



Neutral citation number: [2024] UKFTT 00572 (GRC)

Appeal Number: FT/EA/2024/0048

Decision given on: 1 July 2024

**First-Tier Tribunal
(General Regulatory Chamber)
Information Rights**

Between:

DIMITRI SHVOROB

Appellant:

and

THE INFORMATION COMMISSIONER

Respondent:

Date and type of Hearing: 27 June 2024 on the papers.

With: Brian Kennedy KC, & Specialist panel members Anne Chafer & Kerry Pepperell.

Date of Decision: 28 June 2024.

Result: The Tribunal dismiss the Appeal.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA"). The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("DN") dated 22 March 2022 (reference IC- 257156 – S9Q8), which is a matter of public record.
2. Details of the background to this appeal, the Appellant's request for information and the Commissioner's decision are set out in the DN and not repeated here, other than to state that, the appeal concerns a request to London Borough of Bexley (the Council) for information relating to Bexley Constitution and Codes of Governance.
3. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely upon section 14(1) of FOIA to refuse it.
4. On 24 June 2023, the Appellant submitted three separate requests to the Council and requested information in the following terms (For ease, the Commissioner has numbered the requests to align with the Council's response):

"(1). Page 56 of "Codes and Protocols", Part 5 of Bexley Constitution and Codes of Governance, says: *"Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted"*.

Can you please provide the full list of reasons why a proposed petition could be deemed "inappropriate"?

(2). Page 56 of "Codes and Protocols", Part 5 of "Bexley Constitution and Codes of Governance", says:

"If a petition has more than 2,000 signatures, this would be sufficient to trigger a debate at a Full Council meeting.

This means that the issue raised in the petition will be discussed at a meeting which all Councillors can attend". (Italics added).

Can you please confirm that "full council meeting" refers to a meeting of the full council. ("A meeting which all councillors can attend" is a broader concept).

(3) Page 56 of "Codes and Protocols", Part 5 of "Bexley Constitution and Codes of Governance", says (emphasis added);

"If a petition has more than 2,000 signatures, this WOULD BE SUFFICIENT to trigger a debate at a Full Council meeting".

Page 3 of "London Borough of Bexley Petitions Scheme" document says (emphasis added):

"If a petition contains more than 2000 signatures it MAY be debated by the Full Council unless it is a petition asking for a Council officer to give evidence at a public meeting".

Can you please confirm that a petition with over 2,000 signatures not deemed "vexatious, abusive or otherwise inappropriate" (cf. a related question about what "inappropriate" is) - will be debated at a full council meeting if requested by the organiser or provide the full list of reasons why it could not be debated at a full council meeting."

5. A response was provided on 14 July 2023 in which the three requests were responded to as one and were refused under section 14(1) of FOIA.
6. Upon receiving this response, the Appellant asked the Council to conduct an internal review on 14 July 2023. After contact by the Commissioner, the Council provided its internal review response on 26 October 2023 and maintained its original position.
7. The Appellant contacted the Commissioner on 12 September 2023 to complain about the way their request for information had been handled.
8. The Appellant stated that the "*bundling of responses*" to three separate requests was "confusing". However, the Commissioner considers that as the requests were all submitted on the same day and were all related to page 56 of 'Codes and Protocols', the Council was entitled to respond to them as one request.
9. The Commissioner has therefore considered the Council's handling of the request, in particular whether it was entitled to refuse the request on the grounds that it was vexatious.

The Relevant Law:

10. S1. FOIA – Provides a general right of access to information held by public authorities:

(1) Section 1(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.

11. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.

12. The term ‘*vexatious*’ is not defined in FOIA. The Commissioner’s guidance suggests that if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.

13. FOIA gives individuals the right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.

14. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “*vexatious*” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. *Dransfield* also considered four broad issues at paragraph [45]:

“(1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.”

The Appellants case:

15. The Appellant stated that the Petitions Scheme is a *“contentious subject for the Council”*, and that the rules are sometimes *“vague and contradictory”*. Therefore, the Appellant believes there is a public interest in forcing the Council to clarify its rules.
16. The Appellant further explained that the Council’s references to a previous FOI request and a Local Government complaint are a *“red herring”*, and that the information has not been requested before.

The Councils’ case:

17. In its initial response, the Council informed the Appellant that it has deemed their request to be vexatious as it relates to: *“seeking information regarding the Council’s Petition Scheme”*, which the Council has previously responded to.
18. The Council further explained that the requests are an attempt to reopen an issue which has *“already been comprehensively addressed”* by the Council, the Local Government and Social Care Ombudsman and the Information Commissioner.
19. In highlighting administrative burden, the Council explained that *“an inordinate and disproportionate”* amount of Council Officer time has been spent dealing with the requests, and that it can no longer *“justify the time and expense”*, in corresponding further regarding requests in relation to the Petition Scheme. It further explained that the repeated requests are causing undue pressure on service delivery.
20. With regard to the motive of the requester, the Council stated that the Appellant is dissatisfied with the Council’s Petition Scheme, and that the *“FOI procedure is being utilised to address dissatisfaction with the Scheme”*, which the Council believes is inappropriate and contrary to the purpose of FOIA.
21. Looking at the value and purpose of the request, the Appellant argues that they have repeatedly raised concerns about the *“ambiguity of the Council’s Petition Scheme rules”*. The Council states that the initial request was of benefit to the complainant in seeking clarification regarding the Petition Scheme. However, it argues that the complainant’s ongoing requests are driven by their belief that the Petition Scheme be revised, to address their aim that a petition should be considered at full Council.
22. In highlighting the issue of harassment and distress, the Council explained that the repeated requests are designed to cause *“disruption or annoyance or harass the Council by submitting requests for further information which a reasonable person would consider too futile”*.

The Decision Notice:

23. In reaching a decision in this case, the Commissioner has balanced the purpose and value of the request against the detrimental effect on the public authority.
24. As per the Commissioner's guidance on section 14(1) of FOIA, consideration of the background and history of the request can be taken into account. Therefore, the Commissioner is mindful that the Appellant has submitted numerous requests over the past 18 months, five of which relate to the Petition Scheme and signatures and have been submitted over the past eight months.
25. Furthermore, as the Commissioner's guidance states, if the request does have a value or serious purpose, there may be factors that reduce that value. For example, if a matter has already been investigated and/or if the matter has been subject of some form of independent scrutiny.
26. The Commissioner would, however reminded the Council that it must keep in mind its underlying commitment to transparency and openness and consider each request on its own merit. Furthermore, he is keen to stress that it is the request itself that is vexatious and not the person making it.
27. In the circumstances of the case, and on the basis of evidence provided, the Commissioner is satisfied that the Council was entitled to consider that the request was vexatious and therefore rely on section 14(1) of FOIA to refuse it.

Other matters:

28. There is no obligation under FOIA for a public authority to provide an internal review. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
29. In this case, the Council took more than 75 working days to respond to the internal review. The Commissioner reminded the Council of the Code of Practice and urged it to respond in a timely manner.

The Burden:

30. 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.
31. As to the *number*, 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. Volume, alone, however, may not be decisive. Furthermore, if the public authority in question has consistently failed to deal appropriately with earlier requests, that may well militate against a finding that the new request is vexatious.
32. As to their *breadth*, a single well-focussed request for information is, all other things being equal, less likely to run the risk of being found to be vexatious. However, this does not mean that a single but very wide-ranging request is necessarily more likely to be found to be vexatious – it may well be more appropriate for the public authority, faced with such a request, to provide advice or guidance on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked.
33. As regards the *pattern*, a requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request.
34. Likewise, as to *duration*, the period of time over which requests are made may be significant in at least two ways. First, a long history of requests e.g. over several years may make what would otherwise be, taken in isolation, an entirely reasonable request, wholly unreasonable in the light of the anticipated present and future burden on the public authority. Second, given the problems of storage, public authorities necessarily have document retention and destruction policies in place, and it may be unreasonable to expect them to e.g. identify whether particular documents are still held which may or may not have been in force at some perhaps now relatively distant date in the past.
35. In this case the Tribunal note that, during investigations, the Commissioner considered that the Council provided sufficient information in its internal review and the Commissioner considered that as the requests were all submitted on the same day and were all related to page 56 of ‘Codes and Protocols’, the Council was entitled to respond to them as one request.

36. We agree that the Council has dealt with an undoubtedly burdensome request with some patience, diligence and courtesy culminating in the decision to rely upon s.14(1) FOIA which was in our view justifiably made (see below).

The Motive:

37. Second, 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”. There is, for example, no need to provide any reason for making a request for information under section 1; nor are there any qualifying requirements as regards either the identity or personal characteristics of the requester. However, the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request. What may seem an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority. Thus, vexatiousness may be found where an original and entirely reasonable request leads on to a series of further requests on allied topics, where such subsequent requests become increasingly distant from the requester’s starting point (see below).

38. In this context it is important to bear in mind that the right to information under FOIA is a significant but not an overriding right in a modern democratic society. As has already been noted, it is a right that is qualified or circumscribed in various ways. Those restrictions reflect other countervailing public interests, including the importance of an efficient system of public administration. Thus section 14 serves the legitimate public interest in public authorities not being exposed to irresponsible use of FOIA, especially by repeat requesters whose inquiries may represent an undue and disproportionate burden on scarce public resources. In that context it must be relevant to consider the underlying motive for the request. As the FTT observed in *Independent Police Complaints Commission v Information Commissioner* (EA/2011/0222) (at paragraph 19):

“Abuse of the right to information under s.1 of FOIA is the most dangerous enemy of the continuing exercise of that right for legitimate purposes. It damages FOIA and the vital rights that it enacted in the public perception. In our view, the ICO and the Tribunal should have no hesitation in upholding public authorities which invoke s.14(1) in answer to grossly excessive or ill-intentioned requests and should not feel bound to do so only where a sufficient number of tests on a checklist are satisfied.”

39. This approach should not be seen as giving licence to public authorities to use section 14 as a means of forestalling genuine attempts to hold them to account. For example, an investigative journalist may make a single request which produces certain information, the contents of which in turn prompts a further request for more

information, and so on. Such a series of requests may be reasonable when viewed both individually and in context as a group. The same may also be true of a request made by a private citizen involved in a long-running dispute or exchanges with the public authority. As the IC's Guidance for public authorities helpfully advises (p.3).

“Many previous cases of vexatious requests have been in the context of a longstanding grievance or dispute. However, a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily. You must always look at the effect of the particular request and consider the questions [the five factors] set out below.”

40. However, in other circumstances a series of requests may suggest that later requests have become disproportionate to whatever the original inquiry was. This phenomenon has been described as “spread”. The term now often used is “vexatiousness by drift” where the Appellant whose conduct becomes wholly disproportionate to their original aim. However, “drift” is not a prerequisite to a finding that section 14 applies, as by definition it may only arise where there is a previous course of dealings. A single well-defined and narrow request put in extremely offensive terms, or which is expressly made purely to cause annoyance or disruption to the public authority rather than out of a genuine desire for the information requested, may be vexatious in the complete absence of any ‘drift’.
41. In this case while the motive was reasonable the email exchanges clearly indicate that the underlying purpose of the request from the Appellant was dealt with by the Council.

The value or serious purpose:

42. Third, and usually bound up to some degree with the question of the requester's motive, is the inherent value of the request. Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases, the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been

exhaustively considered and addressed, then subsequent requests can become disproportionate to whatever the original inquiry was. See the references to “spread” or “vexatiousness by drift” above. In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident.

43. The Council in this case recognised the value and serious purpose of the request and took appropriate action. However, this was not enough for the Appellant who did persist in an obsessive manner to the extent that in our view it became inappropriate and disproportionate. The Appellant attempted to draw the Council staff into debate or arguments about the policy. This is not the function or purpose of FOIA. The Council staff provided the information, FOIA does not require Council staff to justify or enter into debate about such matters as Council policy.

Causing harassment of, or distress to staff:

44. Fourth, 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 unacceptable language). As noted previously, however, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within section 14.
45. On examination of the exchanges and evidence before us we are satisfied that the staff at Council who were required to deal with this request were caused harassment to an unacceptable degree. Examples include (with our emphasis in bold type);
- (a) The wording of the request asking to be defined is in the first request of 27 June 2023 (although his emails were sent on 24 June 2023) where the request refers to the sentence *'Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted'* The request asks for **a full list of reasons** (why a proposed petition could be deemed inappropriate).
- (b) The second request is asking the Council to confirm that a; ***"Full council meeting refers to a meeting of the full council. ("A meeting which all councillors can attend is a broader concept)"***. This in our view is not an appropriate matter Council staff can be expected to enter into debate upon in a FOIA request.

- (c) The Appellant argues that the Petitions Scheme is a *“contentious subject for the Council”*, and that the rules are sometimes *“vague and contradictory”*. Therefore, the Appellant believes there is a public interest in forcing the Council to clarify its rules. That may be so but a request to Council staff for opinion or justification for a Council Policy is not the purpose or appropriate use of FOIA.
- (d) In highlighting administrative burden, the Council explained that *“an inordinate and disproportionate”* amount of Council Officer time has been spent dealing with the requests, and that it can no longer *“justify the time and expense”*, in corresponding further **regarding requests in relation to the Petition Scheme**. It further explained that the repeated requests are causing undue pressure on service delivery. The Tribunal accept that this is an unacceptable and disproportionate burden on Council staff.
- (e) The Appellant charges the Council with *“ambiguity of the Council’s Petition Scheme rules”*. The Council states that the initial request was of benefit to the Appellant in seeking clarification regarding the Petition Scheme. However, it argues that **the Appellant’s ongoing requests are driven by their belief that the Petition Scheme be revised, to address their aim that a petition should be considered at full Council**. This is not the function of Council staff responding to a FOIA request.

46. The Tribunal accept that this form of challenge is beyond the scope of a proportionate request under FOIA and amounts to a vexatious request. As the interpretation of a vexatious request has developed over the years the Tribunal and higher courts take a holistic view of all the circumstances in a case to arrive at what admittedly can be a difficult decision. Proportionality is key in this sense and on the evidence and submissions before us, the Tribunal take the view that the Appellant’s expectations of the Council staff in relation to the request (or requests) in issue was disproportionate, manifestly unjustified, inappropriate and an improper use of a formal procedure or the use of FOIA.

47. Accordingly, we also accept the reasoning in the DN and find no error in law nor in the exercise of his discretion by the Commissioner therein.

48. For all the above reasons and in all the circumstances of this case we must dismiss the appeal.

Brian Kennedy KC

28 June 2024.

Promulgated on: 1 July 2024

