



**Neutral Citation Number: [2024] UKFTT 488 (GRC)**  
**Decision given on: 12 June 2024**

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

**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL**  
**(INFORMATION RIGHTS)**  
**UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

**Appeal Number: EA/2023/0087**

**BETWEEN:**

**S**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**First Respondent**

**and**

**The MID and EAST ANTRIM BOROUGH COUNCIL**

**Second Respondent**

Hearing: Oral hearing 4 September 2023 and on the papers on 7 June 2024.

Before: Brian Kennedy KC, Paul Taylor and David Cook.

Representations:

For the Appellant: S as a Litigant in person in his Grounds of Appeal and oral submissions on 4 September 2023 and in further written submissions dated 10 November 2023.

For the First Respondent: Nicholas Martin of the ICO in writing by way of the Response dated 22 May 2023.

For the Second Respondent by way of Closed written submissions, dated 17 October 2023.

Result: The Appeal is dismissed.

## REASONS

### **Introduction:**

1. This appeal is against the decision of the First Respondent, the Information Commissioner ("the Commissioner"), brought by S ("the Appellant"), under section 57 of the Freedom of Information Act 2000 ("FOIA). It is against the Commissioner's decision notice of 30 January 2023 - Ref. IC-186813-Z2D6 - the Decision Notice: ("DN").
2. The Appellant requested information relating to bonfires from the public authority, the Second Respondent, i.e. the Mid and East Antrim Borough Council ("the Council") who refused the request under section 14(1) (vexatious request) of the FOIA. The Commissioner's decision is that the Council is entitled to rely on section 14(1) refuse to provide the requested information. The Commissioner does not require the Council to take any steps.

### **History and Chronology:**

3. On 10 July 2022 the Appellant wrote to the Council requesting the following information:

*"I am now formally asking for a copy of all internal communications under FOI/EIR and GDPR, regarding my correspondence with MEA Council to include deliberations and formation of responses to my communications. I expect this information to be provided by the use of whatever of the formal legislation delivers the most comprehensive material, and that whatever mechanism is most appropriate to ensure that it is expeditiously provided, and that absolutely no attempt to avoid provision is made under whatever exemptions may be thought by MEA Council to apply. This matter is far too serious. I also ask for a copy of communications between MEA and HSENI regarding bonfires from January 2022 to this date of submission.*

*A copy of internal communications should also include those following on from my emails to yourself Ms Watts in the last couple of weeks and any deliberations and responses between yourself and other personnel. I am happy for these communications to be suitably redacted in line with legislation."*

4. The Council's refused the request, citing section 14(1) (vexatious request) of the FOIA as its basis for doing so.
  
5. The Appellant requested an internal review on 27 September 2022. The Council responded on 26 January 2023 following intervention by the Commissioner. The Council maintained its reliance on section 14 of the FOIA. The Council stated that the Appellant had submitted six information requests and two formal complaints in the year 2021/2022, and one complaint in 2022/2023 along with the request that is the subject of the DN under appeal. Furthermore, the Council stated that the Appellant's wider correspondence with the Council was 'consistently in relation to bonfires'. The Council also stated that the Appellant alleges wrongdoing on the part of the Council.

**The Decision Notice:**

6. In his DN, the Commissioner concluded that the Appellant's information request was vexatious, and the Council was entitled to rely on section 14 FOIA. The Commissioner's reasoning is set out in his DN. In summary whilst the Commissioner considered that the amount of FOIA requests made by the Appellant to the Council was not particularly high, he noted the wider context of the correspondence that the Appellant had exchanged with the Council on this issue and did agree that the Appellant was using FOIA to inappropriately raise arguments with the Council in circumstances where there were other remedies for addressing such concerns. The Commissioner, whilst noting that the Appellant disputes the Council's version of events, considered that the Appellant was ultimately pursuing a personal campaign against the Council, and it was not the purpose of the FOIA to provide another route to the facilitating of such grievances in the context of this case. [§DN 5 - 21]

**The Grounds of Appeal:**

7. The Appellant set out the grounds of appeal as follows:
  1. *ICO has erred in assessing the FOI request as being vexatious.*
  2. *ICO has not conducted a sufficient probative assessment of the reasoning for the FOI request.*

3. *ICO has given undue weight to arguments advanced in the internal review by MEA Council and has not conducted sufficient probative investigation as to the veracity of those reasons advanced by MEA Council.*
4. *ICO has concluded that my reasons for requesting information is one of satisfying my personal interest as stated by MEA Council. ICO have failed to give due weight to the fact that there is an overwhelming public interest case as evidenced by coverage of main Northern Ireland national newspaper coverage, coverage by other print media concerning FOI handling by Council, coverage by the BBC and ongoing criminal investigations concerning MEA Council concerning FOI applications. This evidences that this information requested is not for my personal interest satisfaction whatsoever, but absolutely in the public interest.*
5. *ICO made its determination within one day of receipt of the internal review and my initial response. MEA Council provided its Internal Review on Thursday 26 January 2023. I formulated a response late on Thursday night and this would have been received by ICO on Friday 27 January 2023. I then sent further submission to be considered by ICO on Saturday 28 January 2023. On Monday 30 January 2023 at approx. 9am I received the determination of the ICO Decision Notice. ICO could not have even had the time to consider my further submission sent on the Sat 28 January to any meaningful degree – if at all, or to evaluate its significance. Despite offering to attend ICO in Belfast to answer any probative questions and allow for ICO to test my reasoning for request, ICO did not take this offer up. ICO have contacted MEA and although I do not know the nature of these conversations/communications, I draw attention to these should MEA been allowed to advance their refusal arguments in these contacts whilst I have not been afforded the same opportunity – if in fact this point is correct.*
6. *ICO make reference to the stated case law which I will refer to as Dransfield<sup>1</sup>. ICO acknowledge that for MEA Council to engage section 14(1) is a high hurdle. ICO have erred in assessing that MEA has met this hurdle. ICO have made reference to the fact that some people misuse or abuse FOIA with the intention of being annoying, disruptive or have a disproportionate effect on a public authority. On what grounds has ICO established this to be correct as stated in point 17 of the decision notice. The rationale for asking for the information is to hold the public authority to account for how it has handled a complaint that directly has an inextricably bearing on an event which transpired, namely the death of an individual. ICO state clearly that the purpose of FOI in point 14 of the decision notice, was designed to give individuals a greater right of access to information to official information with the intention of making public bodies more transparent and accountable. The whole purpose of requesting the information on how the previous complaints had been handled, is precisely to obtain how the MEA Council handled the complaints and to hold the Council to account.*
7. *ICO has erred in its assessment of the argument advanced by MEA Council that my request is a disproportionate impact on the council to provide this information. ICO has failed to take into consideration that this information will most likely have been collated already for evaluation by the internal review established by the MEA Council for the use by the Council self-appointed*

*criminal barrister to examine the issues as identified by the leaked report to Council by this barrister. ICO have also failed to recognise that the information is most likely held in electronic format and should be relatively easily accessible. 8. ICO in point 17 has stated that the nature of the FOI request is indicative of my position regarding the Councils approach to bonfires and the associated fatality. ICO goes on to state that the use of FOIA is to inappropriately raise arguments with the council. This is seriously misconstrued as ICO has failed to understand that the complaints process has been closed down by MEA Council. ICO has determined that by asking for information as to how the council handled my complaints regarding bonfires, that this is to advance arguments with the council. I had clearly stated that the purpose of requesting this information was to gather information to make evidenced submissions to both the Northern Ireland Public Service Ombudsman (NIPSO) and to the Coroner. ICO has failed to give sufficient weight to my reasons for my request and has not fully taken into account by its very own statement, that the purpose of FOI is to hold public authorities to account. By refusing the FOI request – how am I to realise this purpose of FOI, if ICO state, that by obtaining this information by requesting this via FOI, ICO determine that the purpose of requesting this information does not negate the proffered reasoning for refusal given by the council.*

*9. ICO makes reliance on Dransfield regarding disproportionate, manifestly unjustified, inappropriate or improper use of FOI which I address as follows:*

- Disproportionate – a person died despite concerns raised to council some 8 months prior to this event about issues that if addressed would have had a significant impact on the possibility of this event happening. This assertion is evidenced by the fact that the council commissioned its own review and information concerning this review released into the public domain by a copy of a leaked report, shows these issues are in fact being examined by the council now after the event. It is therefore absolutely proportionate that any request to ask for a copy of electronic communications concerning how the council handled the complaints raised prior to the death, that this is in the public interest to justify the time to provide this.*

- Manifestly unjustified – this is clearly not the case. The request for the information is justified on the grounds of public interest and validity. All issues of concern that I raised prior to the death, which the council failed to act upon, have now been considered by the council after the event and council have received the findings of its own commissioned barrister that these issues now need to be acted upon. So by asking for the communication of how the council handled these same issues prior to the death of the individual, this provides full justification and fulfils the ICO own stated criteria of the purpose of FOI is to hold a public body to account.*

- Inappropriate – this is clearly a misconstrued reliance by ICO on information provided by MEA Council. I have followed the procedures of a stage 1 complaint and stage 2 complaint. Both outcomes have by using this system, provided completely erroneous information by MEA Council, or has failed to even answer issues and failure to take action regarding these issues. In point 19 of the decision notice, ICO states that the request to ask for the information held by the council and how the council dealt with the complaints and issues raised – is*

*in fact not the purpose of FOIA. ICO states that there are other remedies for addressing such concerns. Having exhausted the stage 1 and stage 2 complaints process, I simply asked for the information to as already stated, provide to NIPSO, the coroner and to bring into the public domain. ICO have already stated that the purpose of FOIA is to hold a public authority to account and these aims fulfil that purpose. ICO have therefore erred in this judgement.*

- *Improper use of FOI – as stated in above point.*

*10. ICO then refer back in point 20, that it is satisfied that my motive is to further a personal campaign against the council. On what grounds does ICO satisfy itself. Presumably this determination has been reached by referral to the internal review report from MEA Council. So, this will need examined briefly:*

- *Council outlines timeline and makes reference to myself, submitting on 10 July 2022 a request for information. Council makes issue of the fact that this request came the day after the death on 9 July 2022. Given the nature and purpose of the request to obtain information how the council handled the issues which I believe are directly linked to issues concerning the death of the individual, it is self-evident that this request would be submitted after the incident. I do not see what council is trying to establish by reference to this.*

- *Council refers to its Head of Communications being made aware that I had approached at least one journalist and that the journalist had written an article criticising the council. I can confirm that I provide information to the journalist in furtherance of the public interest and given the fundamental role of journalism to hold public authorities to account, again I do not see the relevance of council making this point. I do note that in information that has just been released into the public domain on 11 February 2023 by the front page story from the Belfast Telegraph concerning a 73-page report by the MEA Council' own auditors, that the Head of Communications had directed that a FOI response concerning another matter be changed in contradiction to what was recommended by its own FOI team and its own data protection officer telling auditors that this was "wholly inappropriate". Council then states that I am entitled to provide information to a journalist, but it quite clearly is included in its internal review to paint a picture of myself to ICO. ICO should also bear in mind that I provided information prior to this point by MEA Council directly to ICO that I had informed a journalist. This clearly evidences my upfront and transparent dealings and reasoning.*

- *Council then informs ICO that I have made numerous information requests, and frames this as complaints "in pursuit of his interests". If these so called personal interest complaints are solely in pursuit of my interests, ICO have failed to consider that these so called personal interests were subsequently investigated by a commissioned internal barrister led review by the council and completely shows that these issues were not personal but of fundamental public and policy importance to the council.*

- *Council then go on to state that due to the complex timeline, this led to considerable difficulties in conducting an internal review. It does acknowledge that the delay is unacceptable, but ICO whilst not in possession of this information at the time of its decision notice, it should be now made fully aware of new additional information that has come to the public attention as released on 11 February 2023 in the Belfast Telegraph that auditors report states that –*

*three senior staff said that the council's preferred response to FOIs was to delay as long as possible – wholly contrary to law. The auditors said the delay was "highly inappropriate and prima facie this appears to have been an attempt to subvert and delay the FOI process". I believe ICO should take this into consideration and supplements evidence already provided to ICO of the numerous reports of FOI handling and associated issues including criminal cases in respect of FOI.*

- *Council in 3.1 makes a point of informing ICO that I have made several comments and allegations towards council. This again is designed to paint a picture and I believe ICO did not give due weight to the comments and allegations.*
- *ICO has given undue weight to the advancement in 3.2.2 from the council that "given the extensive review work concerning the tragic accident", my request has the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. Firstly, I have addressed the subcategories from Dransfield. Secondly, I have refuted the continuous assertion that my request is only to serve my own interest and evidenced this. ICO have failed to give due weight to this. Thirdly, is not an absolutely improper use of FOIA. It seeks to allow the holding of a public authority to account. ICO have also failed to take cognizance of a critical issue. MEA have informed its own councillors that it is being sued in respect of the death. Whilst it maintains in the internal review that this is an accidental death, the family have launched legal proceedings in respect of wrongful death against the council as landowner. ICO should also bear in mind that when council state I have made allegations, any findings in respect of this matter will be a matter of law to be determined by a court. ICO have failed to give due consideration that the council has a vested interest in not releasing how it handled my complaints prior to the death, due to legal action against it. Council expressly states that "release of this information would not serve the public interest". ICO have failed to recognise that by bringing into the public domain exactly how the council handled my complaints – that this would totally be in the public interest.*
- *ICO has not given due consideration to the circumstances of my request in context of the points raised by council in 3.2.3. Council state that vexation by drift has occurred and attempts to evidence this by reference to number of FOI and complaints submitted. ICO has stated that the amount of FOI was not overbearing (4 prior to death and 2 after death). The complaints procedure is a two-stage process which I adhered to.*
- *As referred to earlier, council go on to give a general point of council being acutely aware of information held may contain potentially exempt information potentially lead to legal ramifications. ICO as stated earlier have failed to give due weight to the fact that those legal ramifications could well be the suing by the family of the deceased against the council.*
- *Council concludes this point by saying that given the pattern of correspondence, there is a high potential would generate further requests. ICO have failed to consider that the nature of the requested information is to provide this to the aforementioned bodies and into the public domain. I do not consider the further requesting of information necessary from this council. I brought several areas of concern to its attention, I followed the procedure, the council*

*provided wrongful and inaccurate information as a response. It stated that the matter was one outside of its control and a province wide matter which has now been refuted by its own commissioned barrister. It refused to comply with the law and has now been told that the law as referenced in my complaints, does in fact apply to it and that the council is subject under it. I have no reason to continuously correspond with this council.*

- *Council in 3.24 makes reference to allegations by me as to wrongdoing. It quotes case law that I shall refer to the Oxford Phoenix case. It states that I have stated that council has committed wrongdoing as a direct result of ignoring my unsolicited personal advice. ICO has failed to recognise that a stipulation of the stage 2 complaint system of MEA Council requires that not only, do I have to state what the issues are that are being complained about, I am required to state what I expect the Council to do about them. In that context, the so called unsolicited legal advice, was in respect of those areas and what I expected council to do. The reference to Oxford Phoenix case, is not applicable as supporting a vexatious finding as not only was this the method used in compliance to MEA stated procedure requirements, but the unsubstantiated accusations also upheld in the First Tier Tribunal, are not analogous to this request. MEA as stated, have been told that the issues raised are substantiated and ICO has failed to give this due consideration which would have negated reliance on the oxford phoenix case.*

- *Council in 3.2.5 states I have demonstrated an unyielding position. ICO have failed to realise, that by requesting information as to how a matter was handled, this is of no relevance to whether I accept or dispute the council determination as to how it handled my complaints. The point of request is to bring how (methodology, and reasoning) into the public domain and to be able to evidence a case for investigation to NIPSO as well as provide this to the coroner. There is no harassment of staff or undue burden, it is a professional matter and ICO failed to understand that it is acceptable by me to have any personal information redacted.*

- *The summary from council attempts to paint a picture of myself using the death of the individual as a motivating factor. The ICO has failed to realise that the very reason for the request is precisely because of the death. There is no underlying nefarious reasoning. I couldn't have been any clearer in my request that I wish for this information precisely to establish what way the council handled the issues prior to the death. It is to hold the council to account as per the ICO 'own stated reason for the establishment of FOI.*

- *Council then went on to try to paint a picture of myself intimidating the policy manager by referring to the public available information that the individual had obtained a law degree and masters in corporate management. I referred to this in order to advance my argument that as a principle adviser to the directors and chief executive, I felt that she was well qualified and under a duty to ensure that the council upheld its obligations under law.*

- *Council also attempted to state that I had deliberately lied when I had stated that I was gathering evidence for a submission to the coroners office and had been directed by the court to provide relevant information. Council stated that they believed that there was no truth to this, and that it was a deliberate attempt to mislead. It also stated that I had subsequently changed my position. Having*



*sought legal advice, I was advised that the element of malice would be hard to prove in any defamation case. I was therefore advised to write to the chief executive of the council and invite her to withdraw those comments. On 1 February 2023, I wrote to the Chief Executive of MEA council and provided her with documentary proof as to the veracity of my statements and invited her to withdraw council comments. I have received no response. ICO has failed to give due weight to the fact that I had not only provided ICO with documentary proof that I had been instructed by the coroner's court to precisely do as stated which I believe would have went a long way to show my motive for request and that it was not vexatious. Finally, ICO, separated a second FOI request asking for terms of reference of the internal review of the death of the individual. This FOI has not as yet been decided upon by ICO after having been refused by MEA Council, firstly on a spurious reliance of section 30(1) of the FOIA. After this was shown to be incorrect by myself, MEA Council then changed its reasoning to information not held. Given the ICO own stated policy of trying to make a determination as quickly as possible, ICO expeditiously made a decision notice on this appeal matter even before I had submitted all my evidence. Yet on a matter of whether or not information is held, and given I have informed ICO that not only is the information held regarding the terms of reference asked for, that the report that the terms of reference was in relation to – has in fact concluded and reported back to council. The reasoning for including this fact in this appeal, is that if I had of been provided with the terms of reference, I could have evidence that not only was my initial complaints to council valid, that if they were aligned to the terms of reference, this would have proven that my request was in the public interests and not my own personal interest. I ask that should the tribunal proceed with a hearing, that it compels this material for its own evaluation in any hearing.*

### **The Commissioners' Response:**

8. The Commissioner resists this appeal. Generally the Commissioner relies on the DN as setting out his findings and the reasons for those findings, and repeats the matters stated in his Response to the Grounds of Appeal, along with the submissions of the Council provided in the internal review.

### **Anonymity:**

9. The appeal was listed for an oral hearing before this Tribunal on Monday 4 September 2023. The Appellant made extensive submissions including an application for permanent Anonymity which the Tribunal were persuaded was appropriate in the circumstances. On 4 May 2023 the Tribunal Registrar granted an application by the Appellant for temporary anonymity and the Appellant subsequently sought to make this application permanent. This Tribunal grant that application for

Permanent Anonymity throughout these proceedings and accordingly all parties must ensure that the Appellant's anonymity is ensured using redaction or otherwise on all relevant information and documents touching on and arising from this appeal.

10. At §26 of the Commissioner's Response to the Appeal, which appears at page A20 to A27 of the Open Bundle ("OB"), we are referred to the high hurdle for vexatiousness to be met and to the Upper Tribunal's guidance in Dransfield that, "*The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious*" (at [§68] and repeated here with our emphasis added). § 26 goes on to refer to the case of CP v Information Commissioner [2016] UKUT 0427 (AAC) in which the Upper Tribunal stated (with our emphasis again added) that:

*"In this case and in others where past dealings are of relevance, I find that an appropriately detailed evidential foundation addressing the course of dealings between the requestor and the public authority is a necessary part of that assessment. A compendious and exhaustive chronology exhibiting numerous items of correspondence is not required but there must be some evidence, particularly from the IC, about the past course of dealings between the requestor and the public authority which also explains and contextualises them". (at [§34])*

11. The Tribunal had not been provided with sufficient evidence of that nature and the Public Authority has joined as the Second Respondent and comprehensive Case Management Directions were issued on 12 September 2023 as a result of which the Council provided closed submissions dated 17 October 2023 in a Closed Bundle ("CB").

**Rule 14 of the Tribunal Rules:**

12. The Tribunal has since received information in the CB which includes disputed Information. The CB will be held, pursuant to rule 14(6), on the basis that it will not be disclosed to anyone except the Information Commissioner. To do otherwise would defeat the purpose of the proceedings.
13. Any party who holds material documents or to whom a document has been provided in an appeal (or application) to the First-tier Tribunal (including these bundles) may use that document only for the purpose of the proceedings in which it is disclosed, except where the Tribunal

gives permission or the party who disclosed the document and the person to whom the document belongs agree. For reference see: - *Prevention of disclosure – disputed information*.

[All parties may find it helpful to refer to the Practice Note on Closed Material available here: <https://www.judiciary.gov.uk/publications/practice-note-closed-material-in-information-rights-cases/> ]

14. The Appellant has provided the Tribunal with a detailed and comprehensive Reply (to the submissions of the Council dated 17 October 2023) with his reply dated 10 November 2023. The appeal is now determined on the papers.
15. The Tribunal welcome the comprehensive submissions presented to us for this appeal and are satisfied that we now have adequate information before us to do so fairly, and sat on 7 June 2024 to finally deliberate upon the appeal. We do not repeat the extremely lengthy submissions by the parties but deal with the issues under the following relevant headings.

#### **The Relevant Law:**

16. S.1 FOIA 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.

S14 FOIA Vexatious or repeated requests:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

17. The Upper Tribunal considered the issue of vexatious requests in

*Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. *Dransfield* also considered four broad issues at paragraph [§45]:

*“(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. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.”*

18. It is abundantly clear that the circumstances leading to the death of a man are in the public interest. The Tribunal does not hesitate to agree with that submission and does not wish to suggest anything to the contrary. The circumstances of a loss of life are of the highest public interest and an interrogation of issues and decisions that surround that should be properly considered and reviewed to the utmost level of detail. However, our analysis must go beyond the consideration of the tragedy referred to by the Appellant. Indeed, the Upper Tribunal decision in *Cabinet Office -v- IC and Ashton* [2018] UKUT 208 (AAC) expands on this slightly and sets out that a compelling public interest in the disclosure of the information does not necessarily trump other factors, which can, in an appropriate case, tip the balance. Accordingly, we reflect on the four broad issues identified in the *Dransfield* case as set out at §17 above.

**The Burden:**

19. 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 particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number,

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

20. 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 a finding that the new request is vexatious.
21. 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.
22. 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.
23. 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.
24. In this case the Tribunal note the Council at the outset has not made its case in terms of burden. At OB, p.2, §6 the DN sets out the Council's position; this states that the Appellant has "...corresponded with multiple departments across Council and submitted numerous information requests and complaints in pursuit of their interest in bonfires within Mid and East Antrim Borough Council." As part of this, the Council dealt with six FOIA

requests and two formal complaints during 2021/2022 and one FOIA request and one complaint during 2022/2023 (OB, p.2, §7).

25. The internal review response at OB, p.73 addresses burden further but does not go into detail in terms of time spent. Here, the Council state such things as "*For the last two years Mr S has corresponded with multiple departments across council and submitted numerous information requests and complaints...*" With respect, the use of "multiple" gives no indication of whether the number is large or otherwise; neither does the word "multiple". In reality, the actual number of requests, as we have seen, is eight over a two-year period; this is not a voluminous number.
26. In fact, the Commissioner has acknowledged that the number of requests made by the Appellant are "*...not particularly high,*" (OB, p.4, para.18). However, the Council through their CB has made a more substantive case on the burden of this request, including the extent of its dealings with the Appellant on the same or similar matters (taking a holistic approach, as approved in Dransfield). It is clear from pages 16 - 445 of the CB that there has been voluminous correspondence between July 2021 and July 2022 and subsequently (though we do not allocate any material weight to matters occurring after the date of the request under appeal, i.e. 10 July 2022).
27. It is clear that the Council, mindful of the high public interest following tragic events, initially did respond to requests and correspondence. The Tribunal note the following material factual matters:
- (i) We must consider the context of the requests, to whom those requests were made, and how that information was held.
  - (ii) The Appellant has been corresponding with the Council since 2005. We understand that he has previously made 20 requests under FOIA, sent 73 letters, and has sent 17 postcards. This can be properly characterised as a pattern of conduct over a lengthy period of time in the past and one that is likely to continue in the future. That context is important and particularly when we understand that the issue of bonfires is one that the Council will be required to review every year.
  - (iii) We note that 81 items of correspondence from the Appellant were received by the Council in the year up to the date of this request. It is also submitted that the Appellant engaged in multiple lines of correspondence to various different officers of the Council and would jump between those avenues of correspondence, and their recipients, on the same or different points. Those correspondences included recipients

at all levels of the hierarchy, up to and including the Chief Executive from whom the Appellant expected responses directly.

(iv)The material requested will be contained within mailboxes and Microsoft Teams instances relating to a number of individuals and residing in a number of different locations. Identifying and extracting relevant material would not be a quick or an easy task.

(v)The Council position is that information about bonfires will not be disclosed to the Appellant under FOIA or discussed with him by way of correspondence with those at the Council. It is understood that this stance is principally because of ongoing investigations. The ability of the Council to rely on exemptions of that nature is not an issue that is before the Tribunal for consideration and no views as to its ability to do so are expressed in one direction or another. However, this stance is an important aspect of matters when the Tribunal considers this specific request under this specific appeal, because it goes directly to the burden on the council. It appears to us that the Appellant has exerted a great burden on the Council historically and will continue to do so in future, irrespective of whether the Council seeks to rely on other exemptions to withhold information from him.

**28.**We note from CB, p.5, §24 that the Council does not have a central case management/customer service system from which to easily retrieve relevant information. We also note and accept that there is no corporate file-naming convention through which to easily identify relevant electronic documents. The FOIA does not prescribe a particular way of managing information, it simply applies to whatever information is held. Consequently, it is not for this Tribunal to criticise a public authority in this regard.

**29.**The current working practices in place across many public authorities following the Covid pandemic are understandable, yet as acknowledged by the Council present their own problems in terms of searching for information generated by remote working staff, for example.

**30.**At CB, p.5, §26 we note the particular difficulties arising from the number of staff no longer employed by or on sick leave from the Council.

**31.**Against this, the Appellant states: "*...the alleged burden is entirely brought about, by the direct actions of the council through the delay and response*

*provided. The council has altruistically attempted to highlight the level of correspondence, (which was necessitated to try to get a response), whilst avoiding explaining why there was such a staff turnover leading to the exorbitant delays, and also it makes no reference to the deliberate policy of the council to delay responding to FOI requests, as uncovered by its own auditors."*

32. Taking the above facts together, the location, retrieval and extraction of the requested information, not to mention the time required for considering exemptions, making redactions and so forth is inevitably burdensome. Even if we accept the Appellant's reasons for the volume of correspondence, that does not take away the significant burden necessary to gather what has been requested.

**Distraction from core function (as a sub-heading under Burden):**

33. At OB, p.78, the Council sets out the following in terms of its response to the tragic death of a local man.

*"Given the extensive review work that Council is currently involved in respect of several elements around the tragic accident which occurred at the bonfire in question, this review finds that Mr S's request does have the potential to cause a disproportionate or unjustified level of disruption."*

34. However, the Council does not go on to elaborate on how the FOI handling team's attention to the request would be a distraction, given the focus of their role.

**The Motive:**

35. Second, the motive of the *requester* may well be a relevant and indeed a 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.

36. 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 requests where 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."*

37. 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. As the Commissioner'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. You must always look at the effect of the particular request and consider the questions [the five factors] set out below."*

38. However, in other circumstances a series of requests may suggest that later requests have become disproportionate to whatever the original inquiry was. This phenomenon has been described as "spread". The term now often used is "vexatiousness by drift" where the Appellant whose conduct becomes wholly disproportionate to their 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 requested, may be vexatious in the complete absence of any 'drift'.

39. In this case while the motive was reasonable, in submissions dated the 10 November 2023, the Appellant states that his overall aim is: *"...to prevent the loss of life and gather evidence concerning the ongoing inaction to comply with the law by the council, in order to submit to the Northern Ireland Public Service Ombudsman"*. At CB, p10, §51 the Council observe as follows: *"... whilst public safety and Council accountability may have been within the Appellant's original intentions when he first entered into correspondence with the Council, the information within the scope of this specific request does not serve to preserve human life and instead serves for the Appellant to seek validation to his personal pursuit of the Council. He has now strayed beyond his original stated purpose and is engaging in satellite issues which are personal to him and serve no public interest."*

40. The Appellant has responded to this, stating that: *"... the council is now asserting that my motive in this appeal is to gain evidence to sue the council..."* and noting that he was advised *"... due to provisions within the Defamation Act, that it was ill advised to engage in any civil action, due to the burden of proving malice, I accepted this, and I consider this matter of defamation closed."*

41. In our view, despite claiming that the matter of defamation is now closed, the Appellant must have had in mind the potential for legal

action for defamation, otherwise he would not have sought legal advice about this.

**The value or serious purpose:**

42. We have carefully considered the wording of the Appellant's request, which reads as follows "*I am now formally asking for a copy of all internal communications under FOI/EIR and GDPR, regarding my correspondence with MEA Council to include deliberations and formation of responses to my communications. I expect this information to be provided by the use of whatever of the formal legislation delivers the most comprehensive material, and that whatever mechanism is most appropriate to ensure that it is expeditiously provided, and that absolutely no attempt to avoid provision is made under whatever exemptions may be thought by MEA Council to apply. This matter is far too serious.*

*I also ask for a copy of communications between MEA and HSENI regarding bonfires from January 2022 to this date of submission. A copy of internal communications should also include those following on from my emails to yourself Ms Watts in the last couple of weeks and any deliberations and responses between yourself and other personnel. I am happy for these communications to be suitably redacted in line with legislation."* (our emphasis).

43. We accept and are inclined to agree with the Council, it is difficult to see how formulation of responses to the Appellant's correspondence can be said to assist in preserving human life. It is not the intended purpose of the FOIA for a public authority to enter into an extended debate on various related issues to the request. They are only required to provide information within clearly defined limits and exemptions apply.

44. The Tribunal is troubled by the Appellant's purpose for this request. The Appellant has referred to legal action being undertaken by the Coroner's Office and to gathering evidence. The Coroner's Office has its own process for gathering evidence that it needs, and any other legal action will have the benefit of the relevant discovery and disclosure regimes as will be applicable. The Appellant is persistent - and we mean no criticism by that, particularly given the clear public interest in transparency around the circumstances of a man's death - but the Tribunal fears that these efforts are misguided. It is not for the requester to obtain information for the Coroner's Office. Requests to achieve that aim would be, on the face of it, a misuse of the FOIA regime.

45. On close examination of the facts, we find the Appellant's conduct has strayed well beyond the original purposes of transparency around the risks and hazards of traditional bonfires. He now appears to be focused on satellite issues which are personal to him and for which there is less material residual public interest. He may have been seeking material for which there was a public interest initially, but he has transitioned from that and unfortunately there is now an element of vexatiousness by drift.
46. While efforts by the Appellant are laudable, the issues that he raises in justifying the requests and engagement that he has, and continues to have with the Council are already subject to official investigations and accountability measures through appropriate public authorities. The scrutiny applied by those methods and processes behind them are not dependent on the Appellant's request or on the Appellant at all. The value and purpose of the request is also therefore undermined.

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

47. Fourth, vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff. a conclusion that a request is vexatious within section 14. In his correspondence with the Council, the Appellant has ventured from directing that engagement at the Council as an entity and has since began focusing on the individuals responding to the correspondence or responsible for his request(s).
48. That conduct has intimidated officers of the Council and that may be a reasonable reaction, given the contents of the correspondence in question and within the CB which we have considered in depth.
49. The Council point to a pattern of the Appellant expecting personal responses from those at the Council for community-wide issues. The Tribunal are particularly concerned by an insistence for a direct response from the Chief Executive of the Council and "chasing up" that individual when a response was not forthcoming, or not received in a timeframe unilaterally defined by the Appellant.
50. While we see no justification to absolve the Council or its officers (right up to and including the Chief Executive) from needing to personally

attend to matters that are appropriately and proportionately within their remit, we are troubled by the effect of this engagement on the ability of the Council to discharge its core function. As stated above, this engagement began in 2005 and will probably continue while the Council are required to consider the issue of bonfires, which is likely to be yearly and for the foreseeable future.

51. On examination of the exchanges and evidence before us we are satisfied that the staff at Council who were required to deal with this request were caused harassment and distress to an unacceptable degree.

**Conclusion:**

52. As the interpretation of a vexatious request has developed over the years the Tribunal and higher courts take a holistic view of all the circumstances in a case to arrive at what admittedly can be a difficult decision and a high bar. The relevant circumstances of this request therefore lead us to a conclusion that this request is vexatious with reference to section 14(1) of FOIA. The term "vexatious" is no doubt an emotive one and the Tribunal has experience of a great number of Appellants over the years as having been upset by that term. No doubt the Appellant here will be upset by that term. It is to be noted it is the Request that is found to be vexatious, not the requestor. We emphasise again that his efforts around seeking to understand the death of a man are laudable and to be commended. There are proper processes underway and legal remedies available that are designed to interrogate the circumstances and/or present a proper route by which any additional transparency can be obtained. Proportionality is key in this sense and on all the evidence now before us the Tribunal take the view that the Appellant's expectations of the Council in relation to the request in question did become disproportionate, manifestly unjustified, inappropriate and an improper use of a formal procedure or the use of FOIA and we therefore conclude this request under FOIA is Vexatious.
53. Accordingly, we also accept the reasoning in the DN and find no error in law or in the exercise of discretion by the Commissioner therein.
54. For all the above reasons and in all the circumstances of this case we must therefore dismiss the appeal.

Brian Kennedy KC

10 June 2024.

Promulgated on: 12 June 2024