



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

Appeal No. EA/2016/0053

**BETWEEN:**

**ABDUL AZIZ**

**Appellant**

**-and-**

**INFORMATION COMMISSIONER**

**Respondent**

**-and-**

**Before**

**Brian Kennedy QC  
John Randall  
Narendra Makanji**

**Date of Hearing: 8 June 2016 at Field House, London.**

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**DECISION**

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**Subject matter:** Application of section 14(1) (a Vexatious request), section 40 (Personal Information) & section 44 (Prohibitions on disclosure), of the Freedom of Information Act 2000 ("FOIA").

The Tribunal dismisses the appeal.

## **REASONS**

### **Introduction:**

1. The decision concerns an appeal of a Decision of the respondent (“the Commissioner”) dated 2 February 2016, reference: FS50589128 (“the DN”), which is a matter of public record.
2. In the DN the Commissioner held that the Public Authority, in this case the Oldham Academy North (“the Academy”), had correctly withheld requested information from the appellant pursuant to s 14(1) in regarding the request as vexatious in the circumstances.
3. The Tribunal is provided with a bundle of documents referred to herein as the Open Bundle, (“OB”) pages 1 – 86, and a bundle including the requested information referred to as the Closed Bundle (“CB”) pages 1 – 20.
4. **Factual Background to this Appeal:**

Full details of the background to this appeal, Mr Aziz’s request for information and the Commissioner’s decision are set out in the Decision Notice and not repeated here, other than to state that, in brief, the appeal concerns the question of whether Mr Aziz’s requests for information on Oldham Academy North (“the Academy”) were vexatious.

5. **History and Chronology:**

17 April 2015	1 <sup>st</sup> request in 7 parts
20 April 2015	E-ACT response that request exceeds cost limits 2 <sup>nd</sup> request narrowing to 3 parts
21 May 2015	Disclosure re 2 of 3 parts, s40 personal information re 1
22 May 2015	Request for internal review and re-consideration of remaining parts of original request (3 <sup>rd</sup> request)
30 June 2015	Aziz requests update on review
9 July 2015	Aziz requests update on review again E-ACT informs that review on-going but maintains re original request that it exceeds cost limits
10 July 2015	Appellant requests information on same terms as 3 <sup>rd</sup> request
11 July 2015	Complaint to the Commissioner
30 July 2015	E-ACT upholds reliance on s40
2 August 2015	Appellant submits 4 <sup>th</sup> request for similar or the same information
6 August 2015	E-ACT maintains request still exceeds cost limits Appellant claims separate request
16 August 2015	5 <sup>th</sup> request for the same information as 1 <sup>st</sup> , 3 <sup>rd</sup> and 4 <sup>th</sup> requests but limited to three questions
3 November 2015	E-ACT considers requests vexatious
17 November 2015	Complaint to Commissioner

**6. Relevant Law:**

**S14 Vexatious or repeated requests.**

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

**S40 Personal information.**

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if –
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is –
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the M1Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
    - (i) any of the data protection principles, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the M2Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the M3Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

#### **S44 Prohibitions on disclosure.**

- (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –
- (a) is prohibited by or under any enactment,
  - (b) is incompatible with any [F1EU] obligation, or
  - (c) would constitute or be punishable as a contempt of court.

#### **7. The Commissioner's Decision:**

E-ACT argued that the long stream of identical and repetitive requests were vexatious and appeared to be aimed at uncovering information about specific employees (including disciplinary and criminal records of staff and ethnic make-up of staff and senior management) without the Appellant having any obvious connection with the Academy as parent or employee.

The Appellant argued that:

- E-ACT misinterpreted FOIA
- E-ACT had been evasive and opaque regarding disclosure of information
- Having disclosed information regarding two of the original seven sections, there is no reason that the remaining five sections should now exceed cost limits when taken as a separate request
- The similarity of his requests are as a result of refinements based on E-ACT's advice

The Commissioner upheld E-ACT's reliance on s14 in relation to all requests, describing the requests as "persistent and repeated" and imposing "an unreasonable burden". They are accordingly "manifestly unreasonable and vexatious" and as such there is no need to consider ss40 and 44.

**8. Appellant's Notice of Appeal:**

The Appellant argued that the Commissioner had not fully appreciated that the repetition in the requests was as a result of the Appellant acting on E-ACT's advice. He refined his requests by reducing the number of questions per request, and as such they are not manifestly unjustified, inappropriate or improper.

**9. The Commissioner's Response:**

There is no public interest test as s14 is not strictly an exemption but rather a protection for public authorities. Citing *Dransfield and Craven*, vexatiousness is a flexible concept and the broad themes to be considered are:

- i) The burden (including cost) on the authority of the request
- ii) The motive of the requester
- iii) The value or serious purpose of the request
- iv) Any harassment of or distress to staff

The Commissioner suggests that points (i) to iii) are engaged in this appeal and considered the following in the course of his reasoning.

Burden

When assessing the burden under s14, the Tribunal can have regard to the cost and effort not just of collating the information but of redacting and preparing the information for disclosure. Despite E-ACT's advice on reducing the scope of his requests the Appellant repeatedly submitted very similar requests. By removing certain questions in his second request and re-submitting them in the third the

Appellant was deliberately attempting to circumvent cost limits. Rather than the Appellant acting on E-ACT's advice, he ignored it.

Motive

The burden of a request can be outweighed by a serious purpose or motive behind the request. The Appellant's motives are unclear, but it appears that he has concerns about the Academy and/or particular members of staff but he has not disclosed any motive to the Commissioner.

Value or Purpose

There has been no more specific purpose or value identified beyond the general public interest in transparency.

**12. Conclusions:**

The Tribunal note E-ACT raise concerns that the Appellant is trying to gain information on individual members of staff by cross-referencing answers from his various requests, especially in regards his questions about staff suspensions, disciplinary records and criminal convictions cross-referenced with ethnic make-ups. See pp72-74. The motive is not clear.

The Tribunal have considered the papers herein and the background of the request/s and in the circumstances accept and adopt the Commissioner's analysis and reasoning. We do not accept that the Commissioner has erred in Law or on the facts in this case and accordingly dismiss the appeal.

**Brian Kennedy QC**

**25 July 2016.**

**Promulgated 26th July 2016**