ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50544014

Dated: 6th. November, 2014

Appeal No. EA/2014/0284

Appellant: Amit Matalia ("AM")

First Respondent: The Information Commissioner ("the ICO")

Second Respondent: Warwickshire County Council ("The Council")

Before

David Farrer Q.C.

Judge

and

Paul Taylor

and

Pieter de Waal

Tribunal Members

Date of Decision: 5th. May, 2015

Appearances:

Mr Matalia appeared in person

Neither respondent appeared. Both made written submissions

Subject matter: **FOIA s.14 (1). Whether the request for information was vexatious.**

Reported cases : ***ICO v Devon C.C. and Dransfield [2012] UKUT 440 (AAC)***

Abbreviations :

FOIA - The Freedom of Information Act, 2000.

The DN - The ICO's Decision Notice

UT - The Upper Tribunal

FTT - First - tier Tribunal

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal finds that the particular request giving rise to this appeal was not vexatious. It therefore allows the appeal and orders that, within 28 days of the publication of this Decision, the Council state whether it holds the requested information, if so, whether it will provide it to the appellant and, if so, provide it.

Dated this 5th. day of May, 2015

David Farrer Q.C.

Judge

[Signed on original]

REASONS FOR DECISION

The Background

1. Within the Council's boundaries are six grammar schools. On their behalf the Council administers admissions at age eleven, although the schools decide to which children offers shall be made. Initial allocations are made each year in March on the basis of marks awarded in an 11+ test. Waiting lists are drawn up, also based on marks awarded. Parents have two weeks to accept or reject the place allocated to their child.

2. One of AM's sons, S, was offered a place at one of the grammar schools in March 2013 ("the School") on the footing that, by the date of admission, he would be living in a property owned by AM in a specified town. The School subsequently concluded that this statement as to residence was fraudulent or misleading and withdrew its offer without offering an appeal to an independent panel. This led to a dispute involving AM, the School and the Council which resulted in AM making two complaints to the Local Government Ombudsman ("the LGO"), one against the Council and the other against the School.

3. In March, 2014 by which time S was attending another grammar school, the LGO issued a decision in relation to the complaint against the Council, making some criticism of the Council's provision of information as to admission

criteria but otherwise closing his investigation. In May, 2014, the LGO, in a second decision, found fault with the School for its failure to reconsider AM's application following the withdrawal of its offer and recommended that the School offer an appeal to an independent panel.

4. The merits and quite intricate details of these procedures have no direct bearing on this appeal, save that they were taking place over the period in which AM made various requests for information to the Council.

5. In addition to his personal concerns, AM operates, on a non - profit making basis, fifteen websites relating to 11+ admission, which offer advice to parents as to how procedures operate within different authorities. From late 2012 he requested information from the Council both on matters relevant to the education of S and on specific issues such as the marks necessary for offers of places and the numbers of promotions from waiting lists. To the nature of the requests and to the question whether they were all mere variations on the same theme we shall return.

6. Of particular concern to AM was the practice of allowing some children to sit the 11+ test on later dates than that on which the majority were tested. He and, no doubt, others believed that this could give an unfair advantage to the later candidates who might discover the content of questions from those who had already sat the examination. The Council disagreed. Its reasons and their validity are irrelevant to this decision. The matter is material only because AM published information on one or more websites which the Council regarded as threatening the integrity of the examination. It took proceedings to obtain an injunction restraining AM from publishing such material. The Tri-

bunal is not required to form any view on the merits of the dispute but notes that it appears to have exacerbated already strained relations between the parties.

The Request

7. On 2nd. April, 2014, AM made three requests for information to the Council. The second related to the marks obtained over the previous four allocations of places to four of the grammar schools by those to whom places were offered. The third raised issues as to the correlation of offers to dates when candidates sat the 11+ test. The first in time, which was the request in respect of which AM subsequently complained to the ICO and on which the ICO accordingly focused, was in these terms -

"*Please provide me with number of offers made from the waiting list for the 2013 entry for:*

(He identified five grammar schools including the School).

Also provide me with the number of offers made from the waiting list so far for 2014 entry at the above grammar schools and if possible the waiting list scores."

8. Further requests from AM followed on 8th and 10th. April. They related to (i) the conditions applying to an offer of a place and time taken by the School to process an application and (ii) the number of children deprived of the offer of a place through error.

9. The Council replied on 2nd. May, 2014 refusing to comply with any of the five requests on the ground that they were vexatious within the meaning of

that term in FOIA s.14 (1). It maintained that refusal following an internal review. AM complained to the ICO on 6th. June. 2014.

The DN

10. While AM's complaint to the ICO was framed against the Council's collective refusal of his requests of 2nd, 8th and 10th April as stated above the ICO treated the first request of 2nd. April as the one to be assessed "as an exemplar" (see par 6 of the ICO's Response to the Notice of Appeal), albeit having regard to those requests which preceded the first request of 2nd April over an eighteen - month period and the two which followed later on 2nd. April.

11. He directed himself in accordance with the UT guidance provided in *ICO v Devon C.C. and Dransfield [2012] UKUT 440 (AAC),* analysing the evidence by reference to the burden on the Council, AM's motives for making the request, the value of the purpose of the request and whether it resulted in harassment of or distress to Council staff. He summarised the test as posing the question : was the value of the answer to the request likely to be proportionate to the burden imposed ? Put another way, did its importance justify the demands it made? Whether AM's conduct in making these requests was reasonable or obsessive, whether he was simply intent on harassing the Council in retaliation for its taking proceedings against him - these were questions which the ICO treated as material to that overall assessment.

12. It is significant that the ICO regarded the whole series of requests dating back eighteen months as variations on a single theme, namely the allocation of grammar school places in Warwickshire over the previous two years or so.

13. He concluded that the requests, viewed as a series, suggested an obsessive requester. He did not regard them as placing an unreasonable burden on the Council as regards resources. Acknowledging, as did the Council, that AM had a serious purpose in furthering his son's education; he judged that its value steadily diminished as each request, sometimes highly detailed, succeeded its predecessor.

14. He therefore upheld the Council's reliance on s.14 (1). AM appealed to the Tribunal.

AM's case before the Tribunal

15. AM made a series of submissions which may be summarised as follows -

- The number of requests was not unreasonably excessive nor were they individually unduly lengthy or complex;
- Compliance did not demand an inordinate amount of time, whether the requests were viewed individually or as a series;
- They were not a single series of pointlessly repeated questions but requests directed to three distinct topics;
- He did not harass or insult Council staff ;

- He had serious and important objectives, namely ensuring the best possible education for his son and securing valuable information for his website for the benefit of parents.

AM provided a very detailed refutation of the DN but it is unnecessary to explore it in any further detail.

The cases of the ICO and the Council

16. The ICO largely adhered to the DN. He emphasised in his Response the need to look at the history as a whole, labelling AM a "repeat requester". He regarded that history as indicating that requests would continue, whatever the answers they elicited.

17. The Council supported that view and referred to the alleged harassment of staff in telephone calls from AM and correspondence directed to particular officers. Like the ICO the Council treated the requests as a single sequence relating to S and it argued that the original serious purpose had degenerated into a campaign of harassment of the Council, fuelled by resentment over the proceedings for an injunction.

Our reasons

18. Two principles relevant to s.14 (1) should be stated at the outset.

19. First, the question for the Tribunal is whether the relevant request, not the requester, is vexatious. (see s.14(1)). Secondly, contrary to AM's submission, a request may be vexatious when made by A but not if it comes from B. That is because vexatiousness is assessed, not necessarily by examining the request in isolation, but, in most cases, in the context of previous dealings between the requester and the public authority. That emerges plainly from *Dransfield* and earlier FTT decisions.

20. In this appeal the Tribunal had the opportunity to read all the emails containing FOIA requests made by AM to the Council. It also listened to and observed AM when he presented his oral submissions. Viewed as a whole and reinforced by AM's demeanour at the hearing, they present a picture of unreasonably inflexible persistence which could fairly be described as obsessive. If the test were limited to whether the requester was vexatious in the general sense of lacking a sense of proportion or any realistic sense of the impact of his attitude to the Council on the Council's likely response to his requests, then the Tribunal may well have found that he passed it.

21. However, our task is to look at the particular request in the light of the previous history and pass judgment on it, not him.

22. It was common ground that AM made fourteen[1] requests potentially relevant to this appeal up to and including 2nd. April, 2014. (There was also further substantial correspondence and telephone calls.) They were dated as follows -

- 26th. October, 2012 - DPA subject access request for AM's older son in respect of an incident at the School, which he attended.
- 9th. July, 2013 (two requests)
- 1st. August, 2013
- 22nd.August, 2013
- 23rd. August, 2013
- 23rd. September, 2013
- 31st. October, 2013
- 11th. February, 2014
- 26th. February, 2013
- 18th. March, 2014 (following the first decision of the Ombudsman).

All the requests from 9th. July, 2013 to 18th. March, 2014 were linked to the School's withdrawal of its offer of a place to S.

- 2nd. April, 2014 (the three requests described in paragraph 7).

Then followed

[1] The request dated 22nd. November, 2012 listed in the DN was for an internal review of the Council's response to the DPA request of 26th. October, 2012.

- 8th. April, 2014.
- 10th. April, 2014 - both requests apparently directed to general questions as to the administration of the admissions procedure.

23. The culmination of the sequence of requests regarding the subject of withdrawal of the offer might well be seen as justifying reliance on s.14 (1). However, s.14 (1) was collectively invoked also in response to the subsequent inquiries of 2nd. April which dealt with different matters.

24. Nothing turns on which of the three requests made that day was chosen as the subject of the complaint and of this appeal. Identical considerations apply to all three.

25. The Tribunal does not agree with the Council and the ICO that they can be seen simply as more of the same. True, they relate to admissions policy and the two later requests (8th. and 10th. April) to the execution of that policy. That is, however, not necessarily the same issue as the lengthily debated question of the treatment of the offer to S. It is reasonable to regard the requests of 2nd. April as being made for the purposes of AM's website service, as were their successors of 8th. and 10th. April. They marked a clear change of direction from the barrage of requests on the previous topic.

26. Taking the three requests of 2nd. April together, they were reasonable and proportionate requests on questions of possible interest to other parents than AM. The information sought had a wider value therefore to members of the

public. The ICO found that the first was not unreasonably burdensome; the same goes for all three.

27. Had these requests followed several months of similar or overlapping inquiries, the Tribunal may have taken a different view but such is not the case.

28. Of course, the ICO or the Tribunal must take proper account of previous dealings between requester and public authority but the fact that earlier requests may have been vexatious does not, of itself, condemn later requests on a distinct, if related topic.

28. We have considerable sympathy for the Council, having regard to the whole history of its contacts with AM. However, it picked the wrong request and the wrong time to invoke s.14 (1). Taking a request in sequential context when applying s.14 (1) does not entitle a public authority simply to ignore the fact that, on analysis, the request is focused on a fresh, if loosely linked subject matter.

29. For these reasons the Tribunal allows this appeal

30. Its decision is unanimous.

David Farrer Q.C.

Tribunal Judge 5th. May, 2015