NCN: [2024] UKFTT 00526 (GRC)

Case Reference: EA/2023/0169

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard: at York House, Leeds

Heard on: 28 February 2024
Decision given on: 24 June 2024

Before

TRIBUNAL JUDGE LIZ ORD
TRIBUNAL MEMBER PAUL TAYLOR
TRIBUNAL MEMBER MIRIAM SCOTT

Between

LIAM HARRON

Appellant

and

(1) THE INFORMATION COMMISSIONER
(2) ROTHERHAM METROPOLITAN BOROUGH COUNCIL

Respondents

Representation:

For the Appellant: In person
For the First Respondent: Not attending
For the Second Respondent: Not attending

Decision: The appeal is Allowed

Substituted Decision Notice: Rotherham Metropolitan Borough Council is not entitled to rely on section 14 of the Freedom of Information Act 2000 to withhold the requested information. Rotherham Metropolitan Borough Council is to provide a fresh response to the Appellant's request, not relying on section 14.

REASONS

Introduction

1. This is an appeal against the Information Commissioner's (IC) decision notice (DN) IC-211882-K3V2 dated 8 March 2023, which found that Rotherham Metropolitan Borough Council (RMBC) was entitled to rely on s.14 of the Freedom of Information Act 2000 (FOIA) to withhold the requested information, as the request was unjustifiably repetitive. The IC did not require RMBC to take any further steps.

2. The Appellant had requested the IC to make:

    - a written certification of RMBC's response to DN (IC-172053-T2X6 dated 13.11.22) to the High Court as a possible contempt of court;

    - an order that the Criminal Investigations Team investigates the responses by RMBC to the FOIA request that he submitted on 13.1.2022.

    These requests were struck out by the FTT on 28 July 2023.

3. References to sections within our reasons are to FOIA.

Preliminary matters

4. We gave permission for the Appellant to call T, a Child Sexual Exploitation (CSE) victim, to give evidence. We ruled that T's identity was to be anonymised and they would be identified as T in our decision and any transcript of the hearing. That part of the hearing in which T gave evidence was heard in private. A separate case management order has been made to this effect.

Background

5. The Jay Report into CSE in Rotherham (1997-2013) was published in August 2014. The Appellant was actively involved in voluntary work in the local community at the time. After speaking to CSE victims, and to endeavour to give them a voice, he co-authored a publication called "Voices of Despair, Voices of Hope", which contained victims' testimony of CSE in Rotherham. In March 2015 RMBC ordered 1,500 copies of the publication, although six months later it stopped distributing them.

6. The Appellant wanted to understand why RMBC did this and submitted a FOIA request on 16 September 2015 to RMBC seeking information about that decision. This was the first of a long line of requests made over the following years, as the Appellant sought to hold RMBC to account for the way it handled the CSE scandal in the wake of the Jay Report.

7. One particular aspect of RMBC's handling of CSE matters concerned a charity called Swinton Lock Activity Centre, which supported adult survivors of CSE, and to which RMBC referred such survivors. Jayne Senior, a RMBC Councillor, was a support worker with the charity and became its Chief Executive Officer.

8. On 1 September 2016 , whilst at the Activity Centre, Ms Senior received a call on her mobile from a reporter from the Sheffield Star, Chris Burn. He was enquiring whether she was aware that she was under investigation, as he had been told by RMBC. She had received no communication about this and was unaware of it. Ms Senior spoke with the

RMBC Chief Executive, Sharon Kemp, who confirmed a statement had been made. Ms Senior was shocked that RMBC had informed the press before informing her.

9. On 2 September 2016, the BBC issued a statement about the investigation into Swinton Lock Activity Centre.

10. On 23 August 2016, Mandy Atkinson, a press officer for RMBC, wrote an e-mail at 15.44 to Sharon Kemp and Ian Thomas (Head of Children's Services), ready to respond to an approach by the press. It read: "As discussed please see below a draft statement for the Sheffield Star, in follow up to their enquiry (pasted below). …our statement would be: **A spokesman for Rotherham Council confirmed that the council has received three complaints, adding: "An independent investigation is now underway, and as such we are unable to comment further at this stage."**

11. Sometime later, in September 2017, the Appellant first met two CSE survivors, T and E. They were presenting a petition to RMBC at a special "Reports meeting" in the council chamber seeking a meaningful consultation about the needs of adult survivors of CSE in Rotherham. T and E asked the Appellant to attend a meeting at Swinton Lock. He did, and thereafter he became actively involved in fundraising for the charity.

12. On 29 July 2020, the Appellant submitted a FOIA request reference FOI-295-2021 (**First Request**):

    Please can I have a copy of any statements made to the Press/Media related to the Media Statement from E on Thursday 30 July 2020. It will help provide clarity to the media if Sharon Kemp quickly provides an answer to E's question on Wednesday 29 July:

    "Please can you explain how a Star article published at 5 am on Friday 2.9.16 stated:

    The Star has spoken to four people who say they have raised concerns ....
    two of the three people who have made official complaints and two more
    who say they are in the process of doing so."

13. RMBC denied holding any recorded information and accordingly refused the request.

14. On 17 August 2020, the Appellant requested an internal review. RMBC responded on 14 September 2020 by informing him that, since the refusal, it had received a communication from an external source providing an e-mail that fell within scope. Information from the partially redacted email of 23.8.2016 and timed at 16.55 was disclosed to the Appellant. It read:

    "A spokesman for Rotherham Council confirmed that the council had received three complaints, adding: "An independent investigation is now underway, and as such we are unable to comment further at this stage."

15. On 8 October 2020 the Appellant complained to the IC, arguing that RMBC had either suppressed information that was held at the time of the request or had deleted the information in issue. The IC held that on balance the disclosed information had not been held at the time of the request.

16. On 11 December 2020 the Appellant made a further FOIA request reference FOI-802-20/21 (**Second Request**). This was for a copy of all communications: 1) with the external party

and any other external parties, 2) between officers and elected members that led up to the communications with the external party and any other external parties, 3) between officers and elected members, about the email dated 23.8.2016 at 16.55 between the period from 30 July 2020 to 10 December 2020.

17. The external party was Chris Burn (the reporter from the Sheffield Star).

18. RMBC responded on 7 January 2021 by disclosing two redacted email chains

19. On 11 January 2021 the Appellant made another request reference FOI-895-20/21 (**Third Request**). This was for a copy of all the communications that led to Mandy Atkinson (Press officer for RMBC) sending Chris Burn her email of 23.8.2016. He suggested the timeframe must almost certainly be very narrow – possibly as narrow as 22 to 23 August 2016.

20. RMBC responded on 5 February 2021 by disclosing one redacted email also dated 23.8.2016, but timed at 15.44. It was an internal email to Sharon Kemp and Ian Thomas (Copying in Shokat Lal and Leona Marshall) by which Mandy Atkinson sought internal approval for the Press Statement. It set out the details of an approach made by the Star and summarised the allegations against Jayne Senior and Swinton Lock.

21. The Appellant asked for an internal review saying that there were very likely to be other documents related to his request. The review confirmed that only the one email was returned by the search.

22. On 5 January 2022, the Appellant submitted another request reference FOI-839-21/22 (**Fourth Request**). This was for disclosure of the search terms used by RMBC when preparing its response to the First Request (FOIA 295-2021), and asking whether the statement given in the subsequent internal review decision of 14 September 2020 that "the Council [had] been contacted by an external party" was "true".

23. RMBC's response of 31 January 2022 stated that there was no new information to disclose in response to this request and its internal review of 14 March 2022 confirmed that response.

24. On 13 January 2022 the Appellant made another request reference FOI-883-21/22 (**Fifth Request**). This was for "a copy of the **communications** with the Leader of [RMBC], Chris Read, **about statements to the media** connected to the email sent to the Chief Executive of RMBC (Sharon Kemp) at 3.44pm on 23.8.2016."

25. RMBC responded on 7 February 2022 saying a search had been done for emails exchanged between Sharon Kemp and Chris Read between 20 August and 27 August 2016 and no relevant documents were found. The Appellant requested a review and queried the search terms. RMBC's internal review confirmed their original decision.

26. The Appellant complained to the IC and in the DN of 23 November 2022 (reference 172053-T2X6) the IC found that "in addition to using wider search terms within the email system, [RMBC] should also have made checks to see if it had any network files relevant to the issue involved". The IC therefore required RMBC to issue a fresh response.

27. On 22 December 2022, RMBC issued its fresh response refusing to carry out a further search on the basis the request was a repeat and vexatious, pursuant to section 14(1). In its refusal letter it said it had gone "above and beyond what was required". It noted that the request centred around "…statements to the media connected to the email sent to the Chief

Executive of RMBC (Sharon Kemp) at 3.44pm on 23.8.16…". It stated that the media contact (Chris Burn) was already in the public domain, and the subject matter of media contact, press releases and specific contact with Chris Burn around CSE and associated subject matter had already been disclosed. Therefore, in its view, the request was "still hinged on looking for information relating to substantially similar requests that [had] already been concluded", and it referred the Appellant to the First, Second, Third and Fourth Requests.

28. The Appellant complained to the IC, who decided that RMBC was entitled to rely on s.14. The DN is the subject of this appeal.

Observations from Judges

29. Some aspects of the Appellant's wider FOIA requests were considered by the First Tier Tribunal and the Upper Tribunal. Their observations are relevant in considering the context of the Appellant's request.

30. In the First Tier Tribunal (Hearing 2 May 2019) – Appeal reference EA/2018/0086, Judge Holmes observed (§101) that:

§101. Further, the Tribunal would like to address the oft-repeated assertion by RMBC that the Appellant's requests were "complex". They were not. They were often no more than a paragraph. … Any complexity that has arisen, it seems to the Tribunal, has arisen because of the piecemeal and unsatisfactory manner in which information has been elicited from RMBC. This has inevitably led to a train of further enquiry. RMBC can hardly complain when the Appellant raises a further request because a piece of information that it has disclosed suggests that there may be more information that has not been disclosed.

31. In the Upper Tribunal (Hearing on 19 May 2021 – Appeal references EJ/2021/0003 &0009, Judge O'Connor observed (§§ 33 & 35) that:

§33. Given what is said above, I accept that on numerous occasions in the past RMBC have failed to disclose information that it ought to have disclosed. That such errors came to light has in large part been due to the appellant's diligence and persistence in pursuing information. I do not accept, however, that the applicant has demonstrated to the required standard that RMBC have acted dishonestly in this regard in the past.

§35. Despite the evidence produced by the applicant of circumstances in which RMBC have failed to disclose information in the past and the acceptance by Mr Fitzsimmons of such occurrences…

32. In the Upper Tribunal, (Hearing on 9 March 2022 - Appeal No. UA-2022-000045-GIA), Judge Wikeley observed (§§ 8-10 & 34) that:

§8. At this juncture it should be noted that several months later, on 5 February 2021, and following two further FOIA requests, RMBC disclosed a further e-mail to Mr Harron. Also dated 23 August 2016, but timed earlier in the afternoon at 15:44, this further e-mail was a much longer message. This e-mail was sent by the Press Officer concerned to the Chief Executive and copied to other officers of Rotherham MBC (hence I call this 'the Press Officer's internal e-mail'. It also included the full text of the enquiry from the Sheffield Star. It began as follows:

(Please ignore my text message if you get this first!)

As discussed please see below a draft statement for the Sheffield Star, in follow up to their enquiry (pasted below).

§9. The e-mail continued by giving some context to the newspaper's enquiry and asking for Council officers' approval of the one sentence press statement quoted at paragraph 5 above.

§10. In short, the Press Officer's internal e-mail was the precursor to the Press Officer's external e-mail sent later the same afternoon after approval had been sought and obtained. The latter e-mail (but not the former e-mail) was produced by Rotherham MBC in response to Mr Harron's request of 29 July 2020, but only on internal review. The former was only produced in February 2021, in response to a different and subsequent enquiry.

§34 …Mr Harron's point about the Press Officer's internal email. His argument, in a nutshell, was that RMBC must have held other information within scope at the time of his request as the Council later produced (following two further FOIA requests) the Press Officer's internal e-mail. There is no suggestion that this e-mail was provided after the event to RMBC by some outside third party. Moreover, that seems most unlikely, given that the addressee was the Chief Executive and those who were copied in were all Council officers. …

Law

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

General right of access to information

34. There is a general duty to disclose information.

35. The relevant parts of section 1 FOIA provide:

(1) Any person making a request for information to a public authority is entitled –

(a) To be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) If that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) […]

(4) The information –

(a) In respect of which the applicant is to be informed under subsection (1)(a), or
(b) Which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, […]

Section 14 – vexatious or repeated requests

36.

(1) s.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.

Caselaw

37. The Upper Tribunal and the Court of Appeal provided guidance on applying s.14(1) in the case of **Dransfield** [2012] UKUT 440 (AAC) and [2015] EWCA Civ 454. The principles were summarised by the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (ACC) as follows.

(i) The Upper Tribunal in Dransfield

38. §22. The Upper Tribunal held that the purpose of s.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" [paragraph 72 of the CA judgment).

39. §23. The test under s.14 is whether the request is vexatious not whether the requester if vexatious [paragraph 19]. The term "vexatious" in s.14 should carry its ordinary, natural meaning within the particular statutory context of FOIA [paragraph 24]. As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. 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 [paragraph 25]. The IC'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 [paragraph 26].

40. §24. Four broad issues or themes were identified by Upper Tribunal Judge Wikeley 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 not intended to create a formulaic checklist [paragraph 28]. 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.

41. §25. 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 [paragraph 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. However if the public authority has failed to deal with those earlier requests appropriately, that may well militate against holding the most recent request to be vexatious [paragraph 30]…

42. §26. 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]. The Upper Tribunal considered the extensive course of dealings between Mr Dransfield and Devon County Council which, in the relevant period, comprised some 40 letters and several FOIA requests when coming to the conclusion that his request was vexatious [see paragraphs 67-70].

43. §27. 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 [paragraphs 43 and 45].

(ii) The Court of Appeal in Dransfield

44. §28. There was no challenge to the guidance given by the Upper Tribunal in the Court of Appeal. …

45. §29. 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 …"

46. §30. 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.

Issues

47. Taking the four broad themes from Dransfield, the issues for the tribunal are:

> Whether in all the circumstances the request was vexatious, having particular regard to the following:
>
> - What is the value or serious purpose of the request?
> - What is the Appellant's motive?
> - What would the burden on RMBC and its staff be?
> - Has there been any harassment of or distress to RMBC staff?

Submissions

Appellant's submissions

48. In summary, the Appellant does not accept that his request is a repeat, and he considers that this suggestion reflects wilful concealment on the part of RMBC. He says that RMBC are not transparent because they find reasons not to disclose. They have not been compliant with FOIA and they are still trying to avoid answering questions.

49. Whilst there were a lot of requests, they were about a variety of things. Not all of them were FOIA requests, although RMBC chose to deal with them as such. The Appellant had an on-going dialogue with Chris Read and some of the questions were just part of that interaction.

50. There were so may requests because RMBC failed to provide all the information and it became apparent when they disclosed a piece of information, that there was more information to disclose.

51. Swinton Lock almost went bankrupt because of the allegations against it and against Ms Senior. This caused considerable stress to staff and CSE victims. The survivor, T, and the Appellant had to fundraise to help it carry on. By knowing about all communications, the Appellant and others, including the CSE victims, would learn more about what RMBC knew, than by looking only at a date range.

52. The IC's decision was that RMBC had failed to provide an adequate response to the request, and there were issues with the search. RMBC had changed the search parameters, narrowing them down to just emails (not paper documents) and imposing the date range of 20.8.16 - 27.8.16, which stopped just before the critical correspondence of 1.9.2016 about the press investigation. However, rather than re-doing the search, RMBC simply said the request was vexatious.

RMBC submissions

53. Putting the matter into context, the Appellant has made more than 50 FOIA Requests to RMBC over the past 8 years, requesting 24 internal reviews by RMBC of its responses, and referring 13 internal review outcomes to the IC. Furthermore, the Appellant's own evidence

shows that, over a seven-month period starting in October 2022, he brought 5 FTT appeals and 2 UT appeals in relation to FOIA requests submitted to RMBC.

54. This is significantly greater than the level of activity in Dransfield, where the requester had submitted 10 FOIA requests over a 4-year period with accompanying correspondence, and where the UT concluded that the request in issue was vexatious. (Dransfield, CA at [10]).

55. The 2nd Respondent produced a table of 53 requests made by the Appellant.

56. The five requests in relation to the Swinton Lock press briefing were made over an 18 month period between July 2020 and January 2022. They followed three earlier requests in relation to the Swinton Lock investigation.

57. The Fifth Request was an attempt by the Appellant to test whether RMBC's response to the Third Request was accurate and complete. It mirrors the Fourth Request which tried to verify whether the response to the First Request was accurate and "true".

58. The Fifth Request is part of a campaign of FOIA requests against RMBC over 8 years. The aim of that campaign has been to highlight perceived failings in previous FOIA responses from RMBC, and to bring about public condemnation of RMBC.

59. The Fifth Request sought a subset of the information the Appellant had requested in the Third Request. It represented an attempt to test or attack RMBC's response to the Third Request, as well as an attempt to engage the Leader of RMBC in the Appellant's campaign, thereby presumably to garner attention.

60. The tone of the Appellant's communications demonstrates the vexatiousness of his campaign.

61. In the circumstances, the Fifth Request did not seek the disclosure of important information which ought to be made publicly available. Instead it represented a misuse of the FOIA procedure without proper justification or "reasonable foundation". Such a request is vexatious within the meaning of the UT and Court of Appeal judgments in the Dransfield case.

IC's submissions

62. The IC relies on his DN, which in turn sets out the factual background, scope of the IC's remit, law and parties submissions, concluding that the request was unjustifiably repetitive.

Discussion and conclusion

63. Referring back to Arden LJ in Dransfield, we note 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."

Value

64. The overriding theme of serious purpose is the handling of the CSE by RMBC and specifically the Swinton Lock/Jayne Senior complaints. What the leader of the RMBC knew and what he did with that information is relevant and intrinsic to understanding what happened. Having a full picture is important, rather than just partial disclosure from a certain date range. Each request dealt with a different aspect of the theme as and when the Appellant realised there was more information to be had.

65. The Appellant believes there has been a cover up of information and he has demonstrated to judges in both the First Tier Tribunal and Upper Tribunal that RMBC failed to disclose information that it ought to have disclosed on numerous occasions. There is value in RMBC being transparent with what information it holds, especially after its previous failures.

66. With respect to the Fifth Request, after considering the narrow search that RMBC had made, the IC initially found that its response was inadequate and directed it to issue a fresh response. RMBC had changed the search parameters, narrowing them down to emails only and imposing a narrow date range of 20.8.16 - 27.8.16, which stopped just before the critical press investigation correspondence of 1.9.16 . However, instead of broadening the search, RMBC issued a response saying the Appellant's request was vexatious. There is value in re-running the search.

67. In response to questions from the IC about impact and why it was disproportionate to the inherent purpose or value of the request, RMBC said it was applying s.14 to prevent and mitigate detrimental impacts to officer capacity in its tasks and duties to other customers and the wider general public. To continue to divert resources and public funds was not in the wider public interest. It said it had fully complied with related and substantially similar requests.

68. However, with respect to the two emails of 23.8.2016, it took several requests and substantial effort on the part of the Appellant to get them disclosed. Had RMBC provided the relevant information in the first instance, it would have been a simpler and less resourceful task. We query whether RMBC's response to the IC was reasonable under the circumstances.

69. When the witness T gave oral evidence, we questioned T on the value to her of the information. Her reply was "I want to get to the truth. The truth is important to me. RMBC has never answered any questions."

70. We also note the Appellant's sense of obligation to the CSE victims. That is value to him.

71. There is merit in finding the answers. It helps the victims move on.

Motivation

72. RMBC submit that the Appellant was misusing the procedure by conducting a campaign against it and seeking to bring about public condemnation. It seems to be focussing more on the Appellant rather than on the requests made. We do not accept RMBC's submission.

There is no evidence that the Appellant's motive was to attack RMBC. He simply wants answers to questions, which is very important to him. He just wants the truth for himself and for T and other CSE victims, to enable them to move on.

73. The Appellant's evidence was that there is a lack of understanding over how Chris Read got to know about the complaints and what discussions and correspondence there were relating to the press. He and others want to find out how Chris Read got to know. The Appellant's view is that it is inconceivable that the first Chris Read heard about it was from the press, and it is likely there was some communication. In the context of RMBC's previous failures to disclose documents, and the Appellant's suspicion that they have been dishonest, he is concerned that there is an attempt to conceal information.

Burden

74. RMBC have said little about this in its submissions to this appeal, although we have taken account of their response to the Appellant's complaint to the IC, set out in the DN, which refers to diversion of resources, and impact on officers and the public purse. Nonetheless, they have not quantified or evidenced what the burden is, for example, number of hours. RMBC are not a small public authority without resources.

75. The Table records that the Appellant made more than 50 FOIA requests to RMBC over an 8 year period. However, some of the questions were part of an ongoing dialogue with Chris Read (which he personally had encouraged) and not FOIA requests, although RMBC chose to treat them as such.

76. The Appellant asked questions about a variety of things, and they are narrow, simple requests that should not require a lot of resources to respond to. Whilst, he made some repeat requests, this was because RMBC failed to disclose the information in the first place. He did not get answers to his questions. It is not that he got answers but did not like the responses.

77. RMBC have been inconsistent, refusing requests, only later to disclose the information; the emails of August 2016 being an example, which they previously said they didn't have. As Judge Holmes remarked, RMBC provided information in a "piecemeal and unsatisfactory manner", and it "… can hardly complain when the Appellant raises a further request because a piece of information that it has disclosed suggests that there may be more information that has not been disclosed.

Harassment/distress to staff

78. There has been no evidence or submissions that there has been any harassment or distress to staff.

Other matters

79. There is a lot of public interest in the CSE and it is against that background that we have weighed the principles.

80. The IC's response is somewhat thin on the ground. It does not go through the Dransfield principles. Neither the IC nor RMBC have said anything about value or purpose in their submissions.

81. We have considered whether there is vexatiousness by drift. We have had no submissions on this. The Appellant's requests have all been concerned with CSE. At first he had a general involvement with the "Voices" publication, and then he met T and became more focused on helping her as a survivor. The charity was part of her support. So he went from the more general to the specific. In our view, there is no vexatiousness by drift.

Conclusion

82. The Appellant's request has a reasonable foundation in that it is of significant value to the Appellant and CSE victims. His motives for making the request were genuine, in that he simply wants answers to questions, which have been outstanding for such a long time. This would help victims move on. RMBC has handled the Appellant's requests in a piecemeal and unsatisfactory manner, thereby creating work for themselves when the Appellant has pursued them further. Under these circumstances, it is disingenuous of them to suggest that the requests are a burden. There is no suggestion that the requests have caused distress or harassment to RMBC staff.

83. Accordingly, for the reasons given, we find that the Appellant's request was not vexatious and that RMBC is not entitled to rely on s.14.

Signed: Judge Liz Ord Date: 10 June 2024

Promulgated on: 24 June 2024