



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS50889782**

Appeal Reference: EA/2020/0153

Considered on the papers

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

AIMÉE GASSTON & NAOMI MATTHEWS

Between

KEVIN SCRANAGE

Appellant

and

INFORMATION COMMISSIONER

First Respondent

DECISION AND REASONS

1. On 3 September 2019 Mr Scranage wrote to Greater Manchester Police (GMP) seeking information. The request was headed "Hate Crimes and Abuse" it accused the GMP of ignoring him and of taking no action in relation to what he had suffered; it was copied to various news organisations and the Prime Minister (among others). He wrote:-

"I have made formal allegations that I have been abused by Rochdale MBC and some of its senior employees.

"This has been confirmed by the Crown Court and yet I have been ignored by GMP. No action has been taken in respect of the abuse I have suffered (and continue to suffer) (except that I was prosecuted/persecuted by GMP for doing NOTHING MORE SINISTER THAN TELLING THE TRUTH I HAVE BEEN ABUSED)

[1] How many more reports of hate crimes have you ignored?

[2] How many more reports of abuse have you ignored?

"I have sent numerous emails to senior officers at GMP ([addresses redacted]) (and others) but have been systematically ignored.

[3] What is your policy on replying to emails?

[4] What is your target response time?

[5] How many more emails have you ignored?

"I have made a number of other Freedom of Information Act/Data Protection Act requests to GMP (including 09/06/2019 15:15) but have been ignored

[6] How many more FOI Act/DP Act requests have you ignored?

[7] What is the collective amount GMP pays to the above officers?

[8] How many people have been prosecuted in connection with the historic abuse in Rochdale (Knowl Hill)?"

2. GMP did not reply. The appellant complained to the Information Commissioner on 3 November who were informed by GMP that they were relying on s17(6) FOIA. She investigated the complaint to determine whether or not the request was vexatious and if so whether GMP was entitled not to issue a further refusal notice.
3. The Information Commissioner sought information from GMP. In response to GMP providing some information the Information Commissioner replied:-

"the Commissioner is conscious of her previous decision in FS50672933 and that consistently investigating section 17 (6) refusals would undermine the use of that exemption. Nevertheless she will also note that section 17 (6) does not amount to a "blanket ban" on an individual making FOIA requests and, given that it is nearly 3 years since the request which was the subject of her earlier decision, was made, she considers it reasonable to look at whether the use of this exemption is still justified in the circumstances. Whilst you have put forward some reasonable arguments... The Commissioner does need to see some supporting evidence"

4. In reply GMP sent a sample of recent emails from 2019 with multiple recipients within the police and news media making similar accusations of abuse by Rochdale and the covering up of hate crime and corruption by GMP. GMP confirmed that these were representative of a far larger number, saying that 41 such e-mails had been received in 2019 and sent a screen shot showing a listing of 34 emails from the appellant between 30/8/2017 and 24/10/2019 – 22 between 1/6/2019 and 24/10/2019 of which 14 have the title Hate Crimes and Abuse.

The Information Commissioner's 2017 Decision

5. The Information Commissioner relied on a previous decision she had made in 2017 (FS50672933) relating to the appellant and GMP. In that request the appellant had asked:-

“Please tell me the names of all the GMP employees that have been involved in my persecution (hate crimes against me)

*How much time has been spent on harassing someone who was KNOWN to be disabled?
How much has it all cost?”*

6. GMP had refused the request relying on s14(1). In responding to the Information Commissioner it submitted that the appellant’s intention was not to obtain information but to harass and embarrass the force, he was unreasonably persistent, made unfounded accusations, was intransigent (repeatedly making FOIA requests for his personal data when he had been advised of the correct approach) his multiple requests placed a burden on the GMP. He asked the same questions, despite numerous responses from GMP. In almost all circumstances the questions related to the same topic and were still entrenched in the same language. In her decision notice among many points the Information Commissioner noted were:-

As an example, it said that this request had generated a total of five emails from the complainant. Two of these were the request and subsequent request for an internal review. Three were follow-up emails accusing GMP of corruption and harassment. It provided examples of 13 other requests for information and associated correspondence from the complainant.

One request, for copies of all emails the complainant had sent GMP between 2011 and March 2017, revealed that in that period he sent 195 emails to the Chief Constable’s Office alone.

Furthermore, the requests were often copied to multiple recipients (such as other public authorities, MPs and media outlets) and so these allegations reached a wider audience than just GMP.

7. The Information Commissioner had analysed the 2017 request using the approach laid down in *Dransfield* and concluded that it was vexatious within s14(1) FOIA. There was no successful appeal against this decision.

“50. The Commissioner also notes the attempt by the complainant to repeat a request for information in respect of which she has previously issued a decision. The complainant had the opportunity to appeal that decision to the Tribunal, but did not do so. In view of this, the Commissioner considers that element of his complaint to her, to border on the frivolous, within the meaning of section 50(2)(c) of the FOIA.

51. She considers it clear that the complainant appears to be attempting to pursue his grievances through the FOIA regime and that, by the volume and the tone of many of

the requests and accompanying correspondence, he is using it in an attempt to defame and harass GMP.

52. The Commissioner considers that the FOIA is not an appropriate mechanism for pursuing such concerns. If the complainant has concerns about how GMP has dealt with him regarding the matters set out in paragraph 4, there exist other channels through which he may have his grievances formally examined. The Commissioner considers that there is no public interest in them being played out in public, under the FOIA regime.

53. The purpose of section 14 of the FOIA is to protect public authorities and their employees in their everyday business. In her guidance, the Commissioner recognises that dealing with unreasonable requests can place a strain on public authorities' resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself."

The Information Commissioner's 2019 Decision

8. In considering the 2019 request she concluded:-

29. The Commissioner accepts that, despite her 2017 Notice, the complainant continues to use the FOIA as a means to re-visit, re-open and re-litigate his previous grievances. It is apparent that no answer GMP could reasonably be expected to give him would prove satisfactory. Answering this request would shed no light on the underlying matter, nor would it be likely to bring matters to a conclusion. The Commissioner considers it highly likely that even responding to the request by issuing a refusal notice would merely provoke a fresh round of correspondence revisiting the same ground.

30. Section 17(6) exists to give public authorities some form of protection against those who continue to make information requests in order to prolong a pointless exchange of correspondence. That point has clearly been reached here and therefore the Commissioner considers that, not only was the request vexatious, but that it was reasonable, in the circumstances, for GMP to rely on section 17(6) to not issue a fresh refusal notice.

...

33. The complainant obviously has an absolute right to appeal this decision notice if he wishes to do so. However, in the absence of a successful appeal the Tribunal, the Commissioner considers it reasonable to put the complainant on notice that she is likely to rely on section 50(2)(c) of the FOIA in future to refuse to accept his complaints about GMP relying on section 17(6).

The appeal

9. The appellant's statement of case emphasised that he was disabled and accused GMP of systematically ignoring his complaints and withholding evidence to support the perpetrators of hate crime against him – Rochdale MBC. He

submitted that both GMP and the Information Commissioner believed hate crimes to be vexatious. With the appeal he lodged various documents in support including: -

- letters from 2007, 2009, 2015 to Rochdale MBC,
- a GMP report into a complaint he made in 2011 and his response to that report
- various documents relating to an Employment Tribunal case in 2010
- material relating to Crown Court proceedings.

10. In resisting the appeal, the Information Commissioner noted that the issues raised were outside the power of the tribunal and what the decision notice had decided was that GMP were entitled to rely on s17(6) of FOIA, the appellant's grounds of appeal had not addressed this and should be struck out. In responding to the Information Commissioner's case the appellant focussed on the circumstances of his dismissal by Rochdale MBC.

11. In support of his case the appellant has submitted a number of documents including reports of hate crime he has made to GMP on various dates between 2017 and 2020 against named employees of RMBC. In addition he submitted a decision of the Administrative Court from October 2020 relating to his application for judicial review against the Independent Office for Police Complaints (IOPC) arising from IOPC's decision not to investigate a decision of GMP not to investigate the officers of RMBC. The judge gave a detailed and sympathetic account of the Mr Scranage's travails. This tribunal shares that sympathy.

Mr Scranage's history

12. In his appeal he has emphasised the background to this request to explain how it has come about and why he considers that it should be answered. From the documents he has supplied it is clear that he had a career as a trading standards officer until he was convicted and imprisoned for fraud in 1999; that conviction was set aside by the Court of Appeal in 2001. An examination of the Court of Appeal's judgement in that case shows that this was because of a defective good character direction by the trial judge: -

"... in this case the good character direction was one of crucial importance. This was a case in which the appellant was admitting what on the face of it was either dishonest conduct or highly unusual conduct. In those circumstances it does seem to us that it was particularly important to have proper regard to the undoubted good character of the appellant."

13. He was then employed as a trading standards officer again by another authority (Rochdale MBC), he was dismissed in 2009 and unsuccessful in his application to an Employment Tribunal which found his dismissal was fair.

14. After that hearing he started to contact RMBC on multiple occasions and to hand out leaflets attacking the conduct of its witnesses. When approached by the police on this issue he explained his view that the evidence in the employment Tribunal was perjured. GMP investigated and concluded that the absence of recordings and verbatim minutes of the tribunal hearing made a perjury prosecution impossible. The police officer who conducted the investigation noted that Mr Scranage was disabled, had been diagnosed with psychiatric problems and had contacted him by e-mail 51 times in a period of less than three months to 1/12/11.
15. He complained about the GMP decision not to prosecute. GMP did not record the complaint, he then appealed to the Independent Office for Police Complaints (IOPC) which upheld his appeal against the decision not to record the complaint. GMP then investigated his complaint and rejected it and IOPC upheld that rejection. Further complaints were made which were considered to be repetitious.
16. In 2014 he was convicted by magistrates having, over the period of several years, distributed leaflets criticising the witnesses for Rochdale MBC who appeared in the Employment Tribunal. he appealed to the Crown Court and on 18 January 2017 the learned Judge, in setting aside the conviction observed:-

“We are clear that these actions were not rational or in pursuit of the purpose of detecting crime so to that degree the statutory defence it’s not made out. We are clear that he genuinely believed in the conspiracy and perjury alleged that his actions were also motivated by fury and vengeance for the way he thought he had been treated.”
17. He also submitted reports of Hate Crime he had made to GMP on 3/7/17, 2/8/17, 17/8/17 and 14/1/20 all accusing RMBC and GMP of committing the offence against him. The 14/1/20 report was the subject of the refused application for judicial review, the application related to the Police (Complaints and Misconduct) Regulations 2012 and whether GMP were entitled not to record the report of crime because it was repetitious and there was no fresh evidence not reasonably available at the time of the previous complaint. The fresh evidence in question being the 2017 Crown Court decision.

The legal issue for the tribunal

18. The Information Commissioner found that GMP was entitled to rely on s17(6) FOIA to remove the legal duty to supply a refusal notice to an individual making a vexatious request, the issue for the tribunal to determine is whether that is correct.

19. FOIA provides a number of mechanisms to protect public authorities from the excessive burden of requests for information, including:-

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.

...

17 Refusal of request.

...

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where –

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

...

50 Application for decision by Commissioner.

...

(2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him –

...

(c) that the application is frivolous or vexatious, or

...

20. In 2017 GMP relied on s14(1) when it did not provide the information requested to this appellant. In her decision notice that year the Information Commissioner upheld that stance and went further by indicating that in future she would consider relying on s50(2)(c).

21. In 2019 a request was received by GMP which, relying on s17(6) (a), (b) (c), it did not respond to:-

a) It considered the request vexatious since it reworked issues which the appellant had raised with GMP on numerous occasions before and which the appellant copied to numerous recipients.

b) GMP had previously notified the appellant of its reliance on s14(1)

- c) On the evidence accumulated over many years serving a refusal notice would provoke further correspondence and so it was unreasonable to expect GMP to serve a refusal notice
22. The tribunal is satisfied that the conclusion of her decision notice (DN paragraphs 29 and 30 set out at paragraph 8 above) properly summarise the issues. The tribunal is satisfied from all the material it has seen and summarised above that the request was vexatious and that GMP was entitled to rely on s17(6). The request was designed to harass, it was not an attempt to obtain information, it added to the burden already imposed by the appellant and was a manifestly unreasonable misuse of FOIA. From the material he has supplied it is clear that he wishes that the decision not to prosecute RMBC employees should be reversed. The requests for information do not advance that aim. The information he has supplied in support of this appeal has not addressed the legal issue in the Information Commissioner's decision notice but has reflected his underlying complaint against RMBC and from that his frustration with MPC. This information on which he relies has demonstrated the extent of his difficulties arising (in part at least) from irrational behaviour. The Information Commissioner made the correct decision and this appeal must fail.
23. It is a matter of some concern that despite having given a warning in 2017 that in future she would consider using s50(2)(c) she did not do so. Her explanation for the decision to investigate this complaint (paragraph 3 above) was that the passage of time made it *reasonable to look at whether the use of this exemption is still justified*. The difficulty with this proposition is that these provisions are not time limited. Her own decision in 2017 set out that the issue had been pursued for seven years (the requests set out at paragraphs 1 and 5 of this decision are clearly variations on the same theme), specific issues she had found worthy of comment in 2017 (paragraph 6 above) were on the face of the 2019 request (paragraph 1 above) still there. Those issues were on their face sufficient for GMP to rely on in using s17(6) (summarised at paragraph 21 above). It was therefore entirely appropriate for her to have, in the light of the information she possessed when she received the 2019 complaint, to conclude that s50(2)(c) was the more appropriate course of action. To fail to do so is to undermine the protections given to scarce public resources.
24. This failure to do so no meant that an appeal to the tribunal was highly foreseeable. Her attempt to have the appeal struck out was unsuccessful but could have been renewed based on an analysis of the notice of appeal, the decision notice and the materials submitted with the notice of appeal.

Signed Judge Hughes

Judge of the First-tier Tribunal

Date: 29 January 2021