



**THE FIRST TIER TRIBUNAL**

**EA/2016/00147**

**GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)**

**ON APPEAL FROM A DECISION OF THE INFORMATION COMMISSIONER**

**Promulgation Date 14<sup>th</sup> October 2016**

**B E T W E E N**

**MICHELLE SIMMONS**

**Appellant**

**-and-**

**THE INFORMATION COMMISSIONER**

**Respondent**

**BEFORE**

**Melanie Carter**

**Dave Sivers**

**Mike Jones.**

1. This is an appeal brought by Ms Michele Simmons (“The Appellant”) against the Information Commissioner’s (“the Commissioner’s”) Decision Notice reference FS50605346. The appeal is brought under section 57 of the Freedom of Information Act 2000 (“the Act”) and is in the context of a decision of the Worcestershire County Council (“the Council”), and the Commissioner’s decision in turn to uphold, a refusal by the Council to supply information further to a request under the Act.

**Background and request**

2. On 28<sup>th</sup> March 2015, the Appellant made a 46-part request for information to the Council. In its response dated 23 April 2015, the Council refused to comply with the request under section 14(1) of the Act.
3. There is a long history of correspondence between the Appellant and the Council dating back to 2002. This included complaints to the Council and a complaint to the Local Government Ombudsman in relation to the adoption of her child in 2002. Part of this correspondence also included a number of requests under the Act since 2010. The majority of these requests relate to forced adoption of children.
4. The Commissioner concluded in his decision notice that the request was vexatious and that the Council had correctly applied section 14 of FOIA.

#### **The Notice of Appeal**

5. The Appellant argues in her grounds of appeal that the Commissioner erred in concluding that the Appellant's request is vexatious on the following grounds:-
  - i) The request in issue does not solely concern adoption and should not therefore be considered to cover the same subject matter as earlier requests when taking into account the context and history.
  - ii) The request has a legitimate purpose and value as the information requested would benefit other parents and not just the Appellant as well as meeting a wider public interest.
  - iii) Even if previous requests by the Appellant were to be taken into account, the number of requests made by the Appellant over the relevant period of time would not constitute a substantive burden on the Council.
6. The Appellant argues in paragraph 5 a) of her grounds of appeal that the decision notice was reached following on from new evidence added by the Council and that "I was not given the opportunity to challenge it". This argument appears to be related to how the Commissioner investigated the complaint which is outside of the jurisdiction of the

Tribunal which is limited to considering whether the decision reached by the Commissioner in his decision notice is in accordance with the law.

### The law

7. The leading case on the application of section 14 FOIA is the case of *Dransfield v Information Commissioner*. The Upper Tribunal decision in this case, has been upheld by the Court of Appeal: *Dransfield v The Information Commissioner, Devon County Council* [2015] EWCA Civ 454. The Upper Tribunal defined a vexatious request as one which is a “*manifestly unjustified, inappropriate or improper use of FOIA*” (at [43]).
8. The Upper Tribunal analysed the definition of “*vexatious*” by reference to four broad issues: (a) the present or future burden on the public authority; (b) the motive of the requester; (c) the value and serious purpose of the request; and (d) whether the request causes harassment of, or distress to, staff.
9. The Upper Tribunal emphasised the importance of viewing a request in its context. Thus, in relation to issue (a), the Upper Tribunal noted (at [29]):

*“... the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular request, in terms of previous dealings between the individual requester and the public authority, must be considered in assessing whether it is properly to be characterised as vexatious.”*
10. In relation to (b), the Upper Tribunal explained that a request which may seem reasonable and benign “*may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority*” (at [34]).
11. The Upper Tribunal in *Dransfield* said, at [11] that section 14 FOIA:

*“...allows the public authority to say in terms that ‘Enough is enough – the nature of this request is vexatious so that section 1 does not apply.’”*
12. The Court of Appeal, which upheld the UT decision in *Dransfield* found that the starting point for an assessment of vexatiousness is whether there is any “*reasonable foundation for thinking that the information sought would be of value to the requester,*

or to the public or any section of the public” (at [68]). The Court of Appeal agreed that the previous course of dealings between the requester and the Authority could affect this assessment. Arden LJ, giving the judgment of the Court, said at [68]:

*“... If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation.”*

### Analysis

13. The Appellant points out in her grounds of appeal that not all of her questions within the multi-part request pertain to adoption. Whilst the Tribunal would accept that this is true, the majority of the parts of the request clearly do relate to adoption. Further, the Appellant stated in paragraph 14 m) of her grounds of appeal that her request “related to adoptions and pertaining to adoptions”.
14. The Appellant argues in his grounds of appeal that the purpose of her request was “to help other parents in the public interest or myself” and that “My own Family Law Case was over in 2006 so it is too late for me now. I ask questions now from my own experiences to help others because of what I have been through”. The Appellant further argues that there “is a wider serious purpose / value...for the public to be given rights to the public information I requested” and that the information could “help families affected by the intervention of having Children’s services involvement...and help towards implementing positive change”.
15. However, the Appellant also states in her grounds of appeal that her concern is that others will experience the same situation as her and “who may not be so strong mentally to feel able to challenge such a decision as I am doing; who could be experiencing concerns relating to Children’s Services matters, Adoption related matters or concerned they could be facing or have faced a potential miscarriage of justice”.

16. The Tribunal noted however that the Appellant had not provided any evidence to suggest that the answers to the many questions within her request would benefit others in a similar situation to herself beyond the information already publicly available or indeed that there would be a wider public interest in such information.
17. Whilst the Tribunal would accept that there may be a public interest in transparency of the Council's adoption policies and procedures in general, there is no evidence in this case of a wider public concern relating to the information sought in the request relating to such policies and procedures. The Tribunal accepts the Commissioner's submission that a request for information which is of little if any benefit to the wider public can restrict the value of the request, even where there is clearly a serious purpose, on a personal level, behind it.
18. Moreover,, in paragraph 1 of the grounds of appeal, the Appellant stated that:

*"I have needed to make a further FOI request due to the said Court Order<sup>1</sup> decision being breached regards children's services with the said child mentioned not having his wishes, thoughts and feelings as of late being met. I am stopped making my complaints through usual procedures too and have nowhere to go for my (or my natural son's) information rights".*
19. This suggests that the purpose of the request relates to the Appellant's own case with the Council arising out of the adoption in 2002 and that, at least with respect to some parts of the request, it was reasonable to conclude that the request is an attempt to address issues relating to this case.
20. Whilst the Tribunal accepts that the issues raised are a serious matter for the Appellant, the Commissioner was correct to take into account that the subsequent service complaints following the 2002 decision have all been investigated and are now closed.
21. In any event, even if the Appellant could demonstrate a serious purpose and value, beyond her own personal interests, to her request, it is insufficient to say that just because a request may have such a purpose and value, the request therefore has 'reasonable foundation'. It is

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necessary to consider in all the circumstances of the case whether the purpose and value are proportionate to the impact on the authority. As Arden LJ made clear in the judgment of the Court of Appeal in Dransfield, "*the decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious*" [para 67].

22. The appropriate approach therefore was to weigh any purpose and value of the request against the burden on the authority of complying with the request when taking into account the context and history of that request.
  
23. The requests is in 46 parts. The Tribunal was of the view that the request, insofar as convoluted and unclear, in and of itself imposed a burden. A number of the parts to the request appear to be questions rather than requests for recorded information. A question for the Tribunal is whether compliance with all of the parts of the request, when the context and history are taken into account, would impose a disproportionate burden on the Council. The Council advised the Commissioner that, in order to comply with this request, the Council would need to contact a number of managers to work through the parts of the request to firstly determine those that are valid requests for which recorded information is held and then go on to provide any information within the scope of the request. The Tribunal accepted the Commissioner's submission, on the basis of the evidence, that compliance with this request alone would impose a disproportionate burden on the Council's staff.
  
24. The Appellant argues in her grounds of appeal that her case with the Council began in 1999 and that she calculated that, over the 15 years until her request, she would have asked "*2.185 questions*" for information each year and later that "*14 requests over a time period of 5 years equates to 2.8 requests each year*". The Council's representations to the Commissioner suggested however that the Appellant has submitted a significant amount of correspondence to the Council over the last 14 years including 20 FOIA requests since 2010 mainly in relation to the same subject matter, namely adoption. As mentioned above, the Council has also had to respond to a number of complaints to the Council from the Appellant.

25. On the facts of this particular case, the Tribunal accepts that compliance with the request would impose a real and significant burden upon the Council which would distract it from its other necessary functions. The Tribunal was of the view moreover that the burden imposed on the Council by the Appellant's request, when viewed in light of the context and history of the request (applying the approach of the Upper Tribunal in Dransfield), has reached the point with the 46-part request where it must be regarded as being unwarranted and disproportionate to the value of the request.
26. Further, from the context and history of the requests the Tribunal was of the view that compliance is also likely to lead to further communication and requests for information from the Appellant with the consequential burden on staff.

## Conclusion

27. The Appellant had at all times conducted herself in a polite manner. The Tribunal accepted that she had no intention of making accusations for the sake of it, or being abusive or aggressive in approach. She was tenacious and persistent in her desire to understand the answers to questions. However, this alone did not negate the burden and impact which her request would have on the Council. The burden did not arise from the tone or conduct of the Appellant but rather the volume of the correspondence and previous requests (taken with the current extensive request) and the unclear and convoluted nature of that communication.
28. Whilst the Tribunal was sympathetic to the Appellant in her desire to pursue the underlying issues, those issues went beyond the Tribunal's remit and it was limited in its approach to considering whether the request was vexatious. The rejection of the appeal was not in anyway a judgement on the matters which she had raised with the Council over the years and most recently in the request.
29. The Tribunal decided for the reasons set out above, that the impact of the burden on the Council of complying with the request, when the context and history of the other requests and correspondence is taken into account, would be disproportionate to the purpose and value of the request and that therefore the request was vexatious. As such, the Council had been entitled to rely upon section 14(1) and the Commissioner in turn to uphold the Council's decision. As such, the appeal was rejected.
30. The decision of the Tribunal was unanimous.

