



Neutral citation number: [2024] UKFTT 768 (GRC)

Appeal Number: EA/2023/0299

Decision given on: 23 August 2024

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

Between:

ANTHONY MYLES

Appellant:

And

THE INFORMATION COMMISSIONER

Respondent:

Date and type of Hearing: - 2 August 2023. - Live on the GRC - CVP.

Panel: Brian Kennedy QC, Kate Grimley Evans and Stephen Shaw.

Date of Decision: - 03 August 2024.

Result: The Tribunal dismiss the Appeal.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA"). The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("DN") dated 13 June 2023 (reference IC-175980 - T0V4), which is a matter of public record.
2. Details of the background to this appeal, the Appellant's request for information and the Commissioner's decision are set out in the DN and not set out in detail here, other than to state that, the appeal concerns the question of whether the public authority in this case, The Halton Borough Council ("the Council"), was correct to rely on section 14(1) FOIA.

The Request:

3. On 1 March 2022, the Appellant made the following request for information":

"I want to make a FOI request for the Search Documents provided for the sale of this property originally as well as the land dimensions and descriptions for the sale of [specified address]. For clarity it might be sensible to review who took control of the sale by auction and who formulated the list of prospective buyers. Who did the subdivision of the property and what records were made at the time not later".
4. The Council responded on 22 April 2022 confirming that it held a number of files on the issues raised by the Appellant. It stated that it had concentrated its search around 2000 when the sale took place and had examined the various relevant files. It stated that it had been unable to identify any search documents and, in respect of the sale process, the Open Day and the subdivision of the land, the Council stated that this had taken place 22 years ago, any officers involved would have since left.
5. In relation to the request for files held regarding the property sale and the boundary dispute the Council explained that it held a number of files that

contained a considerable amount of documentation. Some of the information held on file relates to Counsel advice provided to the Council and information about third parties and adjacent properties. The Council stated that it would need to redact this information and in order to do this it would need to read all the files.

6. Given the broad nature of the request, the Council asked that the Appellant considered narrowing their search and asked that, if there were any specific documents they required, to specify these and identify the information they required.
7. Following the response from the Council the Appellant requested an internal review, to which the Council responded on 5 July 2022 and it applied section 14(1) of FOIA to the Appellant's request.

The Decision Notice & Appeal:

8. The Appellant contacted the Commissioner on 14 June 2023 to complain about the way the request for information had been handled. The Commissioner noted that the Appellant had made a number of requests to the Council regarding the same issue, so the Commissioner took the decision to treat the request as outlined in paragraph 3 above as the 'lead request.' It is that request which is the subject of this DN.
9. The Commissioner considered whether the Council was correct to refuse to comply with the request under section 14(1) of FOIA and concluded that the request was vexatious setting out his reasons in the DN.
10. The Grounds of Appeal dated 16 June 2023 demonstrate that the Appellant strongly disagrees with the Commissioner's assessment of the facts, of his application of the FOIA, and the Commissioner's understanding of how it can, or should, in this case be used and argues as follows: *"The Grounds for the appeal are blatantly apparent to a blind man on a flying horse: in that the ICO have accepted the verdict of the council who refused to follow ICO guidelines by responding to such requests in 21 days. All such requests would be vexatious to any body receiving them especially when compliance with such a request highlights the illegal process they have been involved. If the requests are vexatious as the decision was made, then the ICO should be able to explain why and how they are vexatious and why they were not fulfilled other than to distract attention to their faulty practices and hoping such requests would expire due to natural causes. If the decision maker can explain why they are vexatious and not rely on the people involved to determine the results. This issue*

was 1st raised in December 2021 and now the ICO decision has offered a decision well I would like the ICO to explain to me what the case is about. Because in reality the decision made by the Senior Case Officer mentioned does not comply with reality”.

11. The Appellant accuses Council, and by direct implication the Commissioner, of prejudice and of unreasonable conduct, seeking compensation from both parties. In effect he argues that the Commissioner erred in law and in the exercise of his discretion in his reasoning and conclusion in the DN.

The Relevant Law:

12. 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.

13. S14 FOIA Vexatious or repeated requests:

- (1) Section 14(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) 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.

Discussion:

14. 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.”

The Burden:

15. 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, can 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.
16. 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.
17. 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.
18. 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.
19. 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.

20. In this case the Tribunal note that, during investigations from the time of the request at the beginning of March 2022, up to the Internal Review in July 2022 the Council had assisted the Appellant with what was a broad and wide request and had provided much information and further, suggestions as to how to narrow his request. It appears the Appellant has made 22 requests on the same or similar topics by the time of the internal review. We agree that Council appear to have dealt with an undoubtedly burdensome request with some patience, diligence and courtesy culminating in the decision to rely upon s.14(1) FOIA which was, in our view at that stage, justifiably made.

The Motive:

21. Second, the motive of the *requester* may well be a relevant and indeed significant factor in assessing whether the *request* itself is vexatious. The FOIA mantra is that the Act is both “motive blind” and “applicant blind”. There is, for example, no need to provide any reason for making a request for information under section 1 FOIA; - 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.
22. In this context it is important to bear in mind that the right to information under FOIA is a significant but not an overriding right in a modern democratic society. As has already been noted, it is a right that is qualified or circumscribed in various ways. Those restrictions reflect other countervailing public interests, including the importance of an efficient system of public administration. Thus section 14 serves the legitimate public interest in public authorities not being

exposed to irresponsible use of FOIA, especially by repeat requesters whose inquiries may represent an undue and disproportionate burden on scarce public resources. In that context it must be relevant to consider the underlying motive for the request. As the FTT observed in *Independent Police Complaints Commission v Information Commissioner* (EA/2011/0222) (at §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.”

23. 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.”

24. 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 s14 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*'.

25. In this case while the motive was clearly personal, the exchanges clearly indicate that the underlying concern of the Appellant was dealt with by the Council in so far as they were able to do so, but which resulted in responses that did not satisfy the Appellant. It is clear, both from the papers before us and the evidence provided by the Appellant at his hearing of this appeal that what might have been a straightforward request did in fact become vexatious by drift, even between the time of the request and the internal review.

The value or serious purpose:

26. Third, and usually bound up to some degree with the question of the requester's motive, is the inherent value of the request. Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases, the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests can become disproportionate to whatever the original inquiry was. See the references to "*spread*" or "*vexatiousness by drift*" above. In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone provide a basis for refusal under s14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident. When the Appellant was asked by this Tribunal what he wished to achieve with the requested information he had no clear purpose. In fact, he said the land in question or its use, was not that important to him. He had issues with the Council and issues which became clear to the Tribunal, that had become disproportionate.

27. The Council regarded the central issue raised by this request is around the recent change in allocation to Council land. As such, the Council considers that the information held in relation to the land sale around 2000, and the subsequent boundary dispute in 2012, has no relevance to this issue. The Council does not believe that the search document will reference any details of the adjacent land, and its sole purpose was to assist the Appellant in the purchase of the specified property in 2000. Therefore, the Council considers that the information has no value to the purpose of the Appellant's request and therefore searching for the document places a disproportionate burden on the Council.
28. The Council states that the Appellant's correspondence in relation to this FOIA request relates to the status of the Council's land adjacent to the Appellant's property. This has been the subject of an independent public Inquiry by the Planning Inspectorate in relation to the Delivery and Allocation Plan. The boundary dispute between the Appellant and the Council was also subject to independent scrutiny in the court arena. Again, the Council does not believe the search document will have any bearing on the fundamental grievances held by the Appellant in relation to the historic boundary dispute and the current status of the adjacent land.
29. The Council considers that the Appellant is seeking to re-open matters that have been conclusively resolved by independent external bodies. The Council does not consider the search document will contain any information that would change the decisions of the Courts or the Planning Inspector. Given that the matters about which the Appellant is seeking information have been subject to independent scrutiny, the Council considers this place a burden on the Council to search for a record which will have no impact upon the main focus of the complaints and as such, no value in overturning those decisions.

Causing harassment of, or distress to, staff:

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

31. In any event the Council did try to assist the Appellant with the request in the first instance and provided relevant information. However, this was not enough for the Appellant who did persist in an obsessive manner to the extent that in our view it became wholly disproportionate.
32. 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. While we are satisfied in that regard, the Appellant himself at the hearing informed the Tribunal that he had been brought to court for harassment and was fined £1,000 which seems to support the application of s14 in all the circumstances of this case, even if it were not directly applicable to the instant request.

Conclusion:

33. 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. Proportionality is key in this sense and on the evidence before us, the Tribunal take the view that the Appellant's expectations of the Council in relation to the request in question was disproportionate, manifestly unjustified, inappropriate and an improper use of a formal procedure or the use of FOIA. In this case the Appellants' concerns had expanded to include every aspect of how his many requests had been dealt with - up to the Chief Executive - and a belief that no Council would or should have acted in the way they had done - and his approach had taken on the character of a vendetta.
34. 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.
35. For all the above reasons and in all the circumstances of this case we must dismiss the appeal.

Brian Kennedy KC

3 August 2024.