EA/2018/0057

SANWAR ALI

Appellant:

And

THE INFORMATION COMMISSIONER

First Respondent:

And

OFFICE OF THE IMMIGRATION SERVICES COMMISSIONER

Second Respondent:

DECISION

Introduction:

[1] This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA") and Regulation 18 of the Environmental Information Regulations ("EIR"). The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice dated 19 February 2018 (reference FS50698883), which is a matter of public record.

[2] The Tribunal Judge and lay members sat to consider this case on 6 August 2018.

Factual Background to this Appeal:

[3] Full details of the background to this appeal, Mr Ali's request for information and the Commissioner's decision are set out in the Decision Notice ("DN") and not repeated here, other than to state that, in brief, the appeal concerns the question of whether the Office of the Immigration Services Commissioner ("the OISC") was correct to characterise the Appellant's request as vexatious.

Chronology:

2 June 2017	Appellant submits 114 questions/requests relating to OISC and making allegations of misconduct relating to immigration law and its Interpretation, OISC procedures and current and former employees of the OISC.
29 June 2017	Refusal, citing s14(1) FOIA as vexatious
1 Aug 2017	Internal review upholds refusal under s14(1)
4 Sept 2017	Appellant complains to Commissioner
19 Feb 2018	DN upholding the refusal

Relevant Legislation:

Freedom of Information Act 2000

14 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.

The Commissioners Decision Notice:

[4] The OISC explained the long history with the Appellant: two of the Appellant's previous organisations had their registrations with the OISC cancelled in 2014, and the appeals concluded in October 2017 in the OISC's favour with attendant costs orders to the OISC. The Commissioner explained to the Appellant that the right of access to information only extends to 'recorded information' and not to answering questions that ask for an opinion or response to allegations made. The OISC was of the opinion that the request could not be revised or refined in any way that would be likely to bring it within the reasonable and appropriate use of FOIA, as it was both unduly burdensome and harassing its staff with numerous baseless accusations. The request could not be reproduced in the DN as it contained a substantial amount of personal data.

[5] The Appellant has concerns about how his cases were dealt with by the OISC, and it is clear that his requests arose from that sense of grievance. However, the Commissioner considered that the requested information would do nothing to resolve his dispute with the OISC, and as such has no wider value than the continuation of the Appellant's personal grievance. The Commissioner was of the view that FOIA was not intended to facilitate the public exploration of personal grievances, and the Appellant was attempting to use it for an inappropriate purpose. The Commissioner found the Appellant was also displaying unreasonable persistence, pursuing this beyond the conclusion of the legitimate appeal processes.

Grounds of Appeal:

[6] The Appellant claimed that the information sought was not vexatious as it could be relevant to complaints to the Parliamentary Ombudsman or the European Commission, and legal proceedings before the ECJ and Supreme Court. He also denied that it would cause annoyance to the OISC, claiming that he owned a global news service that could place negative stories about the OISC *"at the top of Google around the World"* and if he wished to cause them annoyance he would use that means. He contended that the Commissioner was biased towards OISC and that he had a better reputation than OISC.

The Commissioner's Response:

[7] The Commissioner stated that the Appellant confirmed to her that she was to consider recorded information only. There is no evidence of any wrongdoing on the part of the

OISC. While the Commissioner accepted that the OISC provided no specific evidence as to the burden of the request, she states that it is clear how a request so voluminous and so specifically formulated would be unreasonably burdensome.

[8] The Commissioner is of the view that the legislation was not designed to assist individuals pursuing personal grievances, and there is no broader value or purpose to this request than that. The pursuit of this grievance, the Commissioner asserts, shows an unreasonable persistence on the Appellant's part. The way the request was formulated makes it clear, in the opinion of the Commissioner that it was intended to cause annoyance; the Commissioner pointed to the fact that 22 questions criticise the OISC, 18 criticise current and former staff members of the OISC, and 22 make serious allegations against the OISC, with no evidence to substantiate anything. Intemperate language, she maintains, is inappropriate, and the allegations are likely to cause distress to those named in the request.

Appellant's Reply:

[9] The Appellant asserted that his previous court proceedings were a reason in favour of disclosure. He described himself as *"one of the most important journalists in the country that covers UK visa related issues*", and alleged that his request was a last-ditch attempt to expose; *"dishonesty and corruption at the OISC*". He stated that he may already have some of the requested information but denied that it was a good enough reason to refuse his request. The Appellant was of the view that the OISC had no genuine reason to refuse his request, beyond wishing to avoid embarrassment.

The OISC's Response:

[10] With regard to the Appellant's assertion that, if he wanted to annoy the OISC he would just publish a negative news story, the OISC stated that the Appellant did precisely that on 8 January 2017, containing what was described as "defamatory" and "unfounded" allegations. The OISC denies ever disseminating misleading or untrue statements about the Appellant, or committing perjury in any form. The Appellant had his MP make contact with the OISC regarding certain allegations, and following the OISC's response to that contact, the OISC has heard nothing further from said MP. The matter, they argue, should therefore be considered closed.

The Appellant's Reply to the OISC:

[11] The Appellant described the OISC's claims of defamation as "*of very great concern*", describing himself, as a member of the free press reporting the truth, and as one who should be encouraged and praised. He described the OISC's actions as indicative of a "*Police State*". He went on to criticise six named individuals and accuse one of "*criminal immigration fraud*". He also confirmed that he had launched Employment Tribunal proceedings against the OISC. We have accepted and considered further documents lodged out of time from the Appellant.

Conclusion:

[12] The Tribunal has no hesitation in finding that this request has arisen from a deeply held and long-standing belief in the wrongdoing of the OISC. The lengthy history between the parties has been explained both by the Appellant and the OISC, and it is in this context that the request must be viewed.

[13] The case of *Dransfield v Information Commissioner* [2015] EWCA Civ 454 has been well considered and dissected in this Tribunal. It emphasises that an holistic approach must be taken when considering whether a request is vexatious. The question of vexatiousness in a multi-faceted request was further explored in *McInerney v Information Commissioner and the Department for Education* [2015] UKUT 0047 at para.55:

> *"55 The policy of section 14 is clear: it is to free public authorities from the obligation that would otherwise exist under section 1 to provide information in circumstances that would, in the broadest sense, be troublesome. If the section is to be effective in achieving that objective, it must be interpreted and applied broadly to the substance of the circumstances rather than the form of the request. The form in which a request is presented should not dictate how the section is applied. A series of requests could each be considered vexatious when viewed in the context of the series as a whole.* ***Likewise, when presented with what on its face is a single request, the public authority should not be obliged to dissect it to see whether it could be severed. The public authority, and the First-tier Tribunal on appeal, should take an overall view of the circumstances as a whole*** *to decide whether*

what is before it, whether presented as a series of requests or a single request, is vexatious." (Our emphasis).

[14] The Tribunal concurs with the Commissioner's assessment that the right of access to information extends only to recorded information, and not to requests for commentary on events or allegations. To that extent the portions of the Appellant's request that can be so characterised cannot fall to be disclosed. As for the portions of the request that deal with information that *could* be said to be recorded and held by the OISC (while no evidence is before the Tribunal that the OISC in fact *does* hold this information), the Tribunal finds that, in accordance with the judgment of the Upper Tribunal in ***McInerney***; the OISC is not required to sift through the request to find what could be answered. The Appellant has attempted to litigate his grievance through a number of forums, by his own admission, and the nature of the allegations and the level of personalisation of his criticisms have led the Tribunal to conclude that this is in fact a vexatious request.

[15] In any event the Appellant attended the oral hearing and the Tribunal addressed the particular matters raised by his request. We see no business reason why the Second Respondent would hold the information requested and addressed in his submissions to us at the oral hearing. Nor do we accept that there would be any "*compensation procedures*" as suggested by the Appellant. There is a right of appeal in the OISC decision-making process, which allow remedies within rules, all of which are in the public domain. He has failed to persuade us that there is any information of the nature he has sought in the subject request..

[16] We find no error of fact or Law in the DN and accordingly the Tribunal refuses the appeal.

Brian Kennedy QC 28 August 2018.

Promulgation date: 29 August 2018