



Neutral citation number: [2024] UKFTT 44 (GRC)

Case Reference: EA/2023/0062

Case Reference: EA/2023/0105

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

Heard: by CVP

Heard on: 13 October 2023

Decision given on: 22 January 2024

Before

**TRIBUNAL JUDGE FOSS
TRIBUNAL MEMBER MURPHY
TRIBUNAL MEMBER SCOTT**

Between

SIMON JAMES BOYCE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: the Appellant appeared in person.

For the First Respondent: the First Respondent was unrepresented and did not appear at the hearing.

Decision:

Appeal EA/2023/0062 is DISMISSED.

Appeal EA/2023/0105 is ALLOWED. The Information Commissioner's decision, referenced as IC-179686-G9C8, is not in accordance with the law.

By [35 days from date of promulgation of this decision], to ensure compliance with the Freedom of Information Act 2000, Hertsmere Borough Council must issue a fresh response to the Request (with the exception of the final element which seeks information as to how many bins have been replaced by Hertsmere Borough Council due to damage by Hertsmere Borough Council staff), which does not rely on section 14(1) of the Freedom of Information Act 2000.

REASONS

Introduction to the Appeals

1. This decision addresses two appeals, which the Tribunal heard together on 13 October 2023.
2. The first appeal ("the First Appeal") is against the Decision Notice of the Information Commissioner ("the Commissioner") dated 2 February 2023, referenced IC-172494-Y8S5 ("the First Decision Notice"). The second appeal ("the Second Appeal") is against the Decision Notice of the Commissioner dated 7 February 2023 referenced IC-179686-G9C8 ("the Second Decision Notice").
3. By Order of the Tribunal Registrar of 13 July 2023, it was ordered that the First Appeal and the Second Appeal be heard together.

Background

4. Since about June 2021, the Appellant has been corresponding with Hertsmere Borough Council ("the Council") in relation to a dispute regarding the Appellant's wheelie bin. The Appellant believes that the Council's waste collection team, Street Scene, damaged his bin. The Council has disputed that.

It has told the Appellant that accordingly, and in line with the Council's policy, he must pay the Council £40 to obtain a replacement bin.

The First Request

5. By way of background: on 27 July 2021 the Appellant made this request of the Council:

"Can you please get some information for me.

1) how many bins have the crew reported as damaged by them in the last 5 years.

2) how many other residents have complained about their bins being damaged in the last 5 years.

3) how many residents have paid the £40 for a replacement in the last 5 years"

6. On 26 August 2021, the Council refused parts 1) and 2) of that request pursuant to s12 of the Freedom of Information Act 2000 ("FOIA") (costs of compliance) and confirmed that the information sought by part 3) of the request was not held. The Appellant complained about the Council's response, and the Council conducted an internal review. Upon review, dated 21 September 2021, the Council maintained that it was entitled to refuse to disclose the information requested. It identified that it would take approximately 104 hours of work to answer part 1), approximately 354 hours of work to answer part 2), and that a figure for part 3) was not available but would involve an analysis of accounts receipts for five years, isolating which payment was for a bin and collating that data which would add further council officer time to the total time required.

7. On 26 August 2021, the Appellant submitted this further request:

"Can I also have an foi on how many times you have denied a request from residents in the past 5 years, if that's not too hard for you."

8. The Council refused that request on 22 September 2021, again in reliance on s12 FOIA.

9. The Appellant complained to the Commissioner in relation to the Council's refusal of both the 27 July 2021 request and the 26 August 2021 request and the Commissioner conducted two separate investigations under the following references: (1) IC-131272-M0S81 (the 27 July 2021 request) and (2) IC-159792-W2C2 (the 26 August 2021 request). The Commissioner issued a Decision

Notice with respect to IC-131272-M0S8 on 27 April 2022, reasoning that the Council was entitled to refuse the request in reliance on s12 FOIA. With respect to IC-159792-W2C2, the Commissioner concluded the matter on 4 May 2022 without issuing a Decision Notice, concluding that the Council were entitled to refuse the request in reliance on s12 FOIA. The Commissioner found in both cases that the Council had failed to provide reasonable advice and assistance to the Appellant and so had failed to meet its obligations under section 16(1) of FOIA.

10. Meanwhile, in August 2021 the Appellant submitted a complaint to the Council through the Council's complaints process, regarding the damage to his bin. On 13 August 2021, the Council confirmed to the Appellant that no damage to the bin had been reported on the waste collection team's round sheet. The Appellant persisted in his complaint, through the second stage of the complaints process. On 15 September 2021, the Council confirmed that no damage had been recorded, and that CCTV footage taken from the Council's waste collection vehicle confirmed that the damage was present before the bin was placed on the waste collection team's vehicle's lift mechanism. On 29 September 2021, the Appellant requested a copy of the CCTV footage and a copy of the waste collection team's round sheet. We understand that this engaged the third and final stage of the Council's complaints process. It appears that there was then delay on the Council's part while it considered the application of data protection legislation in relation to provision of the CCTV footage.
11. At some point in November 2021, the Appellant complained to the Local Government Ombudsman (the "LGO"). On 21 December 2021, the Council completed a report in relation to the third stage of the Appellant's complaint. It provided a copy of that report to the Appellant on 25 January 2022. The report confirmed that the CCTV footage could no longer be viewed due to a technical error, but that a member of the waste collection team had previously viewed the footage and confirmed that the damage was present on the bin before it was lifted onto the waste collection vehicle.
12. On 9 May 2022, Ian Kershaw, Head of Street Scene, for the Council's waste operations, and the Appellant met in person. We have not seen any note of the meeting but understand that, inter alia, the meeting was intended to include discussion as to how the Appellant might refine his information requests so as to make them sufficiently proportionate as not to engage objections to disclosure by the Council on grounds of cost pursuant to s12 FOIA.

13. On 13 May 2022, following his meeting with Mr Kershaw, the Appellant submitted the following request to the Council (“the First Request”):

“Hi all, have you come to a decision on the outstanding issues and the way forward I put to Ian Kershaw at Tuesdays meeting?”

I do need a decision by next week or I will need the foi requested

1st IC-131272-M0S8 case 10 months information on part 1 of the 3 items

2nd case IC-159792-W2C2, as recommended by ICO, 6 month information

ICO has stated this is will be with in the section 12 requirements. Each request fall into 18 hour or £450”

14. On 18 May 2022, the LGO concluded that there had been a delay by the Council in responding to the Appellant’s complaint and that the Council must apologise to the Appellant for the delay and failure to manage his complaint, and pay the Appellant £50 for his time and trouble in pursuing a response to his complaint.

15. On 18 May 2022, the Council refused the First Request in reliance on s14(1) FOIA (vexatious requests). It said:

“In regard to your two Freedom of Information requests currently being considered by the Information Commissioner’s Office, rather than invite you to refine these requests (ICO references IC-159792-W2C2/ HBC_FOI_20210445 and IC-131272-M0S8/ HBC_FOI_20210386) so that they can be completed within the acceptable timeframes I am instead refusing them as vexatious under Section 14(1) of the FOIA. This is because you have made it clear when we met him [this is a reference to Mr Kershaw, and we think it should read “me”] and also via email that you have made the FOI requests as leverage in an effort to overturn our bin replacement policy. The Council accepts and apologises that we have not dealt with your complaint in a timely way but we cannot collude to reverse a policy that is in place to ensure that residents show appropriate care when using our bins. If you wish to order another bin you can do so via our customer services and the £40 fee will apply.

For my own satisfaction I have re-interviewed my Street Scene Manager who has confirmed she viewed video evidence of your bin on the day of collection and it was already damaged before we collected it. I find this testimony compelling as a) my manager has no interest one way or another as to who is responsible for the replacement fee b) the nature of the damage is not something that could be achieved during collection – the bin was split and this usually occurs when

it has been overloaded with heavy (typically building waste) or compressed against a wall by a car. We have a nominal charge in place for replacement bins as it encourages residents to take care of their bins. Without such a policy the number of lost and damaged bins experienced increases significantly and is a far greater burden on the local Council Tax payers. ..."

16. On 18 May 2022, the Appellant challenged the Council's refusal of the First Request, but, on the same date, the Council maintained its position.
17. On 19 May 2022, the Appellant sent an email to senior officers or councillors of the Council, seeking their assistance in resolving matters. He said: *"The bin replacement is £40? I estimate that this dispute so far has cost HBC thousands of pounds in time and additional costs"*.
18. On 23 May 2022, the Appellant complained to the Information Commissioner about the Council's response to the First Request. The thrust of his complaint was that the Council had initially rejected his requests of 27 July 2021 and 26 August 2021 pursuant to s12 FOIA, and upon his attempts at refining the request (in relation to which he said the Council had failed to assist him), the Council had then relied on s14 FOIA. He said, *"They say it is vexatious and I'm using your decision on my complaint as leverage. This is total [sic] untrue."*

The Second Request

19. On 26 May 2022, the Appellant submitted the following request to the Council ("the Second Request"):

"How big is the hard drive on the waste collection lorries, how much cctv footage can it hold, i.e. days, weeks, months.

How often is the waste lorries cctv down loaded to a central computer.

In my own outstanding case, Street scene manager states that cctv was viewed by one of the staff, what was the date that the cctv was viewed. It is also stated, by street scene management that the cctv in my outstanding case is not available due to a hard drive issue, when was the issues raised, when was the hard drive replaced.

How many bins have been replaced by HBC street scene due to damage by HBC employed staff."

20. By an undated letter which appears to have been sent to the Appellant at around the end of May/early June 2022, the Council refused the Second Request in reliance on s14 FOIA (vexatious requests). The Council stated:

"I am refusing your response [sic] under S14 of the Freedom of Information Act as vexatious. This is because your request repeats one previously made and refused as vexatious when it asks "How many bins have been replace [sic] by HBC street scene due to damage by HBC employed staff". The Council has already advised the Information Commissioner of its refusal of this request as vexatious (ICO references IC-159792-W2C2/ HBC_FOI_20210445 and IC-131272-M0S8/ HBC_FOI_20210386). Furthermore your request is also an attempt to reopen your complaint about your bin which has been considered fully under the Council's complaints process and the Local Government Ombudsman procedure (reference Case ID - 21012736). The Council has implemented the Ombudsman decision in full.

21. On 31 May 2022, the Executive Director of the Council wrote to the Appellant addressing his various complaints within the context of the third stage of the Council's complaints process. There evidently followed a response from the Appellant which we have not seen but which elicited a further letter from the Executive Director dated 10 June 2022, maintaining the Council's position in relation to refusal of the Appellant's various requests, including the First Request, as vexatious pursuant to s14(1) FOIA. It appears that on or around 7 June 2022, the Appellant may have sought an internal review of the Council's refusal of the Second Request but that the Council did not action that, at least immediately; on 27 June 2022 the Executive Director of the Council wrote to the Appellant saying that he had not been able to ascertain any record of such a request but that he had asked for a review to be undertaken. On 6 July 2022, the Appellant complained to the Commissioner that the Council had not undertaken such a review.

The First Decision Notice

22. By the First Decision Notice (dated 2 February 2023 in relation to the First Request (28 July 2021)), the Commissioner upheld the Council's refusal to provide the information sought by the First Request on the basis that the First Request was vexatious within the meaning of s14(1) FOIA for the following reasons: while compliance with the First Request would not place a significant burden on the Council, the aggregated burden of dealing with the Appellant's overall correspondence would place an additional burden on the Council and its limited resources over a matter which had already been through the Council's three-stage complaint process and was also being considered by the LGO; the Appellant was using the First Request to attempt to re-open a matter which had already been addressed by the Council; the Council's conduct was already receiving independent oversight (from the LGO) at the time of the First Request; the Appellant was seeking to use the First Request as a means of pressurising the Council into providing him with a new bin, free of charge; the

Request consequently lacked a serious purpose or value; the Request was vexatious and the Council was entitled to rely on s14(1) FOIA to refuse it.

The Second Decision Notice

23. By the Second Decision Notice (dated 7 February 2023 in relation to the Second Request (26 May 2022)), the Commissioner upheld the Council's refusal to provide the information sought by the Second Request on the basis that the Second Request was vexatious within the meaning of s14(1) FOIA for the following reasons: the Council faced an aggregated burden in dealing with the Appellant's overall correspondence on the matter along with a complaint handled under the Council's three stage complaint process and had been considered by the LGO, and that dealing with the Second Request would place an additional burden on the Council; the Appellant was using his the Request to attempt to reopen a matter which had already been addressed by the Council; the matter had already received independent oversight by the LGO which had resulted in the Council being ordered to pay the Appellant £50; the Appellant was seeking to use the Second Request to pressurise the Council into providing him with a new bin, free of charge; the request lacked serious purpose and value; weighing the impact on the Council, and balancing this against the lack of purpose in and value of the Second Request, the Council was entitled to refuse the Second Request in reliance on s14 FOIA.

Notice of Appeal in the First Appeal

24. By Notice of Appeal dated 3 February 2023 the Appellant submitted the following matters as grounds of appeal in relation to the First Decision Notice (in summary):

- a. the Commissioner had taken into account complaints made by the Appellant to the Council which were not vexatious and were not related to the wheelie bin issue, for example, issues relating to rubbish, inconsiderate parking and overgrown vegetation;
- b. the Appellant disputed that the First Request was vexatious as the Council had initially refused the request pursuant to s12 FOIA before refusing it pursuant to s14 FOIA;
- c. the Commissioner did not contact the Appellant during the investigation and the Council were given more opportunities to make their case.

The Commissioner's Reply in the First Appeal

25. The Commissioner's Reply to the Notice of Appeal in the First Appeal, dated 27 April 2023 may be summarised as follows:

- a. it was necessary to consider the context and history of the previous course of dealings between the Appellant and the Council, including

previous requests as well as general (email or letter) correspondence, complaint correspondence and the LGO investigation, whether or not they were related to the wheelie bin issue;

- b. upon receipt of the First Request of 13 May 2022, which was effectively a refinement of the Appellant's previous requests, the Council was obliged to treat it as a fresh request and dealt with it appropriately;
- c. the Council was entitled to rely on different exemptions from disclosure (see: **Birkett v DEFRA** [2011] EWCA Civ 1606);
- d. the Appellant's criticism of the Commissioner's failure to engage with him was not an arguable ground of appeal as it related to the conduct of the investigation which falls outside the jurisdiction of the Tribunal to consider; in any event, the right to a full rehearing on the merits by Tribunal cures any alleged procedural defect or breach of natural justice in the Commissioner's investigation.
- e. as to the outcome sought by the Appellant (*"I am seeking that the ICO reconsider their outcome and take my rebuff to HBC evidence as HBC have only used ½ of the truth."*), the Commissioner had discharged his duties, and it was not possible for the Commissioner to reconsider the First Decision Notice.

Notice of Appeal in the Second Appeal

26. By Notice of Appeal dated 20 February 2023, the Appellant submitted the following matters as grounds of appeal in relation to the First Decision Notice (in summary):

- a. the Council has passed wrong, misleading or incomplete information to the Commissioner;
- b. the Commissioner has not proven that the Second Request is vexatious; it is not a significant burden, annoying, frustrating or a worry unless the Council is hiding something;
- c. he believes he can prove that the Council damaged his bin;
- d. His requests as to other subject matter of his correspondence with the Council (relating to fly-tipping, illegal parking and waste bins not being emptied) are not vexatious and/or do not render the Second Request vexatious.

The Commissioner's Reply in the Second Appeal

27. The Commissioner's Reply to the Notice of Appeal in the Second Appeal, dated 19 June 2023 may be summarised as follows:

- a. criticism of the Council's handling of the Appellant's complaint falls outwith the jurisdiction of the Tribunal;
- b. there is no basis to suggest that the Council provided the Commissioner with incorrect information. It is not open to the Tribunal to make any

finding on how the Commissioner investigated matters, and the right to a full re-hearing on the merits cures any alleged procedural defect or breach of natural justice in the Commissioner's investigation;

- c. the Appellant's continued complaint has gone beyond a 'normal resident's concern' as he continues to seek information on an issue which has undergone independent scrutiny by the LGO. Further, he has been awarded £50 by the Council on the back of LGO's findings which is more than what the damaged bin costs to replace. This demonstrates intransigence. Moreover, it is necessary to consider the context and history of the previous course of dealings between the Appellant and the Council, and the consequent cumulative burden;
- d. the Commissioner denies he is using the damaged bin issue against the Appellant; the Commissioner considers the effect of the request holistically, and considers several factors. The Second Decision Notice also records the Appellant's view so it is a fair reflection of the investigation.

The Applicable Law

28. The relevant provisions of FOIA are as follows:

Section 1

General right of access to information held by public authorities.

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

Section 14

Vexatious or repeated requests.

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

...

Section 58

Determination of appeals

- (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.*

29. The import of s58 FOIA is that the right of appeal to the First-tier Tribunal involves a full merits consideration of whether, on the facts and the law, the public authority's response to the Request is in accordance with Part 1 of FOIA (**Information Commissioner v Malnick and ACOBA** [2018] UKUT 72 (AAC); [2018] AACR 29, at paragraphs [45]-[46] and [90].

The hearing

30. The Tribunal conducted the hearing, attended by the Appellant by telephone. The Commissioner did not attend.

Analysis – the First Appeal

31. It is evident even from the material in the bundle before us relating predominantly to the First and Second Requests that correspondence from the Appellant to the Council has been very substantial at least in relation to his bin, and that responding to his complaint through the Council's complaints process and his various FOIA requests must have entailed a considerable amount of time and work by Council officers.

32. We note that on 31 January 2023, the Council told the Commissioner this in relation to the Commissioner's investigation of the Appellant's complaint concerning the Council's refusal of the First Request:

“... between 27 April 2022 and 6 July 2022 Mr Boyce submitted 19 formal complaints. He also submitted two FOIs on 26 May 2022 and 25 July 2022. In May 2022 he submitted a second subject access request, having made an earlier subject access request in late 2021. This is in addition to the 12 emails he sent direct to me between 27 April 2022 and 28 June 2022, 9 emails to our streetscene service between 1 July 2021 and 20 May 2022, 2 emails to our Managing Director in 23 November 2021 and 9 May 2022, and one to the Leader of the Council on 23 May 2022 – all relating to his bin. I have not

included correspondence with Mr Boyce about fly-tipping, litter or parking which although extensive we do not consider to be vexatious."

33. The Commissioner indicated that he could not consider matters arising after the date of the First Request (13 May 2022), to which the Council responded as follows:

"...Mr Boyce submitted 3 formal complaints in the period between 27 April and 13 May 2022. These were on 27 April, and two on 6 May. I understand your cut off date but submit that the additional complaints made after those dates are all part of a pattern of behaviour that has persisted since Mr Boyce originally began complaining about our bin policy in July 2021. Mr Boyce's own statement that he would withdraw all his requests if we replaced his bin free of charge are the key testimony to this."

34. We consider that we can deal shortly with the First Appeal. We understand that the meeting between the Appellant and Mr Kershaw of the Council which took place on 9 May 2022 was to enable the parties, inter alia, to discuss how the Appellant might reduce the scope of the First Request in order to ensure it was sufficiently proportionate to avoid refusal by the Council pursuant to s12 FOIA. We have not been shown any note of the meeting but it seems that the Appellant left the meeting, believing that a reduced scope request would be acceded to by the Council. He considers that the Council's subsequent rejection of the First Request pursuant to s14(1) FOIA is undermined by the fact that up to the point of the meeting on 9 May 2022, the Council's rejection was made pursuant to s12 FOIA i.e. it did not consider the First Request to be vexatious, and that it only changed the basis of its refusal after the meeting on 9 May 2022.

35. The Council has recorded to the Commissioner that at the Appellant's meeting with Mr Kershaw of the Council on 9 May 2022, the Appellant said this:

"The ombudsman says you have to pay me £50. I'll waive the £50 if you give me a new bin. I'll also withdraw the two FOI requests and save you another £900."

36. The Appellant does not dispute this. He told us in the hearing that he told Mr Kershaw that if the Council replaced his bin for free, he would waive the £50 payment which the LGO required the Council to make to him, and he would not require the information he had requested, instead regarding the matter as closed. He told us that he was looking at it as a negotiation.

37. We also note that before that meeting, on 27 April 2022, the Appellant emailed Mr Kershaw, purportedly seeking to reduce the time period covered by his First Request so as to bring the Council's time to respond to it within a time estimate which would not justify refusal pursuant to s12 FOIA, saying this:

"There is another solution to this situation, speak to street scene regarding replacing my brown bin and we could have this all resolved."

38. In our view, the First Request is vexatious. In reaching that view, we have considered the guiding principles for assessing vexatiousness espoused in **Information Commissioner v Devon County Council & Dransfield** [2012] UKUT 440 (AAC), and the observations of the Court of Appeal (**Dransfield v Information Commission & Devon County Council** [2015] EWCA Civ 454) [68], which offered no challenge to the Upper Tribunal's approach, elaborating as follows:

"...the starting point for 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."

39. We acknowledge that there is a high hurdle in establishing that a request is vexatious. We have considered all the circumstances of the Appellant's engagement with the Council in relation to his bin, as it has been presented to us. The Council has made clear, rightly, that in assessing vexatiousness in the context of the First Request, it has not considered other correspondence with the Appellant relating to fly-tipping, litter or parking. The Commissioner has made clear, rightly, that he cannot consider, in his assessment of the First Request, matters arising after its date.

40. Regardless of whether the context of previous dealings between the Appellant and the Council in relation to his bin might indicate the First Request was vexatious, we consider that it is vexatious viewed in isolation in any event. The Appellant is very much alive to the fact that, in seeking to comply with its obligations under FOIA, the Council would be incurring costs significantly more than the replacement charge for his bin, and he seeks to use that as leverage to achieve a replacement bin for free. The motive behind the First Request as a negotiating tactic to that end is improper. Moreover, it lacks serious value or purpose; the information would not be determinative or even indicative of the cause of, and responsibility for, damage to his bin. We consider that there is negligible public interest in disclosure of the information.

41. We consider the Council was entitled to refuse the First Request pursuant to s14(1) FOIA. Accordingly, we dismiss the First Appeal.

Discussion – the Second Appeal

42. The Second Request was as follows:

“How big is the hard drive on the waste collection lorries, how much cctv footage can it hold, i.e. days, weeks, months.

How often is the waste lorries cctv down loaded to a central computer.

In my own outstanding case, Street scene manager states that cctv was viewed by one of the staff, what was the date that the cctv was viewed. It is also stated, by street scene management that the cctv in my outstanding case is not available due to a hard drive issue, when was the issues raised, when was the hard drive replaced.

How many bins have been replaced by HBC street scene due to damage by HBC employed staff.”

43. We find that the Council was wrong to refuse as vexatious the Second Request bar the final question seeking information as to how many bins had been replaced by the Council due to damage by Council-employed staff. We consider that final question to be sufficiently similar to the content the First Request as to be substantially a repetition of it. The Appellant told us in the hearing that the purpose of this part of the request was as follows: if the Council insists that the bins are robust, but they have, in fact, damaged a substantial number of bins, that suggests there is a problem with the bins. By contrast, if they have not damaged many bins, he may be prepared to accept the Council’s position (and, by extension, as we understood it) that it had not damaged his bin. This explanation does not, in our view, imbue this part of the Second Request with any serious value or purpose, which remains lacking.

44. However, the preceding parts of the Second Request raise, so far as we can tell, entirely different questions from those aired previously by the Appellant, namely questions about the CCTV footage.

45. As we have already noted, on 15 September 2021, the Council confirmed that no damage to the Appellant’s bin had been recorded, and that CCTV footage taken from the Council’s waste collection vehicle confirmed that the damage was present before the bin was placed on the waste collection team’s vehicle’s

lift mechanism. On 29 September 2021, the Appellant requested a copy of the CCTV footage and a copy of the waste collection team's round sheet. In circumstances which are not explained beyond a reference to a technical error, it seems that between 15 September 2021 and 25 January 2022, the CCTV footage could no longer be viewed. In circumstances where the Council was seeking to respond to the Appellant's various requests and complaints by direct reference to CCTV footage, it does not seem to us that a request by the Appellant for information as to the operation of the CCTV, and for information as matters relating to the investigation of it in the circumstances of the Appellant's case, can fairly be characterised as vexatious. Moreover, the Commissioner's reasoning for upholding the Council's refusal of the Second Request is near verbatim the same as that in relation to his reasoning for upholding the First Request; although the Commissioner records factual matters in the Second Decision Notice relating to the CCTV footage, his reasoning for upholding the Council's refusal of the Second Request does not appear to recognise what we have found to be a qualitative difference between the two Requests.

46. In relation to the Appellant's request for information relating to CCTV footage of the Council's processing of his bin, we conclude that the Council was not entitled to rely on s14(1) FOIA to refuse to disclose such information. Consequently, to this extent, we find that the Council's response is not in accordance with Part 1 FOIA. Accordingly, and to this extent, we find that the Second Decision Notice is not in accordance with the law and the Appellant's appeal is allowed.

Signed: *Judge Foss*

Date: 18 January 2024