



Neutral citation number: [2023] UKFTT 938 (GRC)

Case Reference: EA/2023/0152

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

Determined, by consent, on written evidence and submissions.

Considered on the papers on 16 October 2023.

Decision given on: 02 November 2023

**Before**

**TRIBUNAL JUDGE Stephen Cragg KC**

**TRIBUNAL MEMBER Kerry Pepperell**

**Between**

**HOWARD LIU**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**Respondent**

**Decision: The appeal is Dismissed.**

**Substituted Decision Notice: None**

**REASONS**

MODE OF HEARING AND PRELIMINARY MATTERS

1. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.
2. The Tribunal considered an open bundle of 144 pages, a closed bundle and submissions from the parties.

BACKGROUND

3. The Appellant requested information held by the British Library (the Library) about the PhD thesis of Dr Tsai Ing-Wen (the current President of Taiwan), in a request dated 4 April 2022:-

Please send me copies of ALL internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations, and all other records regarding cataloguing the referenced Ph.D. thesis in 2015, including but not limited to internal communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations, and all other records within the British Library and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations, and all other records between the British Library and the London School of Economics and Political Science (LSE) and/or the University of London and/or any other third parties in 2015.

Please send me copies of all requests made in relation to the referenced Ph.D. thesis in 2015.

4. On 26 April 2022, the Library provided its response, and advised the Appellant that it was refusing the request under section 14(1) FOIA, on the basis that it was vexatious.

5. At the internal review stage, the Library upheld its previous decision to refuse the request under section 14(1) FOIA.

### THE DECISION NOTICE

6. The Appellant contacted the Commissioner to complain about the way the request for information had been handled. In a decision notice dated 15 February 2023, the Commissioner explained that the Appellant questioned the accuracy and adequacy of information which has previously been released by the Library about Dr Tsai's PhD thesis that is available on EThOS (an e-theses service provided by the Library which gives free access to 'virtually all UK doctoral research'). The Appellant argued that it is in the public interest that the Library releases the requested information which will confirm the accurate time that the thesis was loaded onto EThOS, how the thesis was loaded, and the metadata relating to that thesis. The Commissioner recorded the Library's position as follows:-

12. The Library has advised that since 2015, when it became apparent that Dr Tsai would become President of Taiwan, there has been a concerted campaign to call the validity of her PhD qualification into question. It goes on to say that whilst the LSE then published Dr Tsai's thesis (the thesis), and a copy was ingested into EThOS, information requests have continued to be received about the matter.

13. The Library advised the complainant that since 2020, the LSE, and the University of London, have been refusing requests relating to Dr Tsai's PhD on the basis that they were vexatious; the Library also referred to a statement published by the ICO about its decision to apply section 14 to any requests received on the same subject where it was found that they were lacking "valid purpose".

14. The Library went on to say to the complainant that, at the start of 2022, there had been an increase in volume of similar requests made to the relevant institutions about the matter of Dr Tsai's PhD. It referred to a statement published by "My Society" (who operate the "whatdotheyknow" website) which said that the rise in such requests indicated a "concerted disinformation campaign" that was "designed to harass the government of Taiwan and its democratic allies"...

15. The Library explained to the complainant that it received a steady flow of requests about matters relating to Dr Tsai's PhD each year and that it has already responded to many requests on the subject. It went on to say that it is aware that the complainant already has all the information that the Library holds, and has published, on the matter.

16. The Library said that it regarded the complainant's request to be "repetitive, lacking in serious purpose", and that it "is likely to be part of a concerted and/or state sponsored disinformation campaign designed to harass the President and

government of Taiwan, the UK public sector in general, and the British Library in particular.”

17. The Library went on to say that answering requests on a subject where the matter is regarded to have already been addressed and the information that is held has been released, would cause a disproportionate burden on finite resource. It said that it would disrupt its services in a way that would not be in the public interest and that, as a result, it was refusing the request on the basis that it is vexatious.

7. In the decision notice the Commissioner accepted that there have been a large number of requests made to various institutions about Dr Tsai’s PhD award, and thesis, over a protracted period of time, and that there is evidence that individuals have acted together as part of a campaign when making requests for information about Dr Tsai’s PhD. The Commissioner said:-

21. Whilst the Commissioner is not persuaded that the complainant in this case can be directly linked to any larger ‘concerted campaign’ as claimed by the Library, he is satisfied that there is sufficient evidence to indicate that the motivation behind their request is the same as that of individuals who are part of a concerted campaign; that is, they are all asking for information primarily for the purpose of calling into question the validity of Dr Tsai’s PhD thesis, and qualifications.

22. In the Commissioner’s opinion, if the complainant’s request were to be considered in isolation, it could be seen to have some value and serious purpose; it relates to the academic record of an individual who has become the President of Taiwan. He regards there to be some weight to the argument for transparency over such a matter, particularly given that, in this instance, it has been the subject of some controversy.

23. However, the Commissioner regards it to be appropriate to also take into account the information which is already in the public domain when determining the value of the complainant’s request.

8. The Commissioner considered other matters as follows:-

24. The Commissioner regards it to be pertinent to note that the LSE, the University of London, and the Library have all released information in response to requests that relate to Dr Tsai’s PhD award and thesis. In addition, the LSE and the University of London have made a number of public statements about the matter.

25. The Commissioner has also considered comments made by the Information Rights Tribunal in the case of *Dr Yungtai Hsu v Information Commissioner*, EA/2020/0286 (2 December 2021). In that case, the Tribunal considered a request

made to The Board of Trustees at the University of London for information held that related to Dr Tsai's PhD studies.

26. The Tribunal stated (in paragraph 25) that it appeared that “none of the libraries have a record of the thesis being provided at the time the PhD was awarded in 1984”. However, it went on to say that this “did not mean that President Tsai was not awarded a PhD degree, or that there has been academic fraud. It simply means that the thesis was not filed correctly in the libraries in 1984.”

27. The Tribunal goes on to say that the “University has provided clear statements confirming that President Tsai had an oral (viva) examination and was awarded a PhD degree.....”

9. The Commissioner concluded by saying that it is his view that the information that has been released, and statements and explanations that have been published, have allowed the public to have a full understanding about the records held relating to the relevant thesis and the award of a PhD to Dr Tsai. On that basis, the Commissioner had difficulty ascertaining what value would be attained from the disclosure of the information that has been requested in this particular case, and how this would be in the public interest.
10. The Commissioner's decided that there was insufficient value and serious purpose behind the request to justify the impact and burden which would be caused to the Library if it dealt with that request, and therefore the Library was entitled to rely on section 14(1) FOIA as its basis for refusing the Appellant's request.

## THE APPEAL

11. The Appellant challenged this decision in an appeal notice dated 14 March 2023. He stated that ‘there is legitimate public interest in the information request and denies his information request is vexatious or that it is part of a concerted campaign originating in China’. The Commissioner responded that:-

27. The Commissioner did not find in this case that the Appellant could be directly linked to any larger ‘concerted campaign’ [DN 21].

28. The Commissioner also recognised that in isolation the request had some value and serious purpose [DN 22], however the Commissioner balanced this with the information which is already in the public domain relating to this subject matter and

the wider context of the request, taking a holistic view he determined that the request was correctly categorised as vexatious under section 14(1) FOIA.

12. In reply, the Appellant submitted a longer document. He noted that there was a 'high standard' before a finding of vexatiousness could be made. He argued that:-

...the integrity of the British Library e-theses online services, EThOS, the UK's national thesis service holding only final validated PhD theses awarded by UK universities to demonstrate the quality of UK research and to offer reassurance to the participating universities, authors, and users, is a different subject and a valid and serious purpose for Appellant's FOIA request.

13. The Appellant advanced further arguments to the effect that the thesis is not to be found in British libraries and that 'in fact, that thesis did not exist and no metadata about that thesis was available to the British Library'. He expands on these points in what he calls his 'Argument of Substance', in which he says, in summary, that as LSE, Senate House Library and the Institute of Advanced Legal Studies (IALS) do not have a copy of the thesis then the Library should not have recorded the thesis as being in existence. He says, in conclusion that 'the British Library has created an EThOS record for the thesis that contradicts and violates its own data collection policy and the September 2013 Memorandum of Understanding entered between the LSE and the British Library'.

14. It is noted that the Commissioner applied for the appeal to be struck out. On 11 July 2023, Judge Buckley decided that:-

The question of whether or not the request is vexatious is a multi-factored decision best determined on consideration of the evidence. I am not persuaded on the basis of the information before me that there are no reasonable prospects of the tribunal reaching a different decision to the Commissioner.

15. In his final submissions, the Appellant says as follows:-

...on 24 June 2015 the British Library violated its own EThOS quality assurance protocol to create an EThOS catalogue entry for Tsai Ing-wen's non-existing doctoral thesis. The EThOS protocol required the British Library to only harvest metadata from institutional repositories or acquire other information from member universities, but there was no metadata or other necessary information about Tsai's doctoral thesis available at the London School of Economics, the University of London, the Institute of Advanced Legal Studies or the British Library's own theses collection.

20) The University of London admitted that they received no physical copy of Tsai's doctoral thesis. The LSE Library's catalogue entries made it clear that it was a photocopy or a digital copy of Tsai Ing-wen's personal copy of the original thesis created in 2019. These facts raise a reasonable question where did the British Library get the information for the EThOS entry in 2015, which is the substance of Appellant's FOIA request.

22) The outcome of the internal review conducted by Roly Keating, Chief Executive of the British Library, was emailed to Appellant on 12 July 2022. In the email, Keating provided the background of Appellant's request and Keating's decision, i.e., "I note that in 1984 Dr Tsai Ing-wen received a doctorate from LSE, but no copy of the thesis was published by that institution."... The background was based on the University of London's response on 11 January 2022 ..., which was in turn a result of the First-tier Tribunal Decision EA/2020/0286 on 11 December 2021.... It indicates that the British Library knew that Tsai's final validated doctoral thesis never existed. It did not exist in 1984, nor did it exist on June 24, 2015, when the catalogue entry of Tsai's doctoral thesis was created and added to EThOS. The background provided by Keating on 12 July 2022 is the crucial evidence of the valid purpose for Appellant's FOIA request.

23) There has been no showing that Appellant's FOIA request was impolite, disruptive, threatening or otherwise vexatious. Further, there has been no showing that Appellant is part of a concerted campaign to disrupt the services of the British Library. Finally, there has been no showing that the LSE published the non-existing thesis in 2015 as alleged by Roly Keating.

## THE LAW

16. Section 14(1) FOIA states that 'Section 1(1) [FOIA] does not oblige a public authority to comply with a request for information if the request is vexatious'. Vexatiousness is not defined in section 14 FOIA, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.

17. The approach to vexatiousness is set out in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC). There is an emphasis on protecting public authorities' resources from unreasonable requests which is described by the Upper Tribunal in *Dransfield* when it defined the purpose of section 14 as follows at paragraph 10:-

Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...'

18. Also in *Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question as to whether a request is vexatious ultimately depends upon the circumstances surrounding that request. As the Upper Tribunal observed:-

There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.

19. One aspect of the consideration was whether the request had inherent value. As the UT said at paragraph 38:-

...Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests (especially where there is “vexatiousness by drift”) may not have a continuing justification. ...Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident.

20. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed at paragraph 68 that:-

...the emphasis should be on an objective standard and that the starting point is that 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... Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right...The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.



21. Specific reference should also be made to paragraph 72 of *Dransfield* in the Court of Appeal where Arden LJ addressed paragraph 10 of the UT decision and said:-

72. Before I leave this appeal I note that the UT held [2012] UKUT 440 AAC at [10] that the purpose of section 14 was “to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA”. For my own part, I would wish to qualify that aim as one only to be realised if the high standard set by vexatiousness is satisfied. This is one of the respects in which the public interest and the individual rights conferred by FOIA have, as Lord Sumption JSC indicated in *Kennedy v Charity Commission (Secretary of State for Justice and others intervening)* [2015] AC 455 para 2 above), been carefully calibrated.

22. The Upper Tribunal case of *Cabinet Office v Information Commissioner v Ashton* [2018] UKUT 208 (AAC) made clear that s14(1) FOIA can apply on the basis of the burden placed on the public authority, even where there was a public interest in the request being addressed and where there was a ‘reasonable foundation’ for the request:-

27. The law is thus absolutely clear. The application of section 14 of FOIA requires a holistic assessment of all the circumstances. Section 14 may be invoked on the grounds of resources alone to show that a request is vexatious. A substantial public interest underlying the request for information does not necessarily trump a resources argument. As Mr Armitage put it in the Commissioner’s written response to the appeal (at §18):

- a. In deciding whether a request is vexatious within the meaning of section 14(1), the public authority must consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.
- b. The burden which compliance with the request will impose on the resources of a public authority is a relevant consideration in such an assessment.
- c. In some cases, the burden of complying with the request will be sufficient, in itself, to justify characterising that request as vexatious, and such a conclusion is not precluded if there is a clear public interest in the information requested. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

23. The Commissioner has identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in his published guidance and, in short, they include: • Abusive or aggressive language • Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden • Personal grudges

- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance.

24. As the Commissioner says, the fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

## DISCUSSION

25. The background against which we must consider the Commissioner's decision is one where we accept that since 2015 there have been many, many requests made to a number of UK academic institutions about this particular PhD thesis by Tsai Ing-wen, when it became clear that she would become president of Taiwan. It seems clear from what we have read that there has been a concerted campaign to undermine Dr Tsai and that questioning of the award of a PhD could be seen as an effective way of doing this. Even though we accept the Commissioner's finding that the Appellant is not part of the concerted campaign, this is a subject area about which the Appellant must know there has been a high level of interest over the years.

26. We note that the Library advised the Appellant that, since 2020, the LSE and the University of London have been refusing requests relating to Dr Tsai's thesis on the basis that they were vexatious, and the Library also referred to a statement published by the ICO about its decision to apply section 14 FOIA to any requests received on the same subject where it was found that they were lacking 'valid purpose'.

27. We further note that, importantly, the FTT in the *Hsu* case found as follows:-

24....the University has confirmed publicly that a PhD degree was awarded to President Tsai. In its original response to the Request, the University stated, "The University of London confirms that Ms Ing-Wen Tsai was awarded a PhD by the University of London in 1984 and she was registered as an LSE student", and this statement was repeated in the internal review response. The internal review also repeats information from other FOIA requests that, "The University can confirm its records state that the examiners reviewed the thesis and examined the candidate orally on the subject of the thesis...Dr Tsai was recorded on the University's 1984 pass list". The University's submissions for this appeal also confirm that it holds records of the viva and pass list, and can confirm award of the degree. These clear statements from the University satisfy the legitimate interests in confirming that President Tsai was awarded a PhD degree.

25... We accept that the explanation originally provided by the University that the thesis had been lost or mis-shelved may not be correct, as there is no catalogue or microform record of the original thesis. However, this does not mean that President Tsai was not awarded a PhD degree, or that there has been academic fraud. It simply means that the thesis was not filed correctly in the libraries in 1984. The University has provided clear statements confirming that President Tsai had an oral (viva) examination and was awarded a PhD degree.

28. It is clear from the Appellant's appeal documents that his purpose is to establish that the thesis does not exist, and that somehow the Library's records (which are based on a copy of the thesis provided by Dr Tsai) are falsified in some way. However, from the *Hsu* case we accept Dr Tsai did write a thesis, that she was tested on it in a viva and that the award of the PhD is recorded in the University records. We also accept that the most likely explanation for an inability to locate the thesis is a filing error in 1984 (at a time when there would not have been computerisation of PhD theses). For the purposes of this appeal, we have seen email correspondence from 2015 between University institutions in which it is confirmed that copies of the thesis were provided to examiners in 1984, but that (for reasons not now known) the thesis was not catalogued.
29. The Appellant's focus has been turned towards the question as to how the Library could have made an official record about the existence of the thesis (in 2015) if none of the institutions from which it would take the record (LSE, IALS, Senate House Library) have an original copy of the thesis, and he seeks extensive information on this issue. (It appears that Dr Tsai provided a copy of the thesis in 2019).
30. Despite the Appellant's submissions, it appears to us that the request has very little value. It is now established that the PhD was awarded to Dr Tsai in 1984 and records to confirm this are in existence. As the FTT in *Hsu* said the fact that an original copy of the thesis cannot be found, does not mean that it did not exist. There is nothing else to be said on the subject. We cannot see how it will be of value to be provided with detailed information as to the process by which the Library recorded the award of the degree on its systems in 2015.
31. Together with our acceptance that the Appellant is not part of a concerted campaign, we also accept that the Appellant has not used abusive or aggressive language in his request, and that there is no deliberate intention to cause annoyance. However, it seems to us that some of the other factors in the Commissioner's guidance are made out.

32. There is a clear burden on the Library to answer a request for ‘ALL internal and external communications, correspondences, meeting minutes, emails, notes, recordings of telephone conversations, and all other records regarding cataloguing the referenced Ph.D. thesis in 2015’, in circumstances especially where the Library has had to deal with many requests already about this thesis. In our view there is unreasonable persistence from the Appellant as he is aware that other institutions have confirmed the award of the PhD to Dr Tsai and yet he has continued to pursue the matter. This could also be portrayed as intransigence in the face of this information. It also seems to us that the Appellant has made unfounded allegations that the thesis does not exist, when the evidence is clear that there have been copies originally available which have been misplaced.
33. Taking an holistic view of this request, this request comes in the context of many other requests to the Library and other institutions (even if the Appellant is not part of a concerted campaign), and where the records show that there was a grant of a PhD to Dr Tsai for which she was properly examined. It is hard to avoid the conclusion that the Appellant has a misconceived belief that Dr Tsai has not been awarded a PhD despite clear evidence to the contrary.
34. Taking all these factors into account and bearing in mind the considerations set out in the *Dransfield* case, and in agreement with the reasons given by the Commissioner in the decision notice, it is our decision for the reasons set out above that the request is a vexatious request for the purposes of s14 FOIA.
35. On that basis, this appeal is dismissed.

**Stephen Cragg KC**

Judge of the First-tier Tribunal

Date: 31 October 2023

Date Promulgated:

