



Neutral Citation number: [2024] UKFTT 00189 (GRC)

Case Reference: EA/2023/0390

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

**Heard by Cloud Video Platform
Heard on: 16 February 2024
Decision given on: 12 March 2024**

Before

**TRIBUNAL JUDGE HEALD
TRIBUNAL MEMBER SCOTT
TRIBUNAL MEMBER MURPHY**

Between

T

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

The Appellant: in person
For the Respondent: no attendance

Decisions

1. The Appeal is allowed
2. Unless and until the Tribunal, the Upper Tribunal, or a Court orders otherwise, pursuant to rule 14(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, the Appellant and/or any member of their family, is granted anonymity.
3. No-one shall publish or reveal either directly or indirectly any information, including their names or their addresses, that is likely to lead members of the public to identify them.

Substituted Decision Notice:

Mere Valley Foundation shall, within 30 days of the delivery of this Decision to them, respond to the request for information made by T on 21 April 2023 without reliance on section 14(1) Freedom of Information Act 2000.

REASONS

Anonymity

1. On 11 December 2023 an Interim Decision was made granting the Appellant (T) and family anonymity.

Background

2. T had a child at a school connected with Mere Valley Foundation (“MVF”). T told us that they became concerned about certain aspects of their child’s schooling and the implication for safeguarding. We are not called upon in this Appeal to adjudicate between MVF and T on these concerns and this Decision does not seek to do so.
3. The Appeal relates to a decision notice (“the DN”) issued by the Information Commissioner (“the Commissioner”) dated 11 August 2023. In it the Commissioner supported the view taken by MVF that it was entitled to rely on section 14(1) Freedom of Information Act 2000 (“FOIA”) in refusing to provide the information requested by T.

Evidence

4. To assist us at the Appeal, as well as hearing from T, we had a bundle of documents running to about 500 pages. Reference to page numbers are to this bundle. In addition to this we were provided with a skeleton argument prepared by T and additional correspondence and information including 3 character references for T.
5. We found T to be careful and honest with a focus on the details who sought to assist the Tribunal. The Commissioner referred to T’s “*very sensitive personal concerns...*” and we noted that despite T at times finding the subject matter of the issues to be distressing T (supported by T’s spouse) was able to provide and explain relevant facts with clarity.
6. The Commissioner was not represented relying on the DN and the Commissioner's Response.
7. MVF was not made a party to the Appeal and provided no witness evidence. However their position was set out in a number of items in the bundle of which the most useful was a letter dated 17 July 2023 from Rebecca Cosgrove (who we understand to be the Chair of Governors of MVF) to the Commissioner at pages D433-D435.

The Request and Response

8. On 21 April 2023 T made a request for information to a school (“the Request”) (page C417). MVF is the public authority for the purposes of FOIA. The Request was as follows:-

“Please can you provide the following in relation to Governing Board Meetings from 01/01/2020 to 21/04/2023. Including:

- (a) the agenda for every meeting;
- (b) the attendees;
- (c) the signed minutes of every such meeting; and
- (d) any report or other paper considered at any such meeting.”

Reply

9. On 19 May 2023 MVF responded to the Request (C418). It refused to provide the information relying on section 14(1) FOIA. MVF said that this conclusion had been reached having considered:-

“..the history and context of your previous requests for information and actions since 2022, as well as the impact and burden our school has experienced as a consequence”

10. MVF maintained its response following review.

Complaint

11. On 9 June 2023 T lodged a complaint (D423) with the Commissioner pursuant to section 50 FOIA. T said:-

“[The School] refused the request stating that we (not the request) are vexatious. They cited “the history ad context of your previous requests for information and actions since April 2022 as well as the impact and burden our school has experienced as a consequence”.

We have made 2 previous FOI requests to [the School]

One request was to obtain the staff code of conduct policy. This was formally submitted as an FOI request on 11 May 2022 due to the refusal to provide this document; this request was fulfilled.

The second request was placed to obtain data on school bullying and complaint/concern handling. This request was made on 3 August 2022 following the premature conclusion of a formal complaint process that did not comply with the school’s complaint policy. This request was refused, outside of FOI time frames, on that grounds that it (we) are vexatious.

An internal audit report,.... published in October 2022 concluded that “stage 2 of the original complaint was not handled in accordance with the schools complaints policy” and also evidenced examples of breaches of various other school policies in relation to our complaint. This provides the context to our FOI request placed on 3 August 2022 and evidences that the request was justified and was not vexatious.

This request does not place any additional burden on school resources. School governing board minutes are public documents and it is reasonable to expect that these are stored and easily retrievable within the school’s electronic filing system.”

Decision Notice (DN)

12. On 11 August 2023 the Commissioner issued the DN (A1). It made reference to the decision of the Upper Tribunal (“UT”) in *Dransfield*. The Commissioner focused on the background and history of the relationship between T and MVF since 2022, the alleged burden on MVF and a review of the value of the Request. They also made reference to the view taken by MVF that:-

“...the campaign which the complainant continues to pursue...is a result of them not receiving the outcome they were seeking from their original complaint... now amounts to malicious intent and harassment.the complainant appears intent on causing as much damage and distress as possible for [the School] and its management team.”

13. The Commissioner's conclusion was:-

“.....FOIA is not a means of recourse when the appropriate avenues for raising such concerns have failed to provide a complainant with the outcome they are seeking. The Commissioner considers it highly unlikely that compliance with the request will deliver any information that is likely to satisfy the intentions of the complainant in this case. Nor does he find that complying would satisfy any objective public interest.

It is clear to the Commissioner that the complainant’s previous correspondence, complaints and requests have already placed a notable burden upon [the School’s] resources. Based on the evidence provided to him, which demonstrates the protracted and persistent nature of the complainants campaign against [the School] the Commissioner finds that it is highly likely that responding to this request will generate further related actions or correspondence, thereby placing further burden upon the resources of [the School].”

14. The Commissioner also mentioned that MVF had offered to enable T to inspect the information requested pursuant to the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 (“the 2013 Regulations”).

The Appeal

15. The Appeal is dated 31 August 2023 (A9-A16). It has just under 150 pages of supporting documents. The outcome sought is as follows:-

“We are seeking for you to overturn the judgement that we are 'vexatious' and for [the School] to be instructed to provide copies of the requested documentation (board minutes and supporting documentation) up to and including the latest meeting”

16. Section 14(1) FOIA refers to a request being vexatious not the requester and FOIA is said to be “appellant and motive blind.” We considered this to be an understandable misunderstanding by T and proceeded on the basis that we were to consider whether the Request and not the requester was vexatious.

17. Since the Appeal was issued:-

- a. on 28 November 2023 the Commissioner submitted a response (“the Commissioner’s Response”) (A165-A168)
- b. T replied on 12 December 2023 (“T’s Reply”) (A169-174)
- c. T provided further documentation on 2 January 2024

d. T provided a skeleton argument for the hearing

Role of the Tribunal

18. The Tribunal's role in an appeal by section 57 FOIA is set out in section 58. This provides that:-

(1) If on an appeal under section 57 the Tribunal considers—

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

Relevant Law

19. FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing if that information is held (section 1(1) (a) FOIA) and if that is the case to be provided with that information (section 1 (1) (b) FOIA). These entitlements are subject to a number of exemptions and also to section 14(1) FOIA which provides that:-

“section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

20. “Vexatious“is not defined in FOIA. Judge Wikeley in *Dransfield* referred to it as follows:-
“..... “vexatious” connotes “manifestly unjustified, inappropriate or improper use of a formal procedure”

21. The Decision in *Dransfield* provides authoritative guidance on the approach to section 14(1) FOIA. Four broad non exhaustive issues were identified for consideration namely (1) the burden on the public authority and its staff (2) the motive of the requester (3) the value or serious purpose of the request (4) any harassment or distress of and to the public authority’s staff. Relevant extracts from *Dransfield* follow:-

22. As regards burden:-

“29 First, 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 the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor.”

23. On motive:-

“34...the motive of the requester may well be a relevant and indeed significant factor in assessing whether the request itself is vexatious. The FOIA mantra is that the Act is both “motive blind” and “applicant blind”., the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request..... ”

24. As to the question of value or serious purpose:-

“38...Does the request have a value or serious purpose in terms of the objective public interest in the information sought?

25. On the question of causing harassment and distress:-

“39..vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive (e.g. the use of racist language).”

26. These questions are non exhaustive and illustrative only. From *Dransfield* again:-

“28... the observations that follow should not be taken as imposing any prescriptive and all encompassing definition...”

“83..... all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”.

27. In *Dransfield-v- (1) Information Commissioner and (2) Devon County Council and Craven - v-(1) The Information Commissioner and (2) The Department for Energy and Climate Change [2015] EWCA Civ 454* the Court of Appeal said at para 68:

“The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious”

28. Finally the Commissioner in its guidance notes that making a FOIA request is an important right and so engaging section 14(1) FOIA is a high hurdle to satisfy. This approach is endorsed by Arden LJ in the Court of Appeal in *Dransfield-* (at 68) who says:-

“...Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right.”

29. T suggests that there should be a specific 5th theme added to the “Dransfield Test” namely a consideration of the motive of the public authority. This is not accepted but in any event *Dransfield* does already suggest a holistic approach and specifically says that section 14 FOIA should not be seen as giving:-

“36...licence to public authorities to use section 14 as a means of forestalling genuine attempts to hold them to account”

30. MVF has the burden of demonstrating that the high hurdle of section 14(1) applies.

Chronology

31. Listed below are some of the main matters between April 2022 and April 2023 which we considered relevant when reviewing this Appeal. It is not a complete list of all the interaction between T and MVF in this period or before.

6 April 2022	T makes complaint
10 May 2022	Subject Access Request
11 May 2022	T makes FOIA request for staff code of conduct policy
17 May 2022	T complains to the Council
22 May 2022	T complains to DfE
29 May 2022	T complains about 2 members of staff and Governors of MVF
31 May 2022	Complaint to Council
14 June 2022	1 st Complaints Committee meeting (reconvened on 1 July 2022)
15 June 2022	T seeks clarification about the outcome of the SAR
23 July 2022	Complaint to Ofsted
3 August 2022	T makes FOIA request for data on bullying and complaints handling
21 February 2023	Pre action protocol letter sent from T to MVF.
21 April 2023	The Request in this Appeal

The Commissioner's Position.

32. The Commissioner's Response (A165-A168) in summary says:-

"....the Commissioner opposes this appeal and stands by his DN.

The Commissioner submits that in all the circumstances of this case the request was vexatious further to the binding case law set out by the Court of Appeal in Dransfield..."

The Appellant disputes the comments of the Commissioner in his DN .. in which he notes that [MVF] have approached the Appellant with an offer to view the information in person, according to their obligations under the [2013 Regulations]... the Commissioner notes that these comments are found in the section of his DN titled 'Other matters'. This section follows the Commissioner's decision and does not form part of the reasoning of his decision (Billings v Information Commissioner [2008] UKIT EA/2007/0076), therefore the Appellant's arguments in this regard do not challenge the Commissioner's decision.

The outcome sought by the Appellant, per their Notice of Appeal, is 'to overturn that we are vexatious and for [MVF] to be instructed to provide copies of the requested information (board minutes and supporting information) up to and including the latest meeting.' For the avoidance of doubt, the Commissioner notes that it is not the requester themselves which is found as vexatious, rather it is the request in question.

The Commissioner provides, alongside this Response form, a bundle of documentation and a copy of his own non-statutory guidance about section 14 FOIA, to assist the Tribunal in its

determination of this matter. The Commissioner does not propose to make any further representations or submit further documentation.

Should the Tribunal have any questions or matters which are not answered by the papers before it, the Tribunal may choose to exercise its powers under rule 5(3)(d) of the Tribunal Rules to permit or require a party or another person to provide documents, information or submissions to the Tribunal.

If, contrary to the Commissioner's position, the Tribunal concludes that the request is not vexatious under s. 14(1) FOIA, the Commissioner would invite the Tribunal to order steps obliging the public authority to issue a fresh response to the request not relying upon s. 14(1) FOIA"

MVF's Position

33. The Commissioner sets out its understanding of MVF's position as follows in paragraph 8 of the DN (page A4):-

"... since that initial complaint was submitted a frequent and voluminous sequence of actions and correspondence from the complainant has ensued. [MVF] provided the Commissioner with a chronology and outline of the contacts from the complainant relating to this matter, demonstrating the burden which has already been imposed on it, as well as highlighting examples of communications which it believes were carried out with the sole intention of causing harm and distress to [MVF] and members of its staff.

[MVF] was keen to highlight that it does not believe that the chronology it has provided is exhaustive, such is the extent of the complainant's activities relating to this matter.

[MVF] considers that this request would impose further burden upon it due to its broad nature, particularly with reference to "any report or other paper considered at any such meeting". [MVF] explained that for the dates indicated in the request there would be in the region of 200 documents to consider. As a disclosure of information in response to a FOIA request is essentially a disclosure to the world at large, rather than just to the requester, all of those documents would need to be carefully reviewed by staff to ensure that any personal or confidential information relating to staff or students was redacted and the documents were suitable to be made available to the general public. [MVF] detailed that preparing the documents for disclosure to the world at large would require many hours of staff work, and as such would be a further burden upon already constrained staff time.

[MVF] also considered the value and purpose of the information, to both the complainant and to the wider public. It stated that it is clear that a significant volume of the requested information would be of no value to them due to it being irrelevant to their concerns or due to it already being a matter of public record, giving an example of papers pertaining to planning and procurement of works, etc. [MVF] argued that the substantive matters of concern to the complainant have been independently investigated and the results put into the public domain.

Given that the relevant authorities have already investigated the complainant's concerns, it is unclear what purpose is served by the complainant's continuing unabated activities and what possible interests are served by this FOIA request.

[MVF] firmly believes that the campaign which the complainant continues to pursue against it is a result of them not receiving the outcome they were seeking from their original complaint against [MVF] in April 2022, and now amounts to malicious intent and harassment. It asserts that the complainant appears intent on causing as much damage and distress as possible for [MVF] and its management team.

[MVF] detailed that the complainant has involved multiple agencies such as the local Council, Ofsted and the Department for Education. In doing so they have sought to have particular members of staff struck off, and have triggered an audit by the local Council and an additional Ofsted inspection only 13 months after the most recent one was conducted.

[MVF] also provided evidence of the complainant using inappropriate channels of communication, such as directly contacting staff and governors, including messages to the private mobile number of one governor, as well as emails sent to all staff at [MVF] and all members of the parent-teacher association, some of which contained serious allegations against staff.

[MVF] summarised that it believes the request to be the complainant's attempt to seek redress of matters which have already been thoroughly investigated via the appropriate authorities. It considers that the burden on the School, the lack of serious value of the request, and evidence of both malicious intent and harassment of staff, governors and the wider community of parents to be clear evidence that the request is vexatious."

Review

Burden

34. At Page 433 in the letter of 17 July 2023 Mrs Cosgrove on behalf of MVF says:-

"While there is a statutory duty make some of this information available to the public, the legislation provides for considerable discretion on the part of the governing body in determining what should remain confidential. The request made, which the complainants have sought to add to by contacting us to request that we provide more recent information also, is so broadly drawn that it is manifestly an unjustified, inappropriate, and improper use of the procedure. On the straightforward balance of the burden on the public body and the serious purpose of the requester we believe that this request would be considered vexatious. In addition to this there is clear evidence of both malicious intent and harassment of staff, parent governors and the wider community of parents. Also, the matter for which the complainants are seeking redress has been thoroughly investigated by a city council auditor, the results of which have been made public.

Burden of Preparation:

For only the dates originally indicated this request would include some 200 documents. Each of these would have to be reviewed by two members of staff to ensure that confidential information and any personal information pertaining to staff or students had been redacted prior to release. It would therefore require in excess of 100 person hours to meet this request in terms of our duties under GDPR alone. Added to this there are other legitimate grounds for confidentiality which would require consideration by the executive head and in some cases endorsement by the governors."

35. In summary T says that the information sought by the Request is not intended to be and should not be a burden in any event because MVF is obliged to make this information available by the 2013 Regulations. T says in the letter to the Commissioner on 31 August 2023 (page A17):-

1.1 It is not our intention to cause strain on resources nor to 'get in the way of mainstream services'.

1.2 We requested the documentation to provide evidence if whether the required documents had been chaired at Board to assist us with our decision as to either stop or pursue our litigation case against [MVF] due to [MVF] many safeguarding breaches which led to [redacted]

1.3 We believed that all the information requested would have been stored systematically and electronically (point 25) and therefore would not cause a burden to [MVF] (point 15).

1.4 We believed that the redaction of personal information would have been minimal, and would at no point have believed there to have been over 200 supporting documents, as referred to in point 19 of your decision notice. If [MVF] had been open and transparent with us, or entered into communication with us, we would have reworded our request to minimise the information they were to provide to us.

1.5 Please also see point 12 and 13 below (your points 32 and 34), which evidences that the burden should already have happened as [MVF] was in a position to offer for us to inspect the documents. Letter from Rebecca Cosgrove, now Chair of Governors, dated 7 July 2023 attached.

36. At the Appeal T accepted that the Request did cover a wide time period from January 2020-April 2023 and would therefore involve a considerable amount of material. T also accepted that it was probable that part of it might not be relevant to the reason T made the Request. T agreed that it was highly likely that to publish the material following a FOIA request would involve MVF ensuring others' data rights were properly considered and protected and this would be a time consuming task.

37. As regards the start date of 2020, T informed us this was because it was the date the child had started school. T pointed out that as the information requested was subject to the 2013 Regulations it might (or some of it might) already be in a disclosable format and if not then it should be. T also indicated that in so far as MVF considered the Request to be too wide or burdensome they could have engaged with T to provide advice about this but had not done so.

38. T in the Skeleton at page 8 says clause 12.1.2 says:-

"Hence, whilst we can be empathetic towards [MVF] for any burden that may exist as a result of this request, the burden claimed...is self-imposed as a result of their conscious decision to not follow the best practice advice of regulators."

Chronology and course of dealings

39. The chronology of the relevant history (which is summarised above) was put to T. MVF's letter at page 433 says that *"There is considerable history between the complainants and the school predating this FOI request"*

40. It was pointed out to T that there had been many processes initiated including two prior FOIA requests, a SAR, complaints to various bodies, the sending of a Pre Action Protocol letter, formal complaints in respect of a teacher and other staff and the governing body of MVF and all the accompanying correspondence. The suggestion put to T was that that while each element might by itself not be a burden taken collectively and viewing the Request in the context of the history of the interaction and course of dealing it had become a burden.
41. T did not seek to deny the various elements shown in the chronology but did not agree. T considered them to have been necessary and fair in the context of T's experience and motivation.

Motive

42. MVF in the letter from Mrs Cosgrove on 17 July 2023 (page 434) say under the heading "*malicious intent and harassment*" that (in summary):-

- there is considerable history between the parties predating the Request and T has taken further actions since the Request
- a previous complaint "*apparently did not give them the response they were seeking*"
- T has made contact with "multiple agencies" which MVF says appears to be with the intention of "causing as much trouble as possible for the school and its management team"
- T has made a complaint about 2 members of staff "*seeking to have them struck off*"
- T has issued a letter before action demanding disproportionate financial compensation
- T is seeking to expand the FOIA request.

43. The Commissioner in the DN sets out further information about what MVF say about T's motivation as follows (page A5):-

"21 [MVF] firmly believes that the campaign which the complainant continues to pursue against it is a result of them not receiving the outcome they were seeking from their original complaint against [MVF] in April 2022, and now amounts to malicious intent and harassment. It asserts that the complainant appears intent on causing as much damage and distress as possible for [MVF] and its management team"

"24. [MVF] summarised that it believes the request to be the complainant's attempt to seek redress of matters which have already been thoroughly investigated via the appropriate authorities....."

44. T refutes MVF's representation of T's motivation and disputes many of the things alleged and referred the Tribunal to the report of an audit carried out by Milton Keynes City Council ("the MKCC Report") (A237) from November 2022. Extracts from the MKCC Report in summary included as follows (A240):-

4.2.1 Although the school held comprehensive records on CPOMs for the child including...the school management did not always apply policy requirements and processes

consistently.....” It is however acknowledged that the requests for instant responses to their queries by the complainants added a level of complication.

4.2.2 There was not a common understanding of what was required from each party....

4.3 The recording and retention of minutes of meetings, discussions and events was not systematic, in line with various Policies. Specifically, the Complaints Policy and Anti-Bullying policies had not been properly followed in relation to retaining records. The gaps in compliance with policies made it difficult for the School to demonstrate that the concerns raised had been or were being adequately addressed.

4.4 The proliferation of requests for information/data from the complainants, including a subject access request, reflected their belief that their concerns were not being taken seriously given the sporadic communications and non-adherence to policy requirements which they were continuously highlighting”

4.7 Stage 2 of the original complaint was not handled in accordance with the school’s Complaints Policy...”

45. The MKCC Report made a number of recommendations including (A241):-

“5.2 The school should ensure that complete and accurate records are maintained in accordance with relevant policies, including attendance, bullying incidents, notes of conversations and meetings with parents and members of staff, as appropriate.

5.3 The Governor with responsibilities for safeguarding should monitor compliance with key policies, formally report on this at each full governing body meetings and follow up on any actions or omissions identified, on an ongoing basis.”

46. T in the skeleton at 12.2.2 says in summary that the motive is about the MKCC Report as follows

“Was [the MKCC Report] reviewed and debated by the Governing Board? What action did [MVF] take as a result? This information is unknown.....”

47. At page A19 T says

“Our request is absolutely a legitimate request... By continuing with our pursuit to ensure that the truth is known, and recorded as fact, and to ensure that we are safeguarding our children (and others that follow) is of utmost importance to us. As parents, and adults, we have a duty to protect not only our children but other children who have also faced similar safeguarding issues, and others who will continue to do so should we decide to stop pressing for information, and allow for serious breaches to be concealed....”

48. The steps taken by T and T’s motivation, we were told, aimed at seeking to ensure that the MKCC Report was properly considered by the governors of MKCC so that they could understand what had happened with lessons learnt and appropriate action taken. T summarised this as “so governors could govern.”

49. The Tribunal referred T to the existence of a Pre Action Protocol letter from T to MVF dated 21 February 2023 (pages D443- D460) by which T notified MVF of an intention to

commence civil proceedings against MVF seeking damages. MVF said of this on 17 July 2023 (page 434) to the Commissioner:-

“On 21st February 2023 the complainants issued a “Letter before action”.. they have not pursued this case and issued papers, indicating that they do not have a legitimate claim but are seeking to cause distress...”

50. In T’s letter to the Commissioner on 31 August 2023 (page A17) T says:-

“1.2 We requested the documentation to provide evidence if whether the required documents had been chaired at Board to assist us with our decision as to either stop or pursue our litigation case against [MVF] due to [MVF] many safeguarding breaches which led to [redacted”

51. It was suggested to T that the Request was an attempt to obtain information or otherwise to support or bolster T’s civil claim. T refuted this suggestion.

School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

52. In the 17 July 2023 letter at page 433 MVF says:-

“Access to this information is specifically addressed by statute in the ...2013 [Regulations]. In accordance with this legislation, we have made provisions for the complainants to access this information. It is unclear to us whether general legislation regarding freedom of information or the specific legislation identified relating to these specific documents would take precedence, however given that the information is already being made available we think that its presence in this FOI request is vexatious.”

53. The 2013 Regulations provide for a process whereby minutes of meetings of school governors are to be kept and made available to interested parties. This is subject to reg 15(3) which provides:-

(3) The governing body may exclude from any item required to be made available in pursuance of paragraph (2) any material relating to—

(a) a named person who works, or who it is proposed should work, at the school;

(b) a named pupil at, or candidate for admission to, the school; or

(c) any other matter that, by reason of its nature, the governing body is satisfied should remain confidential.

54. T was asked why the FOIA route had been selected as opposed to making a request by the 2013 Regulations or accepting MVF’s later proposal regarding the 2013 Regulations. We were told and accept that T had not been aware of the 2013 Regulations when making the Request nor had T been made aware of them by MVF. T only knew of them from the DfE.

55. As regards MVF’s later offer in July 2023 in T’s Reply we read this:-

“...the offer from [the School] was an empty gesture and intentional entrapment... This offer from [the School] has been used as a vehicle to make it appear that we had, in the words of

the Commissioner's DN, "so far chosen not to take up any of the opportunities presented to them". Thus, making us appear unreasonable and moving to attempt to substantiate [the School's] claims to the Commissioner that we are vexatious.

Regardless of the route of document access, we had first requested the documentation under FOIA, and it should be provided under this cover. ... When taking into account also the false and unsubstantiated allegations to the police of harassment, and subsequent police guidance to us, there is no practical way that we can inspect the documents under Schools Governance Regulations."

56. We noted that the FOIA request was made on 21 April 2023 and rejected citing section 14(1) FOIA on 19 May 2023 and then:-

- on 25 May 2023 the DfE (page A157) wrote to T and informed them about the 2013 Regulations and said:-

"The department expects schools to fulfil their duties as defined under the Regulations and other education law...."

- on 25 May 2023 T wrote (page C419- 420) to MVF with extracts from the DfE letter about the 2013 Regulations

- on 9 June 2023 T (page 421) said to MVF *"we will raise our case with the ICO and continue to pursue the provision of these document under section 15(2) [2013 Regulations]"*

- on 29 June 2023 (page A162) DfE wrote to T to report that they had written to MVF to

"remind them of the expectations set out under the ...[2013 Regulations]..."

- on 7 July 2023 MVF wrote (D462) to T and said:-

Further to your request for access to documents pertaining to governing board meetings. We have arranged for these documents to be made available for your inspection.

I have the following dates available for viewing at [redacted] school.

Wednesday 12th July 9:30-11:30am

Thursday 13th July 11:15-13:15am

In the event neither of the above dates are convenient. We can arrange viewing on a school day further into the future.

- on 7 July 2023 T replied (D463) saying

"Given the history of the situation, it is neither appropriate or reasonable for you to request our attendance at the federation to view the documents.

As these documents are public record, please provide electronic copies via email to this address.

Due to the amount of time that has elapsed since the original request (21 April 2023), it is reasonable for this request to be extended to cover documentation up until the end of this current school year (2022-23).

Also, as part of the request, and to ensure completeness, please provide copies of all [redacted] Constitution documents (names, meeting dates and attendance) covering the period of the request, so that we can ensure we are in receipt of all records pertaining to Governing Board Meetings (Full Governing Board and Committees). As stipulated by the DfE, all documents are to be received by 13 July 2023.”

- On 11 July 2023 (D465) the DfE said to MVF:-

“Thank you for providing confirmation that the school will make information available for inspection in accordance with the [2013 Regulations].

We understand that [T] have stated their view that it is neither appropriate nor reasonable for them to attend a federation school to inspect the information. It is for the school’s governing body to consider their views and what action, if any, may be required in relation to their information request.

The governing body may wish to consider publishing documents online, in the interest of transparency, and to avoid any further need for the department’s intervention on this matter, or to ensure the school’s continued adherence to the regulations. However, this is entirely a decision for the school to make.

We trust that through engaging with [T] a suitable opportunity to inspect the information can be arranged.”

- On 12 July 2023 T wrote to MVF to follow up on the 7 July 2023 letter in which T says “*We write further to our email to you dated 7 July 2023, to which we note we are yet to receive a response...*” T goes on to make suggestions of how the information could be provided and also referred to The Companies (Company Records) Regulations 2008 saying:-

“Alternatively, if you are still refusing to provide us with copies of the requested documentation in line with this legislation, the Freedom of Information Act or Education Legislation, we request the following in line with The Companies (Company Records) Regulations 2008 Act:” T concludes:-

“As stated above, in order to resolve and expediate this matter, and to minimise the burden on both parties, please provide the documentation in either hard copy or electronic copy, in line with current legislation. This will therefore negate the need for us to attend the registered office of the school and will minimise the potential conflicts / negative consequences that may occur from the original proposal of a face to face meeting as detailed in your email to us of 7 July 2023. We look forward to hearing from you”

- On 17 July 2023 (page 433) and after T’s letters of 7 and 12 July 2023 MVF told the Commissioner:-

“Access to this information is specifically addressed by statute in the...2013 [Regulations]. In accordance with this legislation, we have made provisions for the complainants to access this information.

We are also unsure if FOI legislation in fact applies to the information in question given that it is specifically addressed in other legislation. We have offered opportunities to view the information under that legislation, and continue to do so, however the complainants have so far not chosen to take up those opportunities”

57. T says that when the offer was made on 7 July 2023 by MVF by then T’s trust in MVF had broken down to the point T did not feel able to attend MVF premises on the basis offered. T expressed to us concerns about the length of time offered and had doubts about the usefulness to T of the format in which the information might be shown. T also expressed concern that in effect the offer on 7 July 2023 was tactical on the part of MVF.
58. It appears that thereafter neither T nor MVF sought to explore potentially acceptable ways by which, or locations at which, the information could be provided under the 2013 Regulations.

Value

59. MVF in the letter of 17 July 2023 say:- (page 433)

“Against this extraordinary cost we have considered the potential value to the requester and the wider public of this information. It is clear that a significant volume of the information they are requesting would be of no value to them due to irrelevance or because they are otherwise a matter of public record. Papers pertaining to planning and procurement of works or review of policy updates from DfE for example. The fact that the substantive matters of concern to the complainants (not specified in this request but evident in their other correspondence) have been independently investigated and the results put in the public domain further limits the value of reopening this matter.

It is also worth noting that the majority of these actions occurred after they had already withdrawn their child from the school, and that their efforts continue unabated. Given that authorities have formally investigated both the teachers and the school it is unclear what purpose is served by their continuing activities and what possible additional interests are served by this FOI request, and particular its recent requested expansion to include other schools within the federation.”

60. The Commissioner in the DN (page A4) says:-

“20. [MVF] also considered the value and purpose of the information, to both the complainant and to the wider public. It stated that it is clear that a significant volume of the requested information would be of no value to them due to it being irrelevant to their concerns or due to it already being a matter of public record, giving an example of papers pertaining to planning and procurement of works, etc. [MVF] argued that the substantive matters of concern to the complainant have been independently investigated and the results put into the public domain. Given that the relevant authorities have already investigated the complainant’s concerns, it is unclear what purpose is served by the complainant’s continuing unabated activities and what possible interests are served by this FOIA request.”

61. T in the skeleton says:-

“We have consistently stated throughout this process that it is of significant wider public interest to understand what action the Governing Board and Senior Leadership Team of

MVF have taken as a direct result of the issuance of the [MKCC Report] There is wider public interest in transparency and accountability about child safety, safeguarding and school leadership; especially in light of the documented failings in these areas within the [MKCC Report]. Information on school governance and actions taken following the [MKCC Report] can only be sourced from the Governing Board Minutes. This is the purpose of our request, and the safety of children is of significant wider public interest.

and *“..there is plausible suspicion that the learnings from the [MKCC Report] have not been adopted by [MVF]*

62. T in T’s Reply to the Commissioner's Response also says (page A171-172):-

“It is also in the public interest to understand, and be aware of, how [MVF] is being governed. Are senior leaders and governors of the school fulfilling their responsibilities to children and their families? Is there openness and transparency within the school’s governance that allows the governors to act accordingly and discharge their responsibilities? Are governors being made aware of important matters?”

Harassment & Distress

63. MVF in its 17 July 2023 letter at page D434 refers to *“Malicious intent and Harassment”* In support of this MVF refers to the history of the relationship between the parties and in particular:-

- the sending of emails directly to staff and governors one of which alleged criminality
- correspondence with the parent teacher association
- sending a Letter before action where *“they have not pursued this case and issued papers, indicating that they do not have a legitimate claim but are seeking to cause distress”*

64. MVF in that letter indicates to the Commissioner that *“the school and its governors have contacted Thames Valley Police who are now investigating the complainants’ behaviours as potential criminal harassment”*

65. The Commissioner reports in the DN that MVF refer to there being *“a campaign which the complainant continues to pursue against it”* and refers at paragraph 32 to the evidence demonstrating the *“protracted and persistent nature of the complainants campaign”*

66. The Commissioner also reports in DN that MVF says that:-

“the complainant appears intent on causing as much damage and distress as possible for [the School] and its management team”.

67. We also noted what appears to be an exchange of WhatsApp messages between T and “becky” (who we were told was Rebecca Cosgrove). In them we see that on being contacted by T, Becky says (page D471)

*“hi [redacted] It would not be appropriate for me to respond to you outside formal channels. Please do not contact me any further.”*To which T says *“ok totally get that. Shame the appropriate channels have been blocked”*

68. T says in the skeleton as follows:-:-

“We have been robust and tenacious in our attempts to protect our own children and current and future children of [MVF]. Being robust and tenacious are admirable and positive attributes; they are not crimes and should not be portrayed as such by the Commissioner or [MVF]..... The portrayal of us ... could not be further from the truth. Our purpose has always been to safeguard the children at [MVF]; to ensure that they are nurtured and provided with the support and guidance they are entitled to, and to prevent what happen to [redacted] happening to anyone else”.

Discussion

Significance of the 2013 Regulations

69. MVF and the Commissioner refer to T’s reluctance to accept the proposal to view the information under 2013 Regulations. The Commissioner was informed about the “reluctance” by MVF. In response to T’s appeal the Commissioner says of this part of the DN:-

“.. the Commissioner notes that these comments are found in the section of his DN titled ‘Other matters’. This section follows the Commissioner’s decision and does not form part of the reasoning of his decision (Billings v Information Commissioner [2008] UKIT EA/2007/0076), therefore the Appellant’s arguments in this regard do not challenge the Commissioner’s decision”

70. We noted that in *Billings* the part of the DN entitled “other matters of concern” opened with the words “*Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:*” While this section of the DN in this Appeal is not a formal part of the DN and so cannot form part of the Appeal we concluded that this nuance might not be clear to a requester reading the DN.

71. The issue of the 2013 Regulations is something we consider to be significant. This is because the existence of the rights and obligations set out 2013 Regulations assist in our consideration of the MVF’s claim that the Request is vexatious especially on the question of “burden”.

72. T was not aware of these Regulations when the Request was made. Our conclusion from the evidence is also that initially when the Request was first received those dealing with the issue at MVF were either not aware of their existence at all or failed to realise their significance. Had things been otherwise, given what later occurred, one would have expected MVF to have made the proposal to review the information pursuant to the 2013 Regulations on receipt of the Request.

73. MVF told the Commissioner on 17 July 2023 (page 433) that

“.... given that the information is already being made available we think that its presence in this FOI request is vexatious. “

74. In the context of the state of relations between T and MVF, we do not criticise T for refusing the offer in the terms made and for making a counter proposal. However while T may have considered the terms of the proposal to be unworkable they were not in our view unexpected

or unreasonable given MVF's obligation as regards the data rights of others who may be mentioned in the documents and as provided for in reg 15(3) 2013 Regulations.

75. We were also not persuaded that MVF's offer in July 2023 to provide the information under the 2013 Regulations was simply tactical and "*an empty gesture and intentional entrapment*" as said by T.
76. As the matter was not formally part of the DN it does not call for a Decision but our view is that the chronology relating to the 2013 Regulations would not support the view that the Request was vexatious.

Burden, motive and value

77. We accept that to respond to the Request would involve MVF with a considerable amount of work unless the information is already available. The Request is wide in terms of the time scale. T accepts that on their own case regarding motive the documents requested would contain a considerable amount of material that does not engage their motive including the example given of papers relating to planning and procurement of works referred to by the Respondents.
78. It is also correct to say that based on the chronology (even in the limited form set out) and taken in the context of the existence of all other processes under way, dealing with T's various requests would have been considerably time consuming for those responsible for responding at MVF. We accept that this would have diverted staff from their main tasks at MVF and would have been burdensome.
79. However we concluded it would be problematic for MVF to assert that dealing with the Request itself was too burdensome based on (1) the existence of its obligation to provide such information under the 2013 Regulations and (2) having made the offer (in July 2023) to do so (especially as MVF would have to have carried out a data review prior to disclosing documents under the 2013 Regulations in any event).
80. We also accept the submission made by T that MVF could have, but did not seek to work with T to limit the size of the task. This might have been a sensible response by MVF to the Request especially in light of its obligations as a public authority by section 16(1) FOIA.
81. On this basis we did not conclude that the Request on its own terms could be said to be a burden. However when seen in the context of the previous course of dealings between T and MVF we concluded that it was.
82. As will often be the case, we concluded that there were several interlocking motives behind the Request. These included T's personal desire to get answers about what had happened to the child not least to assist with future schooling. T we accept was also motivated to ensure the outcome of the MKCC Report had been appropriately reported to the governors of MVF, considered and actioned with lessons learnt.
83. As regards value and/or serious purpose it was clear to us that the Request had a value to T. Having accepted that at least part of T's motivation was to ascertain what steps MVF had taken in response to the MKCC Report and noting for example point 5.3 of the MKCC Report that:-

“The Governor with responsibilities for safeguarding should monitor compliance with key policies, formally report on this at each full governing body meetings and follow up on any actions or omissions identified, on an ongoing basis”

we concluded that the Request had a “*serious purpose in terms of the objective public interest in the information sought.*”

Distress

84. It is evident that there was a breakdown of relationships. T’s contact with MVF could have been perceived as being distressing and certainly unrelenting and challenging as opposed to T’s self description as “*robust and tenacious*”.
85. Use of words and phrases by MVF such as “malicious””harassment”, “serial complainants” and by the Commissioner of “.the protracted and persistent nature of the Complainants campaign” indicate their view about the effect of the Request on MVF.
86. Whatever the nature of the personal relationships in the past we do accept that it would have been wiser for T not to make the private contact we see at page 469 especially as this came after the relationship between MVF and T had broken down. To do so at that stage was always likely to place a member of staff in a difficult position and create the potential for professional embarrassment. We consider the response from Mrs Cosgrove by WhatsApp seeking to end such channel of communication to have been appropriate and professional. T’s response was also sensible and measured (D470-471).
87. As regards the report made by MVF to the Police the Tribunal did have sight of paperwork generated by the Police and we did note it was marked “*no further action.*” We also noted that the officer who investigated the complaint from MVF said as regards T’s communication with MVF that “*.....I have read none that appear to be threatening.*”
88. However the regular, direct, robust and at times constant questions and challenges raised by T may in our view have been distressing.

Decision

89. It is for the MVF to satisfy the Tribunal that the high hurdle of Section 14(1) FOIA has been met. The UT in *Dransfield* says

“There is no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”
90. We have concluded that elements of section 14(1) FOIA test are present in particular as regards burden from the course of dealings and distress. However we are not satisfied that the section 14(1) FOIA test is met as regards whether the Request itself is a burden, T’s motive and the value and serious purpose.
91. Having considered all the circumstances and reviewed the issues holistically our Judgment is that MVF has not satisfied us that the Request was vexatious. Accordingly in our view the DN was not in accordance with the law and the Commissioner ought to have exercised his discretion differently.

92. The Appeal is allowed.

Anonymity

93. While the Tribunal must have regard for the public interest in open justice it is clear from the content of the information contained in the Bundle and the decision of the UT in *Cokaj (anonymity orders, jurisdiction and ambit) [2021] UKUT 202 (IAC)* that the anonymity Direction should continue.

Signed Tribunal Judge Heald

Date: 6 March 2024