



NCN: [2024] UKFTT 00483 (GRC)

Case Reference: EA-2023-0522

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

Heard: On the papers

**Heard on: 12 April 2024
Decision given on 23 April 2024**

Before

**TRIBUNAL JUDGE SOPHIE BUCKLEY
TRIBUNAL MEMBER DAVE SIVERS
TRIBUNAL MEMBER ANNE CHAFER**

Between

DR CHRISOSTOMOS PRODROMOU

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is allowed.

Substitute decision notice:

Organisation: Council of the University of Sussex ('The University')

Complainant: Dr Chrisostomos Prodromou

1. The University was not entitled to rely on section 14 of the Freedom of Information Act 2000 (FOIA).
2. The University shall take the following steps:

- a. Within 42 days of the date this decision is sent to the University, it shall provide Dr Prodromou with a fresh response to the request which does not rely on section 14 FOIA.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-264798-Y4N1 of 23 November 2023 which held that the Council of the University of Sussex (the University) was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA).
2. The parties and the tribunal agreed that this appeal was suitable for determining on the papers.

Request, Decision Notice, and appeal

The request and the response

3. On 19 May 2023 Dr Prodromou made the following request for information ('the Request'), as part of a wider request said to be a subject access request:

“The university policy and guidelines relating to whether a new PI [*principal investigator for a research project*] should or should [*not*] be given such support [*internally funded PhD support*] and how such decisions are taken and the rules applied to refusal of such support.

The number of refusals for PhD support in Life Sciences (biochemistry) for new PIs in the last 5 years.”

4. On 19 June 2023 the University responded to this part of the wider request as a freedom of information request, refusing to comply with the request on the grounds that it was vexatious. On 17 July 2023, it upheld its position on internal review.

The decision notice

5. In a decision notice dated 23 November 2023 the Commissioner decided that the Council was entitled to rely on section 14 FOIA.
6. The Commissioner sympathised with the personal concerns from which the complainant's continued requests stem, but stated that FOIA is not a means of recourse when the appropriate avenues for raising such concerns have been exhausted, and have failed to provide the complainant with the outcome they are seeking.
7. The Commissioner considered it highly unlikely that compliance with the request will deliver any information of value that is likely to satisfy the intentions of the complainant in this case. Nor did he find that complying would satisfy any objective public interest.

8. It was evident to the Commissioner that the complainant's previous correspondence, complaints and requests relating to their ongoing concerns have already placed a notable burden upon the University's resources. Based on the evidence provided to him, which demonstrates a clear and persistent pattern of overlapping and related requests, the Commissioner found that it was highly likely that compliance with the current request would generate further related requests or correspondence. This would place a further burden on the resources of the University, and require further public resources to be expended.
9. The Commissioner was satisfied that the University had clearly demonstrated that the request was vexatious and, therefore, it was entitled to rely on section 14(1) of FOIA to refuse the request.

Notice of appeal

10. In essence, the grounds of appeal are that the Commissioner was wrong to conclude that the request was vexatious.
11. Dr Prodromou makes the following main points:
 - 11.1. Dr Prodromou could have, but did not, report a data breach to the Commissioner which supports his argument that he is not vexatious.
 - 11.2. His requests made during a separate grievance process should not be used to refuse his current request.
 - 11.3. His previous requests would not have been necessary if the University had acted properly.
 - 11.4. The information requested is already documented internally and could easily be provided.
 - 11.5. The way the University operates its finances is of interest to the wider public and to people wanting to come to the University.

The Commissioner's response

12. The Commissioner stands by his decision notice.

Legal framework

S 14(1) Vexatious Request

13. Guidance on applying section 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC).
14. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).

15. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term ‘vexatious’ in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule.
16. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The Commissioner’s guidance that the key question is whether the request is likely to cause distress, disruption, or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request (para 26).
17. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.
18. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal’s decision.
19. As to burden, 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 the request is properly to be described as vexatious. In particular, the number, breadth, pattern, and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].
20. Ultimately the question was whether a request was a manifestly unjustified, inappropriate, or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests (paras 43 and 45).
21. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68:

“In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making

a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the public. 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. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available...”

22. Nothing in the above paragraph is inconsistent with the Upper Tribunal’s decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
23. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a ‘trump card’. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

24. The tribunal’s remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Evidence and submissions

25. We read and took account of an open bundle.

Discussion and conclusions

Section 14

26. Although the four broad issues or themes identified by the Upper Tribunal in **Dransfield** are not exhaustive and are not intended to create a formulaic checklist, they are a helpful tool to structure our discussion. In doing so, we have taken a holistic approach, and we bear in mind that we are considering whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Motive

27. In relation to motive the University said the following in the letter to the Commissioner dated 14 November 2023:

“Dr Prodromou has been open about the motive behind his requests namely that he is seeking information in connection with his ongoing grievance against the University. Dr Prodromou’s grievance has been thoroughly investigated by the University, under our published Grievance process, and disclosure of relevant information has been made to him under that process. Dr Prodromou remains unhappy with the outcome of his grievance, and his subsequent appeal, and the University considers that he is seeking to utilise Freedom of Information and Data Protection legislation to further his case.”

28. This appears to be based on the following statement in Dr Prodromou’s request for an internal review dated 22 June 2023:

“You state that I have made several requests in the last two years in a grievance against the University. The reasons for this were to defend and strengthen my grievance case against two University employees (not the University directly), who bullied me for almost a decade. I was, therefore, trying to obtain information that I needed to make my case and to provide me with the support I needed. In the end the two individuals were found guilty of bullying me.”

29. In the tribunal’s view this is clearly a reference to the previous requests related to the grievance. It is not a statement that the motive behind the request in issue in this appeal is to seek information in connection with his ongoing grievance or to further his case in relation to his unhappiness with the outcome of his grievance or his subsequent appeal.

30. To the extent that the University has interpreted this as a statement that the current request relates to the grievance, we find that this is a misinterpretation of that statement.

31. Dr Prodromou sets out the motive for the request with which we are concerned later in the same letter:

“I am currently on sick leave. I want nothing more than to get back to work. Consequently, I am in discussions with HR about what support I need in order to facilitate a return. The obvious support would be to provide me with a PhD/lab support, something I believe I had a right too, as other new employees of the University have been all given such support. I therefore wish to make that case to the HR, which would expedite actions and my return, which is far from being vexatious, but beneficial to the University (and myself) to see me return to work. Withholding this information complicates and delays my return and may eventually lead to a situation where the support I need is not provided as it relies on taking decisions without all the facts being laid open to be taken into account.”

32. We accept Mr. Prodromou’s position, as set out in his grounds of appeal, that this request, along with one previous request on 20 April 2023, do not relate to the grievance and are not directed at those accused of bullying.

33. Other than relying on Mr. Prodromou's assertion that he is seeking information in connection with his ongoing grievance, which the tribunal has found to be a misinterpretation, the University has not explained why it believes that the current request is related to the grievance.
34. In the absence of any such explanation, Dr Prodromou's motive in making the request appears to the tribunal to be that set out in the extract from the internal review request above, and unrelated to any challenge to the outcome of his grievance or its appeal.
35. For that reason, we do not consider Dr Prodromou to have had any inappropriate motive in making the request.

Burden

36. For the reasons set out above, we do not consider that the current request is related to the grievance. For that reason, although we accept that the University has had to deal with a number of requests arising out of the grievance, this is a separate matter. It is not, in our view, appropriate to take account of the previous unrelated series of requests when considering the burden of this request.
37. For that reason although there is no doubt some burden in dealing with this request taken together with the request in April 2023, there is no evidence that it carries any significant burden.

Harassment and distress

38. There is no evidence before us upon which we could make a finding of any harassment of distress.

Purpose or value

39. Whilst there does not appear to be any significant wider public interest in issue, it cannot be said that there is no reasonable foundation for thinking that the information sought would be of value to the requestor in his attempts to return to work.

Conclusions on whether the request is vexatious

40. The tribunal takes a holistic approach and the request must reach the high hurdle of vexatiousness. One of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account. Looked at as a whole, our conclusion is that this request is not part of the series of requests related to Dr Prodromou's grievance and therefore does not carry a significant burden for the University. There is no inappropriate motive or any distress or harassment. In those circumstances the lack of any real wider public interest does not render the request vexatious.
41. We conclude accordingly that the exemption in section 14 does not apply and the appeal is allowed.

Signed Sophie Buckley

Date: 23 April 2024

Judge of the First-tier Tribunal