



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0231

**Decided without a hearing
On 12 June 2018**

Before

CHRIS HUGHES

MIKE JONES & MARION SAUNDERS

Between

NICHOLAS JOHN HUGHES

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

KIRKLEES COUNCIL

Second Respondent

DECISION AND REASONS

1. The appeal is dismissed.
2. The appellant was for some years the head teacher of a school in Kirklees. Some years after he left the school experienced some difficulties. The

Appellant and others made a series of information requests. On 8 September 2016 the Appellant asked Kirklees Council for more information:-

“using FOIA Act 2000 I would like to requests the reports on Fairfield School from the TQIO [Transforming Quality Improvement Officer] and the SIP [School Improvement Partner] between September 2013 and April 2016. “

3. The Council considered the request and refused it relying on S14(1) FOIA stating that it considered the request vexatious. In refusing the request the Council drew attention to:-

- *“Persistent requests you and another individual, both associated with the school, have made under the FOI Act, some of which are for the same or significantly similar information, and is forming a pattern of disruption to the Council and harassment of individuals which is unjustified”*
- *It acknowledged that the requests had a purpose but noted that he had declined to meet an Investigating Officer to discuss concerns and the findings of the investigation ...“in this respect, it considers your request appears to be designed to mirror the investigative process and is something for which the Council should not be committing resources when the investigation has already been carried out”*
- *“...the Council notes that you have made complaints through the Council’s complaints procedure, to Elected Members and to Ofsted, and also to the ICO in respect of FOI requests made directly to Fairfield School, and therefore considers that your concerns have been thoroughly looked into and considered seriously. The Council notes that you have been advised you may raise your continued concerns with the Secretary of state for Education.”*
- *“You are abusing your rights of access to information by using the legislation as a means to express your displeasure at previous responses which the Council considers to be unreasonable behaviour.”*

4. In seeking an internal review the appellant acknowledged that this was his 8th request, but considered the issues serious and he had not requested these reports before. He was aware that others were making requests, but he was not responsible for them. He denied that his requests had asked for the same or similar information, qualifying this by stating that he had asked two questions about the headteacher’s previous experience. He felt the Council was questioning his motives when he was pursuing a legitimate line of inquiry to determine what had gone wrong in the school. He denied harassment. He had not attended a meeting with the Investigating Officer, it had been a general meeting with other parties, not face to face, he had sought to impose pre- conditions which had not been met. He denied that there was any investigative process to manage and argued that the Council had stated that it did not hold any information relating to the investigation. He argued that his complaints had not been properly looked into and formulated to questions stating *“Until I receive plausible evidence based answers to these questions and others that flow from them. I will not be convinced that the Council has thoroughly looked*

into and considered seriously my concerns." He argued that all his communications with the Council and the School had been to reveal the causes of the problems and were not vexatious.

5. In considering the request for an internal review the reviewer examined the Appellant's arguments in context. She placed weight on his refusal to attend the meeting *"I accept that you have provided reasons for your failure to attend but believe your refusal shows an unwillingness to engage with the authority in relation to the very investigation you requested."* She considered that he was being *"unreasonably persistent in trying to re-open an issue which has already been comprehensively addressed by the Council and others who are independent. In my view the serious problems at Fairfield are historical and relate to issues at the school over three years ago. You have similarly made FOI requests to Fairfield School, complained to Ofsted, complained to the ICO (relating to Fairfield School requests) and the Secretary of State. I agree with the Council's response that the complaints you have made to independent bodies indicates that your complaints have been thoroughly considered and scrutinised. "* She also noted the detailed responses he had received from the Council's Corporate Complaints team and the Deputy Leader of the Council and upheld the view that the request was vexatious.
6. The Appellant complained to the ICO who reviewed the history and the arguments of the Appellant (decision notice paragraphs 22-27) and the Council. She reviewed the evidence that the Appellant was acting in concert with another person (decision notice paragraphs 30-37) noting the similarity of requests and their proximity in time (paragraph 35) and concluded that the evidence was compelling that there was a "group" and therefore considered the impact of the requests in the light of the guidance in *Dransfield*. She noted that the primary responsibility for many issues in the school was the school itself (paragraph 46), that it had received 39 requests, had responded as specifically as it could, that answers had triggered further requests (paragraph 48) that there was persistence which could require disproportionate effort in responding (paragraph 49).
7. In formulating her decision she concluded that the persistence of the requesters would be unlikely to be satisfied, that it was unlikely that the Council would hold the information relating to the appellant's concerns. She concluded that it was not reasonable for the Council to expend further effort which would not resolve the issue and would only serve to reopen points which had already been addressed. She concluded that s14(1) was correctly applied.
8. In his appeal to the tribunal the Appellant felt it wrong to find that he was part of a "campaign" since he was only aware of a few requests, those submitted by one specific person. He had not attended the meeting because he was not satisfied that it would be a proper part of a transparent process and he had not used FOI to disrupt or express displeasure, there were no grounds for thinking he would never be satisfied.

9. In resisting the appeal the IC maintained the ground set out in the decision notice. There were good grounds for thinking that the appellant was acting in concert with others,. While there was a legitimate interest in events at the school it was unlikely that new information would result from the request, the information requested was not a direct analysis of the issues, information had already been disclosed notably an audit report and there had been press coverage. The Council had responded to concerns, which had produced further requests on similar issues. She noted that the council had responded to the Appellant's concerns by conducting an investigation but he had decided to forgo an opportunity to hear about the outcome of that investigation. This unreasonable position had properly weighed in concluding that the request was vexatious. Replying to the request would result in meaningless work for the Council and the Council had properly protected its resources by drawing the line where it had. The Council supported the IC's stance in a response to the appeal of 19 December.
10. In replying to the IC the Appellant detailed a number of criticisms of the IC's response. He considered that the Council had responsibility and information relating to the school. He emphasised the importance of the issue which was staff stress , damage to careers and the possible impact on children. He argued that all the responses he had received from the Council had failed to address his concerns. The Council had set up an Inquiry in September 2017 which had been properly scoped and he was satisfied with the way that it was being conducted. The Council was therefore no longer adopting the position it had held on review of his request.

Consideration

11. The tribunal notes the arguments of the Appellant as to the subsequent actions of the Council and his claim that, in setting up a further inquiry, it is changing its position, but finds this unsatisfactory. Whatever decision the Council may have made in September 2017, in December 2017 when it submitted its response to these proceedings it was still standing by its stance with respect to this information request made in autumn 2016 and the subject of its review decision in December 2016.
12. The tribunal's task is to consider whether the IC's decision is correct in law as analysed in *Dransfield* in the light of the factual circumstances. It is clear that, despite his assertions, there was real linkage between the Appellant and others and the context of his request is therefore significantly shaped by the other requests. When offered the opportunity to discuss the outcome of the first review he had unreasonably declined. He had pursued his concerns repeatedly through every available channel in the Council and beyond. There was no dispute that some things had gone wrong in the school; however the specific request would provide information which was at best tangential to the

underlying cause of problems in the school. It was clear that there was a concatenation of requests, with one leading to another. The tribunal was satisfied that the public interest in this request was very limited and the Council was properly entitled to protect its resources in 2016 by categorising the request as vexatious.

13. The decision of the IC correctly weighed the issues in the light of the *Dransfield* decision, is correct in law and the tribunal dismisses this appeal.

Signed Chris Hughes

Judge of the First-tier Tribunal

Date: 25 June 2018

Promulgation date: 27 June 2018