Dransfield, despite there being some serious purpose and value behind the Request, on balance given the relevant factors considered, the Commissioner submits that HM Treasury correctly engaged section 14(1) FOIA under all of the circumstances of this particular case.

#### **Ground 4**

44. The Commissioner accepts that the metadata request in this case is not limited to the definition contained in the Annex to the DN. The metadata request in this case was also for the contents of the correspondence requested.

#### **Ground 5**

45. The Commissioner's guidance refers to the application of section 14 FOIA in the context of meta requests:

"Under section 14 of FOIA, you do not have to comply with requests that are vexatious. The equivalent provision in the EIR is regulation 12(4)(b), the exception for manifestly unreasonable requests.

We have dealt with several cases where public authorities have supported their decision to apply section 14 to a meta request with general arguments around the theme that such requests are, by nature, obsessive or lacking in any serious purpose of value. In the ICO's view, there is nothing intrinsically vexatious about a request for information about a request. It follows that you should not treat meta requests as vexatious as a matter of course.

Rather, you should only consider refusing a meta request as vexatious if you can point to specific evidence that the request will cause a disproportionate or unjustified level of disruption, irritation or distress on its own merits."

46. The guidance is clear that although meta requests are not vexatious per se, section 14 FOIA can be applied to meta requests where a public authority can demonstrate that the request meets the definition of a vexatious request on its own merits.

## **Ground 6**

47. The Commissioner investigates FOIA complaints made to him on a case by case basis. The number of complaints about HM Treasury which are not upheld by the Commissioner is not relevant to HM Treasury's application of section 14(1) FOIA in this case.

## **Conclusions**

48. In reaching its decision the Tribunal took into account all the evidence before it whether or not specifically referred to in this Decision. The Tribunal applied the legislation and case law referred to above.
49. In reaching its decision the Tribunal has weighed the evidence about the impact on HM Treasury and balancing this against the purpose and value of the Request. The Tribunal has considered whether a reasonable person would think that the purpose and value of the Request are enough to justify the impact on HM Treasury. The Tribunal has taken into account the background and history of the Request and the previous requests and complaints.

## **Burden of the Request**

50. The Tribunal found that there would be a disproportionate effort required to comply with the Request taking into account the time and resources that would be needed to provide the information and taking into account the time and resources already expended in dealing with previous requests and providing the information that is the subject of appeal with reference EA/2023/0201. The Tribunal found that

complying with the Request would require the diversion of resources away from core duties which would place a significant burden on HM Treasury's resources.

### **The Motive**

51. The Tribunal found that Mr Tully made the Request to assist him in understanding the handling of a previous request. The Tribunal found that the motive for the Request was not a persuasive factor. The Tribunal found there is limited public interest in the information sought by Mr Tully and concerns matters personal to Mr Tully only.

### **The Value and Purpose**

52. The Tribunal found that taking into account the information already released to Mr Tully there is little value or purpose in his Request for the metadata that would justify the level of disruption to HM Treasury.

### **Harassment or Distress**

53. The Tribunal found it likely that the diversion of resources to deal with the Request would be likely to cause a burden and distress to staff in taking them away from pressing core duties.
54. Mr Tully asked the Commissioner to investigate the evidence of HM Treasury's attitude and behaviour which he describes as "unacceptable and dismissive." This is not a matter before the Tribunal and there was no error in law in the Commissioner's approach to this request.
55. The Tribunal did not consider it significant that Annex to the DN was not an exhaustive description or definition of metadata.

56. In reaching its decision the Tribunal attached weight to the information provided by HM Treasury to the Commissioner in the letter dated 17 May 2023 (pages 86 to 90).
57. The Tribunal found that the number of complaints about HM Treasury which are not upheld by the Commissioner is not relevant to the issues before the Tribunal.
58. The Tribunal found that section 14(1) was correctly engaged in all the circumstances and that the Request was a disproportionate and improper use of the FOIA.
59. The Tribunal found there was no error of law in the DN

Signed: *Judge J Findlay*

Date: 4 November 2024