



NCN: [2024] UKFTT 00265 (GRC)

Case Reference: EA/2023/0225

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

Heard: GRC Remote Hearing Rooms

**Heard on: 7 March 2024
Decision given on: 2 April 2024**

Before: Brian Kennedy KC, Anne Chafer and Stephen Shaw.

Between:

JULIE BOND

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: Julie Bond as a Litigant in person.

For the Respondent: on behalf of the Commissioner: Joseph Lynch-Watson.

Decision: The appeal is Allowed.

Substituted Decision Notice: The Tribunal direct the Public Authority to issue a fresh response to the request not relying upon s. 14(1) FOIA.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“FOIA”) against his decision notice of the Commissioner dated 24 April 2023 Ref. IC-216732-Z7Y2 (“the DN”) which is a matter of public record.

Factual Background to this Appeal and Decision Notice:

2. The Appellant made the following information request to a public authority, the Endeavour Learning Trust (‘the Trust’) on 12 November 2022;

“Please list all appointments made to permanent and fixed term roles within the Trust's central administrative and executive functions, including those in related organisations such as the Trust's Initial Teacher Training Programme and Schools Alliance.

Please list all appointments made; from the inception of the Trust up until the current date, including roles which were newly created, those in which an incumbent's job title was changed, as well as those roles which have since ceased to exist.

In addition to this, please list appointments to the Senior Leadership Teams at schools and academies managed by the Trust. This should include appointments made from the onset of the Trust's managerial oversight, regardless of the state of academisation.

For each appointment, please detail:

- *The date of the appointment,*
- *The job title,*
- *Whether or not the job was advertised widely (meaning somewhere beyond the Trust's own website(s)),*
- *How many candidates were interviewed for the role at the time of appointment,*
- *The exit date for the appointed person, including to another internal role.*

The information can be provided in one document. I suggest the following structure:

Date of Appointment | Organisation | Job Title | Advertised Widely? | No. Candidates Interviewed | Exit Date

*01/01/20XX | Trust | CEO | NO | 0 | Still in post 01/01/20XX | School A | Head | YES | 3
| 02/02/20XX 01/01/20XX | SCITT | Adminis. | NO | 2 | Still in post 01/01/20XX | School B | Asst.Head | YES | 0 | 02/02/20XX”*

3. The Trust responded to advise that it would cost too much or take up too much staff time to comply with the request.
4. The Appellant then refined the request as follows:

“In this instance, I am prepared to limit the scope of the request to the Trust's central services/related organisations, and to its two longest standing Academies.”

5. The Trust provided some relevant information and advised that it deletes unsuccessful job applicants' data after six months and so it does not hold all the information requested.
6. Further correspondence followed with the Appellant querying and disputing the accuracy of aspects of the Trust's response(s) and the Trust apparently addressing these concerns and providing what they deemed to be relevant information as necessary.
7. On 29 November 2022, the Trust sent the Appellant a copy of its Records Management Policy and a spreadsheet containing information about certain appointments to the Trust.
8. Following the Christmas break, the correspondence continued. Having sought legal advice, on 23 January 2023 the Trust advised the applicant that it considered their request to be vexatious under section 14(1) of FOIA.
9. The Trust explained to the Appellant that it had become concerned when the Appellant returned to it a copy of the information it had provided on 29 November 2022 with initials next to the roles it had kept anonymous so as not to reveal the identity of the individuals holding those roles, which would contravene the UK GDPR and Data Protection Act 2018. The Trust said it was further concerned that those individuals and their roles are not published in an organisational chart *“so as to make such steps a simple exercise”* for the Appellant to carry out. This it is suggested added to the gravity of the Trust's concerns about the Appellant's motives and their intention towards its staff. The Trust considered that the actions the Appellant had taken were of concern and that it believed that their request created a serious risk to its employees' privacy and data rights. The Trust advised that as FOIA is forged on the basis that the information disclosed is to the world at large, it could not disclose any further information to the Appellant or engage further with their request. The Trust took the view that the request was vexatious, and that the Appellant intended to cause distress to those involved in the request.
10. The Trust argue that having considered their correspondence in the round, it was also concerned with the tone and threatening nature the Appellant had adopted when engaging with it. It argues that there was a level of contempt which added to the Trust's concern that the Appellant was seeking the requested information to cause an unjustifiable level of disruption, irritation, and distress to those involved.
11. The Trust also argue that, notwithstanding the above, the level of time the Appellant had drawn down on its resource has exceeded FOIA's £450 cost limit – amounting to 18 hours work. It argues that even if the Trust had not reached the conclusion that the requests are vexatious, it would have reached the point where it would have declined to proceed any further under the cost limit under section 12 of FOIA. The Trust advised the Appellant to contact the Commissioner if they were dissatisfied. It repeated this advice on receipt of further correspondence from the Appellant.
12. The Commissioner accepts that, when it was originally submitted and after it was refined, the request could be said to have some value, to the applicant if minimal wider value.

13. However, the Commissioner had himself noted the tone of the Appellant's communications when he was reviewing their correspondence with the Trust. He agrees with the Trust that in the course of the correspondence, the Appellant's tone became somewhat threatening and hostile, with no obvious reason.
14. In addition, the Commissioner has taken account of the Appellant's handling of the information disclosed to them. They turned anonymised data the Trust provided in a spreadsheet into personal data by adding initials to the information and, according to the Trust, this would not have been easy for them to do as the roles in question are not published in any organisational chart.
15. The Commissioner was persuaded that the Appellant's motive does not appear simply to access the information they have requested. The request does not include a request for names, but the Appellant has nonetheless added individuals' initials to information they received. The Commissioner also took account of the background and context of the request which the Trust had indicated, the ambiguous nature of the relationship between the Appellant and the complainant, the tone of some of the Appellant's correspondence to the Trust and the persistence of their correspondence. In the Commissioner's view the evidence suggests that the Appellant was motivated to harass the Trust and its employees. Any value the request may have had does not outweigh the negative impacts of complying with the request; that is, what appears to be the Appellant's dubious motive and the resulting harassment to the Trust and its employees.
16. The Commissioner was therefore satisfied that the Trust was entitled to refuse the request under section 14(1) of FOIA as he found the request is vexatious.

Legal Framework:

17. Section 14 of the FOI Act states that public authorities do not have to comply with vexatious requests. There is no requirement to carry out a public interest test or to confirm or deny whether the requested information is held.
18. Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit known as the appropriate limit.

Grounds of Appeal:

19. The Appellant challenges the Commissioner's DN.
20. In relation to the Grounds of Appeal, the Appellant states that the Commissioner has supported the public authority in their assertion that the Appellant is vexatious. The Appellant strongly refutes this allegation.

21. The Appellant argues that they were “*absolutely meticulous*” in ensuring that there was no previously unpublished documentation used. The Appellant detailed this at great length.
22. The Appellant contends that there are clear and demonstrable omissions from the data provided. Further, that the public authority has not stated that they do not hold the information.
23. The Appellant states that they do not know of any other requestor however, this appeal is authored by the Appellant. The Appellant accepts persistence; however, the Appellant is adamant that she neither threatened nor harassed.
24. The Appellant criticised the public authority’s handling of her request by providing a timeline between her original appeal and the vexatious decision. She argued that any undue pressure was caused by the Trust’s poor handling of her request and that her persistence was required in order to navigate a series of changeable and inexplicable responses.
25. The Appellant argues that the disclosure of the information will benefit the public at large. The Appellant seeks openness and transparency from the public authority.

Commissioner’s Response:

26. The Commissioner resists the Appeal. The Commissioner concluded that the Trust was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA) [vexatious request] and was therefore not required to respond to the Appellant’s request for information.
27. The Commissioner reviewed the case papers and the Appellant’s appeal documentation. Having done so, the Commissioner opposes this appeal and stands by the DN.
28. The Commissioner in a rather terse written Response to the Grounds of Appeal submits that in all the circumstances of this case the request was vexatious further to the binding case law set out by the Court of Appeal in *Dransfield v Information Commissioner & Devon County Council* [2015] EWCA Civ 454 (and which did not depart from the Upper Tribunal findings in *Information Commissioner v Dransfield* [2012] UKUT 440 (AAC)).
29. The Commissioner provided, alongside his Response form, a bundle of documentation and a copy of his own non-statutory guidance about section 14 FOIA, to assist the

Tribunal in its determination of this matter. The Commissioner does not propose to make any further representations or submit further documentation.

30. The Commissioner suggests that should the Tribunal have any questions or matters which are not answered by the papers before it, the Tribunal may choose to exercise its powers under rule 5(3)(d) of the Tribunal Rules to permit or require a party or another person to provide documents, information or submissions to the Tribunal.
31. If, contrary to the Commissioner's position, the Tribunal concludes that the request is not vexatious under s. 14(1) FOIA, the Commissioner invites the Tribunal to order steps obliging the public authority to issue a fresh response to the request not relying upon s. 14(1) FOIA.

Discussion:

32. The Upper Tribunal have considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). That case commented that "vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in that 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 Tribunal have considered the evidence before us in this appeal as follows:

The burden:

33. First, the present or future burden on the public authority may be inextricably linked with the previous course of dealings, if applicable. 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. On the evidence before us there is no suggestion of any material previous course of dealings between the Appellant or complainant and the Trust. Further we find the Trust should have been able to find the relevant information relatively easily. We agree with the Appellant any "*metadata*" that emerged was as a result of the request and was created as part of the Trusts' response to the refined request.
34. As to the *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. On the evidence before us in this appeal the Appellant has narrowed the request to a manageable scope. The Trust may have considered but did not rely upon section 12. There is insufficient material evidence or information before us to make any finding on this issue.

- 35.** 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. On the evidence before us in this appeal this is not a material factor to be given consideration and on the contrary the evidence does not suggest the Appellant has any such history with the Trust.
- 36.** 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. On the evidence before us in this appeal we do not find a material or significant degree of unreasonable expectation on the Trust to cope with the relevant refined request properly and fairly.

The motive:

- 37.** Second, the motive of the *requester* is 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; 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. On the evidence before us in this appeal we do not accept such circumstances prevail or exist to any such extent as to justify the request being labelled vexatious. We find that the longer than necessary exchange that ultimately occurred was as a direct result of the Trust acting in an obstructive and unhelpful manner rather than any excessive or obsessive conduct on the part of the Appellant.
- 38.** 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. 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 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.”

39. 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 IC’s Guidance for public authorities helpfully advises (p.3). Again, the Tribunal have carefully examined the evidence of the history and chronology of the handling of this request and do not find that the Appellant acted other than in a reasonable manner in the pursuit of her request. Rather we find the Trust did unreasonably forestall a genuine attempt to call on the Trust to account in relation to a request with a genuine motive. Such information as has been provided by the Trust is inadequate and, in our view, disingenuous.

40. In other circumstances such as where 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 used by Judge Jacobs is “*vexatiousness by drift*”. Where for example an Appellant who has become wholly disproportionate to her 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 so requested, may be vexatious in the complete absence of any such drift. There is no material evidence before us that could establish any such drift or offence by the Appellant in this case.

The value or serious purpose:

41. 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? We find the request does have value and serious purpose and we are 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 addressed as has occurred in this case. We find there is a legitimate interest and motive in the request which the Appellant explained quite clearly.

Causing harassment of, or distress to, staff:

42. 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 racist language). However, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within section 14.” The Appellant has properly and fairly acknowledged that the request may have required significant effort on the part of Trust staff, but we find no evidence of sustainable or material harassment or distress in this case. Again, the Tribunal have carefully considered the detail of the evidence relating to the handling of the request in this appeal and we do not find grossly excessive or ill-intended persistence on the part of the Appellant who conducted her dealings in a proportionate manner in her reasonable attempt to pursue a request with a legitimate motive. On examination of the material exchanges before us we are satisfied that the Trust staff who were required to deal with this request were not caused harassment and distress to an unacceptable degree. In fact, we find no evidence of threatening or offensive conduct on the part of the Appellant in her dealing with the Trust. Rather we find the tone and conduct of the Appellant to be one of understandable frustration as a result of clear obstruction. We also find that the two things the Appellant was interested in were not personal data as suggested by the Trust. Further, on the evidence before us we are not persuaded, nor do we accept that there was a material risk to its employees’ privacy and data rights posed to identifiable individuals as a result of initials used by the Appellant in a marked document she produced. What the Appellant does with such inadequate information as has been provided is not an issue before us.

Conclusion:

43. 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 the Tribunal take the view that the Appellants request on the material evidence before us was proportionate.

44. It is clear that the public authority has not stated that they do not hold the information. The Tribunal are not persuaded that the reasoning, such as it is in the DN is substantiated and accordingly we must allow the appeal and issue the following direction;

Substituted Decision Notice:

45. The Tribunal direct the Trust to issue a fresh response to the request not relying upon s. 14(1) FOIA.

Brian Kennedy KC

09 March 2024.