



ON APPEAL FROM

THE INFORMATION COMMISSIONER'S DECISION  
NOTICE No:FS50609613

Dated: 30th. March, 2016

Appeal No. EA/2016/0117

Appellant: Alan Maiden ("AM")  
First Respondent: The Information Commissioner  
("the ICO")  
Second Respondent Lincolnshire County Council  
("LCC")

Before

David Farrer Q.C.

Judge

and

Dave Sivers

and

Melanie Howard

Tribunal Members

Date of Decision: 19th. October, 2016

The Appellant appeared in person.

Neither Respondent appeared at the hearing; both submitted a written response to the grounds of appeal.

Subject matter : FOIA s. 14(1)

Whether the Appellant's requests, dated 13<sup>th</sup>. and 23<sup>rd</sup>. November, 2015 respectively, were vexatious

The Tribunal's decision

Both requests were vexatious within the meaning of that term in FOIA s.14(1).

The appeal is dismissed.

Lincolnshire County Council is not required to take any steps.

David Farrer Q.C.

Tribunal Judge

19<sup>th</sup>. October, 2016

## The relevant statutory provision

FOIA s.14-(1)      “Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

Authority            *Dransfield v Information Commissioner and Devon County Council [2015] EWCA Civ 454; [2013] UKUT 440*

Abbreviations      In addition to those relating to the parties and those indicated in the text the following are used in this Decision –

FOIA                The Freedom of Information Act, 2000

The DN             The Decision Notice.

## The Decision

### The Background

1. In 2012 LCC and Lincolnshire Partnership NHS Foundation Trust (‘The Trust’), using funds provided by central government, jointly launched a project, in collaboration with other voluntary agencies, to help the rehabilitation of people recovering from mental illness. It was called the Mental Illness Prevention Fund and it targeted those aged 18 – 64.
2. In 2015 it was renamed the Mental Health Promotion Fund and its scope was enlarged to assist those aged 65 or over. Additional grant funding was provided by LCC to the Trust for that purpose. According to unchallenged documentary evidence from LCC, in 2012 and thereafter, LCC was committing substantially larger funds to health care for the over 65s

throughout this period from other sources in its budget. The Mental Illness Prevention Fund was set up because care for the 18 – 64 age range had received inadequate resources.

3. AM first contacted LCC in July, 2012 and made a complaint dated 23<sup>rd</sup>. August, 2012, asserting that over – 65s were suffering discrimination as a result of the funding policy referred to in §1. He had already referred his concerns to a councillor on the LCC Adult Care Scrutiny Committee, who had also raised the issue with LCC. In a letter dated 6<sup>th</sup>. September, 2012, LCC's Head of Policy and Service Development provided a detailed explanation of the position and firmly repudiated any suggestion of age discrimination. AM contacted his MP who received a similar response from LCC.
4. It seems that AM was particularly disturbed over the absence of a specific fund dedicated to helping older people to recover from mental illness.
5. There followed a prolonged series of exchanges and meetings, in the course of which AM's expressed concerns extended to the work of the Trust and the operations of other independent bodies involved in caring for those with mental health problems. Nevertheless, he persisted with questions as to the numbers within and the treatment of different age groups in the provision of mental health care.
6. In August, 2015 this correspondence culminated in a complex series of replies to eleven questions posed by AM, covering the role and workings of "Shine", a group of people with experience of and/or expertise in mental health problems, the "management care network", application of funds, numbers of beneficiaries from the service, auditing of the funds and the recurring question as to age discrimination and the reasons for it. The reply made clear that this particular issue had been dealt with on a number of

previous occasions. All but one of the questions was followed by LCC's answer, a response to that answer from AM, and a reply to that response from LCC. There were no shortcuts.

7. Nevertheless, on 30<sup>th</sup>. November, 2015, AM made an official complaint that LCC's response involved a refusal to answer some questions and indirect answers to others.

### The requests

8. In the meantime, AM had submitted to LCC two requests for information. The first, dated 13<sup>th</sup>. November, 2015 read –

*“I would like to know why in 2012 older people were prevented from having access to any benefits provided by the Mental Illness Prevention Fund and why the implementation of this fund was not looked into by the Adult Scrutiny Committee.”*

Although treated initially as a request for information under s.1 of FOIA, this looks more like a request for explanations than for information held by LCC in recorded form, as defined in s.84.

The second request was in these terms –

*“Since the implementation of the Mental Illness Prevention Fund early in 2012, more than £1.4 million of public money has been spent.*

*I would like to know what the outcomes are for the 100,000 people in Lincolnshire who are entitled to benefits provided by this fund and the age groups of the people who have benefitted.”*

9. In summary, LCC replied by stating, as to the first request, that this fund had initially been designed to reduce demand for social care by people of 18 to 64, had been expanded and was regularly audited. The Adult Scrutiny Committee had seen no need to investigate it. As to the second request, it gave the number of projects which the fund supported and stated that the Trust recorded no data as to specific beneficiaries, hence as to their age.
10. By email of 30<sup>th</sup>. November, 2015, the date of his complaint referred to at §7, AM requested internal reviews of both replies. On 14<sup>th</sup>. December, 2015 the same LCC officer sent separate letters to AM, responding to his complaint and providing the result of the internal reviews. The internal reviews produced a brief review of past dealings between LCC and AM leading to decisions by LCC to rely on s.14(1) on the grounds that AM was unreasonably persisting in demands for answers on issues already exhaustively addressed, that the requested information was of limited value and these requests placed undue burdens on LCC's resources. LCC foresaw an unending correspondence which could never satisfy AM's concerns.
11. The fact that LCC initially replied to these requests does not preclude subsequent reliance on s.14 where an internal review is sought. Such a review may substitute another reply for the one reviewed, whether that reply is more or less favourable to the requester.
12. AM complained to the ICO on 16<sup>th</sup>. December, 2015.

### The DN

13. The ICO conducted an investigation into the complaint in the course of which he received from the principal legal officer for LCC by letter dated 16<sup>th</sup>. March, 2016, a detailed chronology and asserted justification for reliance on s.14(1).

14.The ICO upheld LCC's application of s.14(1) to this case, referring in the course of his decision to principles derived from *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454;[2013] UKUT 440.

15.AM appealed.

#### The submissions on appeal

16.AM, in his grounds of appeal, related the history of his dealings with LCC which, in substance, confirmed LCC's chronology. He recounted his campaign for the extension of the Mental Illness Prevention Fund to those over 65 and the support that he received from some councillors. He argued that his requests were reasonable and in no sense, vexatious. LCC could answer them without difficulty.

17.He repeated these points in oral submissions at the hearing and emphasised his disagreement with what he saw as LCC's policy as to assisting older sufferers from mental illness. If the ages of those assisted were not recorded, they should be.

18.The ICO, in his response, supported LCC's claim to have answered AM's inquiries as fully as they could. He submitted that the first request was for explanations, not information, which was an abuse of FOIA.

19.LCC largely relied on submissions contained in its letter of 16<sup>th</sup>. March, 2016 and argued that AM had failed to explain his claim that his questions had not been answered. It stood by its claim that these requests were vexatious.

## The Tribunal's reasons for its decision

20. AM's sincerity is not in issue and the tenacity with which he has pursued what he feels to have been an injustice is, in many ways, admirable. Unlike some persistent requesters, he has generally conducted his transactions with LCC with moderation and civility. The strength of his concerns was plain in the oral submissions that he made at the hearing. That, however, is not a relevant factor when assessing whether this request is vexatious.
21. The upshot of the appeals in *Dransfield* is a broad range of tests based fundamentally on the principle of proportionality, of which several are met in this appeal.
22. We must look at the facts in the round; this is not a box – ticking exercise.
23. We are scrutinising the requests, not the requester, who set out on his campaign with the best of motives.
24. We are entitled to look at the requests against the background of previous contacts with the public authority, here LCC. We may need to decide whether a request is a request under s.1 at all. We must assess the value of answers to these requests; there will be little or none, where the requested information has already been supplied. We must consider the burden placed on LCC's staff by a continuing dialogue. Very importantly, we must ask ourselves whether answers to these requests will simply stimulate further similar requests to be met by similar responses.
25. We must not lose sight of the exceptional character of a finding that a request is vexatious. The evidential bar is set high. That is readily justifiable, since the consequence is a continuing refusal of information.



26. Approaching the issue with these questions in mind, we have no hesitation in finding that these requests are vexatious in the sense required by s.14(1).
27. We greatly doubt that either leg of the first request constitutes a s.1 request, since neither asks for recorded information nor does either imply a belief that such information exists. That is, however, a subsidiary indication that they are vexatious.
28. Both requests were the latest in a series of similar approaches and complaints stretching back to 2012. They covered the same points that had been raised and answered repeatedly, most recently by Justin Hackney on 23<sup>rd</sup>. October 2015, when dealing with questions 4, 5, 8, 10 and 11. There were, additionally, throughout the three – year period, a large number of related or independent points relating to mental health services in Lincolnshire. LCC were subjected to a stream of correspondence and meetings, which never progressed beyond the same exchanges.
29. It appears to the Tribunal that further inquiries and responses were futile and represented a fruitless expenditure of time and public money. The answers had been given and were not going to change, however unsatisfactory to AM. Whether or not the Trust or LCC should have had age – related data, LCC had clearly stated that they did not and FOIA requests could take the matter no further. Changes of policy must be brought about by persuasion or the ballot box; FOIA has no part to play in such a process.
30. It is for these reasons that the Tribunal finds these requests vexatious, when assessed in the context of what had gone before. We repeat that this is not a judgment on AM or the validity of his concerns.
31. This appeal is therefore dismissed

32. Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

Date of Decision: 19<sup>th</sup> October, 2016

Date Promulgated: 24<sup>th</sup> October, 2016