



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

EA/2014/0240

B E T W E E N:-

LINDA TAYLOR

Appellant

-and-

INFORMATION COMMISSIONER

Respondent

Heard on the papers: Judge Carter's Chambers, London

Date of Consideration: 21 April 2015

Before

Melanie Carter

Judge

and

Henry Fitzhugh and David Wilkinson

Tribunal Members

Date of Decision: 21 May 2015

Decision: The appeal was dismissed

1. Linda Taylor, the Appellant, is appealing against the Decision Notice with reference FS50525784 issued by the Information Commissioner (the Commissioner) on 3 September 2014. The Decision Notice related to requests for information made by the Appellant to the Governing Body of Parris Wood High School (the Governing Body) on 26 October 2013. On 27 September 2013 the Appellant wrote to the Governing Body requesting information under the Freedom of Information Act 2000 ("FOIA"). This related to the suspension of a school Governor (her husband) in 2011, a subsequent judicial review overturning the suspension and matters relating to a further suspension of the same governor in June 2013. On 9 October 2013, the Governing Body responded to the request.
2. On 26 October 2013 the Appellant requested further clarification on certain of the responses already made by the Governing Body (see Appendix to the Decision Notice). The Governing Body designated these follow up questions as new requests for information under FOIA. Having received no further response from the Governing Body, on 24 November 2013, the Appellant requested an internal review of the Governing Body's decisions. Later that day the Governing Body requested proof of the Appellant's identity; there followed further correspondence on this point (including in relation to an earlier request by the Appellant under a pseudonym).
3. On 8 December 2013 the Governing Body stated that it was refusing the requests made on 26 October 2013 on the basis of section 14 FOIA, that is that the requests were vexatious, stating that it considered that the requests were being made as part of a campaign. The Appellant complained to the Commissioner who in turn upheld the Governing Body's decision. The Commissioner did not consider the Governing Body's compliance with FOIA in relation to the requests of 27 September 2013. Rather, the Commissioner considered whether the Governing Body had been correct to rely on section 14 FOIA in relation to what it treated as the new, follow-up, requests made on 26 October 2013.
4. This is an appeal in relation to the Decision Notice of the Commissioner and the Tribunal's task is to determine whether it is in accordance with law.

The Law

5. Section 14 of FOIA provides:

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

FOIA does not define the term "vexatious". However, when considering the application of section 14, the Tribunal now looks to the binding decision of *Information Commissioner v Devon County Council & Dransfield* (Upper Tier Tribunal reference GIA/3037/2011). Between the hearing of this appeal and the issuing of this decision, the *Dransfield* case was considered at the Court of Appeal. That decision is not referred to here as it predated the parties' opportunity to make submissions and the date upon which the Tribunal met to decide this matter. It is noted however that the Court of Appeal upheld the Upper Tier Tribunal's decision.

6. By way of overview, Judge Wikeley at the Upper Tier Tribunal stated at paragraph 10 of that judgment that:

“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”.

7. Therefore, whilst making it clear that they were *“not intended to be exhaustive, nor ... meant to create an alternative formulaic check-list”*, Judge Wikeley took the view that it was helpful to approach the question of whether a request was truly vexatious by considering four broad issues or themes which were set out at paragraph 28 as follows:-

- (1) The burden placed on the public authority and its staff;
- (2) The motive of the requester;
- (3) The value or serious purpose of the request; and
- (4) Any harassment of, or distress caused to, the public authority’s staff.

8. Judge Wikeley commented at paragraph 43 that:

“...The question ultimately is this – is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?”

9. The UT proceeded to caution against a too rigid approach to deciding whether a request is vexatious, noting that it is an inherently flexible concept which can take many different forms.
10. In his most recent guidance on section 14 FOIA, drawing in particular on the *Dransfield* case, the Commissioner set out that he considers that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
11. The Tribunal reminded itself of the important distinction that the issue is whether the request is vexatious, rather than the requester.

Background to the request

12. It is relevant background to this appeal that in December 2011 the Governing Body was involved in judicial review proceedings following the suspension of a particular parent Governor, Fergus Kilroy; Mr Kilroy is the Appellant’s husband. The court found that the Governing Body’s decision to suspend the Governor had no effect and, as a result, the governor was reinstated. It appeared that it was on the basis of the marital relationship and the similarity in subject matter of the requests for information, that the Governing Body had concluded that the disparate requests for information, taken over a period of time were part of a concerted campaign.

13. The Governing Body produced a schedule of communications, the so-called 'evidence log', as between on the one hand the Appellant and her husband and on the other, the Governing Body, Manchester City Council, the Department of Education and the Commissioner. The communications from the two individuals, albeit made up in part of chasers to earlier requests for information and the responses of the public authorities, ran to 91 pages.
14. The Commissioner set out in paragraph 26 of the Decision Notice the questions asked by the Appellant's husband of the Governing Body and/or other public authorities. Some of these related to either 2011 minutes of the meetings of the Governing Body or the judicial review mentioned above.
15. Whilst a proportion of the communications were to public authorities other than the Governing Body, the Commissioner argued that given these emanated from the same people and covered the same or similar ground this supported the assertion that the request was part of a campaign.
16. Also by way of background to this appeal, the Tribunal noted that the Appellant had made a previous FOIA request using a pseudonym, Harvey Scott. It appeared that this had been occasioned by concern that the Governing Body would not respond if it knew that it was Mr Kilroy's wife who was making the request. In the event, the Information Commissioner's Office had advised the Appellant to make this request using a pseudonym and it was this that had occasioned the Governing Body's request that she identify herself.
17. The Commissioner found at paragraph 41 of the Decision Notice that "there is evidence to suggest the complainant is making requests in conjunction with another individual and that taken together the frequency and nature of the correspondence would be likely to be categorised as vexatious."

The evidence

18. The Appellant had provided a variety of documents in the Open Bundle (some 63 pages) including Mr Kilroy's written evidence to the Education Committee of the House of Commons, a letter from the Clerk to that Committee and a letter from a "Secret Teacher" at Parris Wood High School (the School).
19. The Governing Body had provided the Commissioner with the evidence log referred to above. In addition, the Tribunal had sight of a letter dated 4 August 2014 from the Headteacher to the Commissioner. The letter contained the following:
 - a) A concern that the Appellant would conduct herself in a similar way to Mr Kilroy pursuing his previous FOIA request "(ie: a response by the School immediately leading to either further linked questions or, where the School advises that it does not hold requested information, a challenge as to why the School does not hold the requested information)".

- b) In relation to question 11 of the request for information, “while the School would not normally have any objection to disclosing the existence of this [Service Level Agreement], our concern in the present case, as indicated above, is that this would trigger another series of e-mails from Mr Kilroy directly to individual members of the Council’s Legal Services Team”.
- c) That this matter had been going on for a period of over 3 years and “[t]he amount of resources dedicated to responding to Mr Kilroy’s complaints and queries has been immense”. It was said that the School was aware that Mr Kilroy had also made a number of FOIA requests to the Council asking the Council to provide information to him as to the costs to the Council of dealing with his judicial review against the Governing Body.
- d) That the matter had been considered and effectively resolved by the High Court on judicial review;
- e) That Mr Kilroy had already been provided with a large amount of information by way of disclosure under the Data Protection Act 1998 (DPA). The School was aware that Mr Kilroy had also made two subject access requests as well as “numerous FOIA requests” to the Council.

The Appellant’s submissions

- 20. The Appellant’s main contention was that the evidence log actually only amounted to one FOIA request (in contrast to the portrayal of there being multiple FOIA requests) and then necessary follow up communications chasing the non-compliance with the one request.
- 21. The Appellant told the Tribunal that she was aware that her husband had made a request in relation to the costs of the judicial review. She further stated that the suggestion that she had been “acting in concert and [part of] a campaign is simply not accurate.” She argued “the definition of several is more than two. A campaign suggests organised actions.” Thus, it appeared that the Appellant’s case was that the Tribunal should not accept that she and her husband were acting as part of a campaign in making FOIA requests, as Mr Kilroy had in effect only made one FOIA request and she also had only made one request; two requests, it was said, were not sufficient to amount to a campaign. All other communications by her and her husband were not to be taken into account as they were either follow up communications to those requests or were for information under different legislative regimes or roles (eg: Mr Kilroy asking questions in his role as Governor or making a subject access request under the DPA).
- 22. Also and perhaps in the alternative, with regard to the issue of burden, the Appellant argued that the Tribunal should only consider the effect of her one FOIA request dated 27 September 2013 with her request for further clarification on 26 October 2013, all other matters being either not part of a campaign or mere follow up to the Governing Body’s non-compliance with her husband’s earlier FOIA request.

The Commissioner’s submissions

23. The Commissioner concluded in the Decision Notice that there was evidence that the Appellant's requests were being made in conjunction with or in the knowledge of a large number other requests made to the Governing Body on the same topic. The Commissioner further took into account that the requests sought to obtain views rather than information from the Governing Body, thereby entering into a debate about issues which had already been resolved (by way of the judicial review proceedings) and that complying with the requests (both as to views and providing information) would impose a disproportionate burden in terms of time and other resources, distracting the Governing Body from its main functions.
24. The Commissioner submitted that each individual question asked in the request met the criteria in section 8 FOIA as a separate request for the purposes of FOIA.

Analysis

25. The Tribunal carefully analysed the evidence log in light of the detailed written submissions of the Appellant, in particular the so-called "Matrix Commentary". The Tribunal was doubtful of the Commissioner's treatment of the email of 27 September 2013 as amounting to 12 requests and was of the view that the better approach was to see this as one FOIA request.
26. The Tribunal accepted the view of the Governing Body and the Commissioner in turn that the Appellant and her husband were acting in concert given their evident marital relationship and the similarity in the subject matter of all the correspondence in the evidence log and the request for information that is the subject of this appeal.
27. That said, the Tribunal took into account that a large proportion of the communications detailed in the evidence log were made by Mr Kilroy in his role as Governor, not under the FOIA regime. Certain communications concerned subject access requests made by him under the DPA. It was accepted by the Tribunal moreover that a proportion of the communications were legitimately follow up letters/emails on account of the Governing Body not clearly complying with their obligations under FOIA.
28. That said, and even accounting for these factors, it was clear that there had been a substantial amount of correspondence between the Appellant or her husband and the Governing Body, the Council and the Department for Education. It was quite clear from the evidence log, that however one analysed the actual number of FOIA requests, the context of the request that is the subject of this appeal was a weight of prior communication all linked to the pair's underlying concerns. The net effect was to create a significant burden on the Governing Body.
29. Whilst the Commissioner had asserted in the Decision Notice that the request was "without merit or value to the public", the Tribunal considered on the contrary that these were matters of legitimate public interest, namely the expenditure of public funds on litigation and behind that the unlawful suspension of a Governor. This amounted to a purpose which originally commanded a genuine degree of public interest.

30. However, there came a point, at some stage between the original suspension in 2011 and the eventual referral to the ICO more than two years later on 27 December 2013, at which, the right thing for the Appellant and Mr Kilroy to have done would have been to pass matters to the Commissioner to investigate. Instead and despite knowing of the proper mechanisms for this, they continued with their pursuit of the broad range of information they were seeking through chasing correspondence, a subject access request and a further FOIA request. This was despite the Appellant being fully aware of the Commissioner's role in these matters (she had made a complaint in relation to a FOIA request to Manchester City Council to the Commissioner in late 2012). The fact that the husband and wife had continued to correspond and make further requests (across the different regimes) and to write persistently to the Governing Body complaining about a failure to make disclosure instead of invoking the Commissioner at an earlier stage was evidence, in the Tribunal's view, that the intended effect behind this request was, in part, to maintain pressure upon the public authority.
31. The Tribunal adopted the holistic and broad approach commended by the Upper Tier Tribunal in *Dransfield*, and balanced the purpose of the request against the detrimental effect of compliance on the Governing Body. It was clear that even with the legitimate purpose and value identified above, the negative impact (see the evidence from the Headteacher) on the Governing Body was such that this fell squarely into the category of vexatious requests. The Governing Body, and the Commissioner in turn, had been entitled to rely upon section 14 of FOIA in refusing disclosure of the information requested.
32. The Tribunal dismissed the appeal. Its decision was unanimous.

Judge Carter

21 May 2015