



Appeal no. EA/2011/0076

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

**ON APPEAL FROM:  
INFORMATION COMMISSIONER'S DECISION NOTICE NO: FS50321625**

**Dated: 28 FEBRUARY 2011**

**B E T W E E N:**

**MICHAEL KEITH VOGES**

**Appellant**

**and**

**THE INFORMATION COMMISSIONER**

**First Respondent**

**and**

**TRANSPORT FOR LONDON**

**Second Respondent**

**Before**

**Brian Kennedy QC**

**Anne Chafer**

**Alison Lowton**

**Representation:**

**For the Appellant: The Complainant**

**For the Second Respondent: Anneliese Blackwood**

**Date of Hearing Friday the 4<sup>th</sup> November  
at the Royal Courts of Justice,  
The Strand,  
London.**

## **Decision**

For the reasons given below, the Tribunal upholds the Decision Notice of the Information Commissioner dated the 28<sup>th</sup> of February 2011, and dismisses the appeal.

Signed:  
Brian Kennedy QC  
Tribunal Judge

Dated: 14<sup>th</sup> December 2011

## **Reasons for Decision**

### **Introduction:**

1. This is an Appeal by Mr Michael Keith Voges (“the appellant”) against a Decision Notice (“DN”) issued by the Information Commissioner (“the first named respondent”) dated 28 February 2011, pursuant to section 57 of the Freedom of Information Act 2000 (“the FOIA”).
2. The DN of the first named respondent of 28 February 2011 considered 13 requests for information made by the appellant to London Underground Limited (“LUL”), a subsidiary for Transport for London (“the second named respondent”). The second named respondent is the responsible public authority listed under paragraph 29 of Schedule 1 of the Freedom of Information Act 2000.
3. In relation to 11 of those 13 requests, the second named respondent refused to provide the information requested on the grounds that the requests were vexatious pursuant to section 14(1) of FOIA. The first named respondent found that the second named respondent was entitled to rely on section 14(1) in relation to those 11 requests.
4. The remaining two requests concerned procedural matters, wherein the first named respondent found that second named respondent was in breach of section 10(1) of the FOIA, however this finding has not been appealed by the appellant.
5. Inter-alia the appellant is complaining – that the respondents referred to LUL and the second named respondent as “the public body” collectively. It appears to us that the appellant is complaining of this on the grounds that he says, if they are not one core body – then his complaints cannot be seen as vexatious and burdensome, as they were sent to two separate core functionary bodies. However this tribunal accepts the submissions of both respondents, that the

correct public body to deal with complaints, is the second named respondent and LUL is a subsidiary of the second named respondent.

**Background:**

6. The appellant had a free travel pass which entitled him to travel on the second named respondent's travel network without paying. On 17 June 2007 the appellant's daughter was identified (by a Revenue Control Inspector) using the appellant's free travel pass on the second named respondents travel network despite the fact that she was not entitled to do so. Consequently the appellant's daughter was convicted and fined on 8 April 2008.
7. On 3 April 2008 the Appellant brought a civil claim against the prosecutions manager of the second named respondent and against LUL itself for confiscating the free travel pass which the appellant's daughter had used. On 11 October 2008 the claim against the prosecutions manager was struck out, and on 25 November 2008 the remainder of the claim was dismissed.
8. On 13 June 2008 the appellant brought a claim against four LUL employees for "*various negligent or illegal acts of commission or omission*". This claim was dismissed on 10 October 2008 on the basis that the court considered it to be "*totally without merit*". The appellant appealed the decision but as he had been declared bankrupt the proceedings were in November 2009 adjourned "unless and until" the Trustee in Bankruptcy confirmed in writing that it wished to continue the appeal. The Trustee in Bankruptcy decided not to appeal.
9. Since 22 June 2007 the appellant has engaged in voluminous correspondence with both LUL and the second named respondent. Such correspondence has concerned information which the appellant believes necessary in order to make complaints against a number of members of staff regarding their conduct in relation to the events that led to the prosecution and their actions since, specifically the factual basis for the prosecution of the appellant's daughter, including allegations of collusion for the purposes of the initial criminal court case and improper presentation of evidence in that case.
10. On the 18 March 2011 the appellant issued his Notice of Appeal to the Tribunal against the DN.
11. On 17 May 2011 the appellant's daughter, with the assistance of the appellant, brought a claim for judicial review against the second named respondent for its decision to prosecute her. This leave application was refused on 22 August 2011.
12. The appellant's daughter, with the assistance of the appellant, also brought a claim, against LUL and the second named respondent together with a number of named employees of the second named respondent, for misfeasance in

public offices and breaches of the Human Rights Act. This claim was struck out on 7 September 2011.

**The requests for information:**

13. The Appellants' lead requests were numbered 1 to 3 which were all submitted on 16 April 2010, followed by 8 subsequent requests on various dates up to the 21 June 2010.
14. The second named respondent confirmed that answering just requests 1 to 3 would not cause a significant burden in terms of expense or distraction, however considered that it is crucial to consider these requests in light of the context and history of the appellant's dealings with the second named respondent.
15. At the time of the first named respondent's DN, while the second named respondent explained that it does not routinely record the amount of time that it spends answering requests, it did provide an incomplete schedule of 39 pieces of correspondence that related to requests for information that preceded the 11 requests and post-dated June 2008
16. All requests and correspondence related to the complainant's concern about the prosecution of his daughter and his belief that the prosecution papers were flawed. Such correspondence has concerned information which the appellant believes necessary in order to make complaints against a number of members of staff regarding their conduct in relation to the events that led to the prosecution and their actions since, specifically the factual basis for the prosecution of the appellant's daughter, including allegations of collusion for the purposes of the initial criminal court case and improper presentation of evidence in that case.
17. The second named respondent explained that the burden in terms of expense and distraction of the previous requests and correspondence was so great that it was reasonable to say that the lead requests 1 to 3 caused a significant burden within their context.
18. The second named respondent explained that it had written to the appellant on 27 June 2009 and 12 August 2009 to explain that it was concerned about the costs being incurred in this matter and that it would restrict its communications to matters that had not previously been answered. These communications did not have any effect on the appellant and the second named respondent explained that it had become necessary for it to issue a further notice on 8 September 2009 explaining that the volume of correspondence was unreasonable (as it had received letters dated 19, 25, 28 and 31 August and 1 September 2009)

**19.** Inter-alia, the second named respondent submitted the following to the first named respondent at the time of making his DN:

- that that the volume of requests meant that it often received duplicate requests and further requests, before a response had been issued to the original request;
- it believed that the requests constituted an administrative burden;
- that the burden was exacerbated by the appellant writing to numerous employees about similar matters simultaneously;
- that the volume of requests has put such pressure on the relevant departments that it prevented them from dealing with anything else, for example, the dispute resolution team received 46 different communications from the complainant over a four month period, regularly receiving more than one different communication per day and multiple copies of same communications;
- that the appellant did not limit his correspondence to single departments, and frequently decided that members of staff are not sufficiently senior to be competent to deal with his enquiries and therefore directed the same enquiries to senior members of staff adding to the burden and distraction;
- the amount and nature of correspondence resulted in frequent distraction from individual's key tasks and from the departments that they work for;
- it believed that the appellant was likely to remain unhappy whatever was provided;
- that the provision of the information requested is not required for the appellant to make a formal complaint through its complaint procedures.

**The complaint to the first named respondent:**

**20.** On 14 September 2010 the appellant contacted the first named respondent to complain about the way his request for information had been handled. The first named respondent was asked to determine whether requests 1 to 11 have been correctly characterised as being vexatious as pursuant to section 14(1).

**21.** The first named respondent considered whether the relevant information held by the second named respondent had been appropriately withheld.

**22.** The first named respondent took the view that whether a request is vexatious for the purposes of the FOIA must be considered as at the date it was received by second named respondent. The first named respondent took into account the appellant's previous interaction with the second named respondent when determining whether the request can be correctly characterised as vexatious.

**23.** The first named respondent, in considering the context of the requests, was satisfied that a great deal of the second named respondent's time had already been spent dealing with previous requests and with the appellant's associated

correspondence about the prosecution of his daughter. The first named respondent noted that at the time of the requests' made, the appellant was already in possession of the information he required to access the second named defendant's complaint process.

24. The first named respondent considered a considerable weight of arguments submitted by the appellant, and while accepting that the public authority had delayed responding to a number of requests, the sheer quality and quantity of correspondence was burdensome and was not necessary. The first named respondent found that the repetition of requests was not acceptable, and that the complainant continued to create further work, further distraction. (This tribunal agrees with that finding, and endorses the view that it does not constitute a responsible use of the FOIA).
25. While the first named respondent found that the requests did have a serious purpose (see paragraph 17 above), he concluded that the seriousness of the appellant's purposes did not suffice to outweigh the other factors pointing towards the engagement of section 14(1) of the FOIA, (and again, this tribunal accepts this finding as reasonable).
26. The first named respondent therefore concluded that, the 11 requests, in their context, fell within section 14(1).
27. By notice of appeal dated the 2<sup>nd</sup> of March 2011 the appellant appeals against the first named respondent's decision. The appellant disputes in its entirety, the decision of the first named respondent that the requests were vexatious pursuant to section 14(1) of the FOIA.
28. The appellant represents himself in this appeal.

**The Legal Framework:**

29. The right of access to information is conferred by section 1(1) the FOIA, however section 14(1) of the FOIA provides that:

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

30. Section 3 of the FOIA provides that:

- (1) In this Act "public authority" means –
  - (a) ...any body which... (i) is listed in Schedule 1 or
  - (b) a publicly-owned company as defined by section 6.

31. Section 6 of the FOIA provides that:

- (1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if - ...
- (c) it is wholly owned by any public authority listed in Schedule 1 ...
  - (2) For the purposes of this section ...
    - (b) a company is wholly owned by a public authority other than a government department if it has no member except –
      - (i) that public authority or companies wholly owned by that public authority, or
      - (ii) persons acting on behalf of that public authority or of companies wholly owned by that public authority.

**32.** Section 29 of Schedule 1 of the FOIA lists the second named respondent as a public authority.

**33.** Section 50(1) of the FOIA provides that:

Any person (in this section referred to as “the complainant”) may apply to the First named respondent for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part 1.

**34.** Section 58 of the FOIA provides that:

- (1) If on an appeal under section 57 the Tribunal considers
  - (a) that the notice against which the appeal is brought is not in accordance with the law, or
  - (b) to the extent that the notice involved an exercise of discretion by the First named respondent, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the First named respondent; and in any other case the Tribunal shall dismiss the appeal.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

**35.** The term “vexatious” is not defined in the FOIA. However, the first named respondent’s guidance – drawing on numerous Tribunal cases – asks the following questions (not all of which apply in every case):

- (i) whether compliance would create a significant burden in terms of expense and distraction;
- (ii) whether the request has the effect of harassing the public authority or its staff;
- (iii) whether the request can fairly be characterised as obsessive;
- (iv) whether the request has any serious purpose or value; and
- (v) whether the request is designed to cause disruption or annoyance.

### **Case Law on Section 14(1) of FOIA**

**36.** The term “vexatious” should be given its ordinary meaning *i.e.* it would be likely to cause distress or irritation: *Ahilathirunayagam v IC EA/2006/0070*, para 32.

**37.** The standard to be applied is an objective one and the focus is on the likely effect of the behaviour on a reasonable public authority: *Gowers v IC EA/2007/0114*, at paragraph 27. The intention of the person making the request is irrelevant: *Wise v IC EA/2009/0080*, para 32.

**38.** The threshold for a request to be found to be vexatious need not be set too high. This is because the consequences of such a finding are much less serious than a finding of vexatious conduct in other contexts: *Hossack v IC EA/2007/0024*, para 11; *Welsh v IC EA/2007/0088*, para 26.

**39.** In order to determine whether a request is vexatious it is appropriate to consider the history and context of the request: *Hossack*, para 12; *Welsh*, para 21. As noted in paragraph 29 of *Gowers*.

“...when considering if a request is vexatious, it is not only the request itself that must be examined, but also its context and history. A request which, when taken in isolation, is quite benign, may show its vexatious quality only when viewed in context. That context may include other requests made by the applicant to that public authority (whether complied with or refused), the number and the subject matter of the requests, as well as the history of other dealings between the applicant and the public authority”



40. It is reasonable for a public authority to consider its past dealings with the requester, particularly in relation to its experience of answering one request which would likely lead to still further requests: *Betts v IC* EA/2007/0109.
41. If a request has a serious and proper purpose it may be deemed not to be vexatious despite the significant burden it places on the public authority: *Coggins v IC* EA/2007/0130, para 20. However there can come “a time when in light of what has gone before there is no longer a serious purpose”: *Wise*, para 51. What constitutes “a significant administrative burden” may be met where a request constitutes “a significant distraction from [the public authority’s core functions]”: *Coggins*, para 27.
42. It should be noted that is “not the purpose of the FOIA to assist requesters in placing undue pressure on a public authority either as part of a campaign to expose maladministration or in order to force it into an admission of liability”: *Betts v IC* EA/2007/01009, para 33.
43. The Tribunal has stated: “There must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested”: *Welsh*, para 26.
44. Requests may objectively be construed as harassing where they are expressed in terms which are “hostile, provocative and often personal... and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit individuals”. *Coggins*, para’s 53-54.
45. There may be circumstances in which the burdensome and harassing nature of a request may be outweighed by its serious purpose: *Coggins*, para 20.
46. The second named respondent has further set out guidance as reflected in case law, which may be considered in identifying a vexatious request. These factors are highly relevant to assisting this tribunal in coming to their decision, and therefore have been set out below, as per the submissions of the second named defendant:
  - a) A large number of FOIA requests and/or an amount of correspondence which causes a significant administrative burden on the public authority in terms of expense and distraction: *Coggins*, EA/2009/0105, para 28, *Almedia v IC*, para 27; *Wise*, para 32;
  - b) Dealing with the requests would be a significant distraction from the public authority’s core functions: *Coggins*, para 28; *Almeida*, para 28;
  - c) Examples of actions which are considered to increase the burden on public authorities are where the appellant has written long, detailed requests, sent the same request to more than one employee of the public authority or

- repeated requests before a response to the preceding request has been received: *Coggins*, para 28;
- d) Requesting information which the appellant already possesses: *Ahilathirunayagam*, para 32;
  - e) Requesting information that relates to matters which the public authority has already previously debated with the appellant: *Ahilathirunayagam*, para 32.
  - f) The substantive issue has already been investigated by external bodies: *Almeida*, para 27;
  - g) The person making the response is unlikely to be satisfied with any response and any response is likely to result in additional requests and correspondence: *Wise*, paras 37 and 38;
  - h) The use of “*tendentious language*” (*Ahilathirunayagam*, para 32), a “*haranguing tone*” (*Coggins*, para 28) or an “*aggressive, accusatory and harassing tone*” (*Wise*, para 26) in the request and/or correspondence.

**Grounds of this Appeal:**

47. The first named respondent expressed the view that a number (but not all) of the grounds of appeal focus on the substance of the appellant’s underlying complaint against LUL and the second named respondent. However, the first named respondent argued, this Tribunal ought not to consider the underlying complaint, but ought to concern itself only with the appellant’s right of access to information held by LUL and the second named respondent. This tribunal endorses that view.
48. The appellant appeals on a number of grounds which we will address as follows:
- (a) The appellant is concerned with the issues dealt with referred to at paragraph 5. herein. That is to say the appellant is of the view that LUL and the second named respondent should be viewed as two separate bodies, in which case, his communications would not constitute a vexatious request within the meaning of section 14(1) of the FOIA. This tribunal, as stated above, and in line with the submissions of both respondents, finds that the second named respondent is the correct public authority for the purposes of FOIA requests for information for TFL and LUL which is a subsidiary thereof. However, this tribunal has expressed concern at the confusion caused to the appellant by a failure to represent properly a cohesive response by these two bodies. This confusion greatly antagonised the appellant in his genuine desire for information (see paragraph 17 above) and frustrated his attempts to obtain same. This exacerbated the appellant's persistence in making repetitive requests. That said, the fundamental and underlying position in relation to the overall effect of the appellant's requests is in the view of this tribunal vexatious within the meaning of section 14(1) of the FOIA.

- (b) The appellant argued that neither the second named respondent nor LUL offer an appropriate complaints procedure. The tribunal accept his criticisms of the complaints procedures in that they did prove to be ineffective. The tribunal have expressed their concern to the second named respondent in relation to the difficulties that the appellant experienced and suggested that thought be given to improve communications with complainants in the future. Nevertheless this tribunal finds that the inadequacies in the complaints procedures, and short comings in the manner in which the appellant's complaints were dealt with, are not directly relevant to this appeal.
- (c) In relation to the history of the appellant's requests the tribunal accepts the second named respondent's assertion that *"the appellant's 'corrections', however simply serve to explain his motive for his requests prior to April 2010 - they do not in any material way dispute the account of that history as set out in the DN. The appellant's corrections therefore go to seriousness of purpose (to which the Commissioner has already given weight in the Appellant's favour), rather than to challenging the Commissioner's findings as to burden/distraction or harassing effect. Other 'corrections' are minor factual issues of no consequence to the Commissioner's ultimate conclusions"*.
- (d) The appellant accuses the first named respondent of bias in favour of the second named respondent. Specifically that the first named respondent's tests for vexatious requests were unfairly imbalanced in favour of the public authority's experience of the requester rather than the other way round.

This Tribunal rejects any suggestion of bias on the part of the first named respondent and finds to the contrary that the evidence shows the first named respondent acted fairly throughout the decision making process and the appellant has singularly failed at the hearing of this case to demonstrate, either through the evidence, or through his submissions, any evidence of bias on the part of the first named respondent.

- (e) The appellant further argues inter-alia that he was not obsessive relating to obtaining information, that annoyance, irritation, distraction, disruption and harassment of "the public authority" were all ill-founded accusations made against him. This tribunal did express sympathy with the appellant in the frustration he experienced in attempting to effect complaints and in endeavouring to obtain information about complaints procedures. However, as stated above, this tribunal finds that these frustrations were unfortunately manifested in communications that did amount to vexatious requests within the meaning of section 14(1) of the FOIA and these adjectives were justified in all the circumstances.

**The questions for the tribunal:**

**49.** Case law assists in identifying a vexatious request: *Wise v IC* EA/2009/0080, para 24, *Young v IC* EA/2010/0004 set out factors such as:

- (i) Would complying with the request impose a significant burden in terms of expense and distraction?;
- (ii) Is the request harassing to the authority or causing distress to staff?;
- (iii) Does the request lack any serious purpose or value?;
- (iv) Can the request fairly be seen as obsessive?;

and finally the tribunal must decide,

- (v) Are the requests vexatious?

**50.** The tribunal answers the following queries accordingly:

- (i) Would complying with the request impose a significant burden in terms of expense and distraction?

The tribunal refers to paragraph 20 above and finds that the requests herein do in fact impose a significant burden in terms of expense and distraction.

- (ii) Is the request harassing to the authority or causing distress to staff?

In relation to this query, the tribunal has considered the following issues and evidence as presented by the second named respondent:

Namely, that the appellant has, in previous communications with the second named respondent and LUL:

- (i) Accused staff of having given perjured evidence and suggested that the signature on a witness statement was forged;
- (ii) Claimed that there was a conspiracy within LUL to knowingly rely on false witness evidence in relation to his daughter's prosecution;
- (iii) Threatened to report a member of the second named respondent's legal team who was involved in his daughter's prosecution to the Solicitors' Regulation Authority;
- (iv) Threatened to, and did in fact, make complaints about various members of the second named respondent and LUL staff;
- (v) Refused to accept correspondence from various members of staff, and said he would return letters from staff unopened;
- (vi) Threatened to take unspecified legal action and has taken legal action against individual employees of the second named respondent and LUL;
- (vii) Generally used an "*aggressive, accusatory and harassing tone*".

The second named respondent went on to highlight specific examples of statements by the appellant that could be objectively viewed as having an

*“aggressive, accusatory and harassing tone”*. Some such examples, along with others, included accusing the second named respondent of not having actually carried out an internal FOIA review at all. Further, that *“false information”* was used in the prosecution of his daughter, and named specific staff members as having participated in providing the said *“false information”*. The appellant accused staff of not being competent to deal with his requests, and referred to *“maladministration and/or malpractices”* by employees of LUL.

The tribunal accepts the submissions of the second named respondent in finding that there is evidence of the appellant having an unreasonable fixation on a certain member of staff (who had been involved in his daughter’s prosecution), and that the volume and frequency of the correspondence contributed to the harassment of staff.

The first named respondent was also of the view that the request had the effect of harassing the second named respondent, particularly in light of: the volume and frequency of correspondence; the appellant’s use of hostile language; his fixation with individual members of staff; and his mingling of requests with accusations and complaints. The tribunal accepts this interpretation.

The tribunal finds on the above grounds, that the requests can be considered as harassing by a reasonable public authority in their history and context.

(iii) Does the request lack any serious purpose or value?

As indicated above the tribunal accepts there is a serious purpose for the request (see paragraph 17 above), however, as explained to the appellant at the hearing, there were alternative means of redress and complaint which were more appropriate ways of pursuing his quest. The FOIA requests in this instance did become obsessive and any serious purpose was outweighed by the conduct of the appellant in the pursuance of his quest and we find disproportionate in the circumstances.

(iv) Can the request fairly be seen as obsessive?

The tribunal has considered the evidence submitted by the second named defendant, namely that:

- (ii) The subject matter of the correspondence and the requests is consistently concerned with the factual basis for the prosecution of the appellant’s daughter, including allegations of collusion for the purposes of the initial criminal court case and improper presentation of evidence in that case;
- (iii) The appellant continued to pursue these matters through correspondence with the second named respondent and LUL despite the fact that the appellant’s daughter abandoned the appeal of her conviction, and the two civil actions brought by the appellant were unsuccessful;

- (iv) The correspondence and the requests often focussed on specific named individuals;
- (v) The volume and frequency of the correspondence was considerable.

The second named respondent submits that the above grounds constitute a campaign by the appellant to try to establish that they should not have taken the decision to prosecute his daughter. In furtherance, the second named respondent submits that it is not the purpose of the FOIA to assist requesters in placing undue pressure on a public authority as part of such a campaign.

In the circumstances outlined above, this tribunal accepts these submissions.

- (v) Are the requests vexatious?

In light the above the tribunal is of the view that the appellant's requests are vexatious within the meaning of section 14(1) of the FOIA.

**Brian Kennedy QC**  
**14<sup>th</sup> December 2011.**