



Case Reference: EA-2023-0178

Neutral Citation Number: [2024] UKFTT 00779 (GRC)

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

Heard: By Cloud Video Platform

Heard on: 16 July 2024

Panel Deliberations on: 26 July 2024

Decision given on: 04 September 2024

Before

**JUDGE SOPHIE BUCKLEY
MEMBER KERRY PEPPERELL
MEMBER NAOMI MATTHEWS**

Between

G BOSWELL

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) OFFICE FOR NATIONAL STATISTICS**

Respondents

Representation:

For the Appellant: In person

For the First Respondent: Did not appear

For the Second Respondent: Cecilia Ivimy (Counsel)

Decision: The appeal is allowed

Substitute decision notice: IC-207287-P1Y3

Organisation: Office for National Statistics

Complainant: Mr. Gregory Joseph Boswell

1. The request for information made by the complainant on 25 May 2022 was not vexatious. The public authority was not entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA) to refuse to comply with the request.
2. The Commissioner's decision notice dated 28 February 2023 as it relates to the requests made by the complainant on 27 May 2022 and 1 June 2022 was not appealed and is undisturbed.
3. The tribunal requires the public authority to take the following step:

Issue to the complainant a fresh response to the request made on 25 May 2022 which does not rely on section 14(1) FOIA.
4. The public authority must take this step within 35 calendar days of the date of this decision.
5. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-207287-P1Y3 of 28 February 2023 which held that the Office for National Statistics (ONS) was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA).
2. The panel apologises for the delay in promulgation which was due to pre-booked annual leave of two of the members of the panel.

The scope of the appeal

3. The decision notice dealt with three requests for information, but the appeal relates only to the request on 25 May 2022 (the Request). This is explicitly set out in the notice of appeal ('I will therefore limit this appeal to DPR-000188 only...'). That is the basis on which the ONS' response was drafted and the basis on which ONS prepared the appeal.
4. In his reply to the ONS' response, Mr. Boswell stated that it was 'subtly misleading' to states that he does not challenge the decision with respect to the other two requests. He clarified the position as follows:

"I certainly do challenge the categorisation of DPRs 189 and 190 as "vexatious" on the grounds that they should never have been considered under FOI law in the first place. I believe the ONS was misapplying FOI law in order to obstruct these requests.

2. It is a matter of record that when DPRs 189 and 190 were previously considered under FOI law, as part of a nine-point request submitted on 25 February 2022, I objected to the notion of their vexatiousness. See, for instance, questions 6-9 in my email sent to Legal Service on 15 April 2022, and page 5 of my initial appeal to the ICO.

The Tribunal should understand, therefore, that:

A. If it were up to me, I would have the Tribunal focus on DPR-188 in isolation, however...

B. ... if the Tribunal agrees with the ONS and the ICO that DPRs 188-190 should be considered together, I absolutely do dispute their vexatiousness."

5. My interpretation of this in advance of the hearing was that
 - 5.1. the appeal was brought against the decision on the Request only and therefore the tribunal was only required to consider whether the Commissioner was right to conclude that the Request was vexatious.
 - 5.2. if the tribunal agreed with the ONS's submission that the other two requests should be taken into account for the purposes of deciding if the Request was vexatious, Mr. Boswell does not agree that the two other requests should be categorised as vexatious *for that purpose*.

6. This was the understanding of the ONS and this was the basis on which their skeleton argument and witness evidence was prepared.
7. I raised this with Mr. Boswell at the start of the appeal hearing. He stated that he did wish to challenge the two other decisions. Given the clear wording in the notice of appeal, in effect this was an application to amend the notice of appeal. Ms Ivimy objected.
8. I refused to permit Mr. Boswell to appeal the decision notice in relation to the other requests at this late stage, given the fact that the application to amend was made on the day of the hearing, orally, only in response to my questions and, in effect, only by implication.
9. I took into account the time it has taken to reach a final hearing, the basis on which the other parties had responded to and prepared the case and the amount of tribunal time that has been spent reading the 1200-page bundle, over 100 pages of supplementary evidence and listening to audio recordings and watching videos in preparation for the hearing.
10. I took into account the balance of prejudice, in particular the fact that Mr. Boswell would be deprived of the chance of formally challenging the decision notice in relation to the other requests and the fact that he was a litigant in person. Overall, I concluded that it was not in the interests of justice and in accordance with the overriding objective to change the direction of the appeal at such a late stage.
11. Mr. Boswell asserts in his grounds of appeal that the other two requests should have been dealt with as SARs. This is not a matter that the tribunal has jurisdiction to determine for three reasons:
 - 11.1. The appeal relates only to the Request.
 - 11.2. An assertion by a requestor that a request should have been dealt with under data protection legislation, is not a matter that is within the tribunal's jurisdiction. To the extent that an individual considers that an organisation has refused to provide his personal data, they can submit a data protection complaint to the Commissioner. The tribunal does not have jurisdiction to deal with substantive appeals from the Commissioner's decisions in relation to data protection complaints.
 - 11.3. The tribunal only has jurisdiction to determine the question of whether the requested information is the requestor's personal data if

the public authority refuses to provide the information under section 40(1) FOIA on the basis that it consists of the requestor's personal data and the Commissioner issues a decision notice upholding the reliance on that exemption. That is not the case here.

Employment tribunal proceedings

12. There are ongoing employment tribunal proceedings brought by Mr. Boswell against the ONS which arise out of the same factual background as this appeal. The factual matters set out under 'background' below represent the factual context as this tribunal understands it based on the documentation in the bundle. They are not findings of fact made on the balance of probabilities after hearing evidence from relevant witnesses of fact. They will not bind any employment tribunal, which it will make its own findings of fact based on the evidence before it.

Background to the appeal

13. This appeal arises against the background of a 'Weekly Message' company-wide email sent by ONS Deputy National Statistician Iain Bell on 8 June 2020, which used certain phrases commonly used in Critical Race Theory, referred to blogs and a radio 1 Xtra programme that were overtly political and signed off with the words, 'Black Lives Matter'.
14. We note that Ed Humpherson, Director General for Regulation, in his outcome to Mr. Boswell's grievance appeal stated that 'I think [Mr. Boswell] has demonstrated that Iain made a statement that brought into the ONS inappropriate political currents. But that is not the same as it being politically motivated – i.e. motivated by a desire to achieve the goals of a particular partisan political movement.' Mr Humpherson raised 'three general concerns' in that document, one of which was his view that 'the wording and content of Iain Bell's original email was unwise'.
15. A number of employees, including Mr. Boswell on 10 June 2020, sent private emails to Mr. Bell in response. Mr. Boswell received no response to his email.
16. On 26 June 2020 Mr. Bell held a meeting with some BAME colleagues.
17. On 2 July 2020 in a company-wide video call Mr. Bell stated:

"First off, as I said in my original message, educate ourselves. I was actually quite shocked by some responses to my email which said that there was no racism and they didn't need to educate themselves (was

almost the tone). Please, listen to the experiences. Through various materials which are available online, through recommended books in the blogs by Bethan and others, the first thing is just read and educate.”

18. Mr. Boswell infers that the ‘various materials’ and ‘recommended books’ are a reference to a reading list that was published on the ONS BAME network and which contained overtly political and radical content. We note that one of the three ‘general concerns’ raised by Ed Humpherson, Director General for Regulation, in his outcome to Mr. Boswell’s grievance appeal was his ‘surprise’ at some of the content in the reading list.
19. On 13 July 2020 Mr. Boswell sent a ‘reply all’ email to Mr. Bell’s Weekly Message of 8 June, in Mr. Boswell’s words, “openly criticising him for his breaches of the Civil Service code and arguing for a more liberal approach to antiracism based on treating people as individuals”. A number of ‘reply all’ emails were sent in response.
20. A BAME network meeting was held following this email. The BAME network issued a statement which Mr. Boswell describes as ‘condemning [his] “misunderstanding” of Black Lives Matter’.
21. On 13 July 2020 Mr. Bell sent another Weekly Message, in which he referred again to ‘Black Lives Matter’ and stated that ‘Any reference to black lives matters is not made as a political statement it is about how we treat people individually and as an organisation’.
22. The above emails resulted in a number of messages on ‘Yammer’, a messaging and chat software product used by members of staff within ONS. This period of Yammer messages lasted approximately six weeks.
23. Also on 13 July 2020 the ONS received a FOI request via WhatDoTheyKnow from a requester (MC) seeking disclosure of the emails set out above. This request is referred to in the decision as ‘the MC FOI request’. The MC FOI request stated:

“An e-mail chain was started on 13 July 2020 when a Director signed off an e-mail with the phrase "black lives matter". An employee, whom I believe is a field interviewer, replied to everyone on the distribution list with a diatribe which included questioning whether the murder of George Floyd was racially motivated and also included the phrase "all lives matter". It is also my understanding that other employees also sent e-mails using the "reply to all" function.

I would like all e-mails involved in this matter to be released. This includes the original e-mail from the Director and any and all replies, including those sent as "reply to all".

I would also like to know what, if any, disciplinary action ONS is, or intends to, take against those involved."

24. The request mistakenly gives the date of 13 July 2020 for the 'original' email from Mr. Bell signed off with the phrase 'Black Lives Matter'. The original email that was signed 'Black Lives Matter' was dated 8 June 2020. The ONS assumed that this was an error in the date rather than a request relating to the later email from Ian Bell dated 13 July 2020. They interpreted the scope of the request as including 'all emails involved in the matter' and searched for reply alls and individual replies to Ian Bell between 8 June and 13 July 2020.
25. On 19 July 2020 a report on the issue appeared in the Mail on Sunday, quoting from Mr. Bell's original email and one of the replies and discussing the issues of the principle of Civil Service neutrality and the political nature of Black Lives Matter.
26. On 27 July 2020 Mr. Boswell emailed the Head of Internal Communications, Adam Wheeler, noting that some Yammer threads relating to his reply all email of 13 July had been deleted or made private. He stated 'there were some serious – and I would say bullying – accusations thrown at me in the course of the discussions. I'm undecided as to whether to make a complaint, but I'd appreciate being able to access the evidence...Is there any chance I could gain access to the threads.'
27. Although Mr. Boswell never received a response to this, it appears that Mr. Wheeler did discuss the matter with 'HR, data protection and legal who agreed that whilst JB was entitled to his own comments, he wasn't entitled directly to the comments of other people. HR did advise [Mr Wheeler] that if a request was made through HR, HR would ask him, and he would provide HR with those comments. However he never had a request for that information (from HR).'
28. Also on 27 July 2020 a letter was sent by 'ONS BAME Network allies' to the ONS Senior Leadership Team to 'convey our concern ...regarding recent PPP email correspondence and Yammer discussions on the topics of BLM and BAME'. The letter stated: 'Whilst we are not seeking punitive measures on those individuals involved: We would ask the senior leadership team to

consider how to ensure the individuals involved understand the consequences and effect of their words and a reminder of the boundaries within which we work.' The letter stated that it was important to prepare for the event of a similar situation occurring in the future and asked for a response to the question of 'what (if any) action can (and will) be taken against staff who insist on continuing discussions which cause staff distress (claiming right to free speech)'.

29. On 13 August 2020, in response to the MC FOI request, the ONS released redacted versions of the June and July Weekly Messages and any 'reply all' responses with personal data redacted. They withheld any individual emails sent only to Iain Bell relying on section 41.
30. On 14 August 2020 the Senior Leadership Team replied to the letter from the ONS BAME Network Allies stating that 'We were taken aback by the inappropriate use of emails to debate sensitive issues and are fully aware of the distress caused'.
31. The letter stated:

"... we have encouraged a culture of open debate: introducing a range of channels to give colleagues the chance to discuss various issues. We took an active decision to trust our colleagues to use these channels respectfully... Like you, we were dismayed that this trust was abused by a handful of colleagues... Following the offensive views shared by some colleagues, we reinforced the boundaries and guidance that are in place.

We do not moderate Yammer on a daily basis and have urged colleagues (through guidance on the intranet, as well as a recent reminder announcement in the All Company group, and on threads that were the subject of complaints) to raise any concerns about the use of Yammer via news@ons.gov.uk rather than commenting on the chain. This way, we can provide robust support for colleagues and quickly stop these conversations from continuing on the channel.

We will keep the effectiveness of this process under review and would welcome support from the BAME network in cascading this message to members, so we can take a united front to prevent comments which may cause distress for colleagues."

32. Mr. Boswell lodged a grievance on 14 October 2020 effectively complaining that there had been an institutionalisation of Critical Race Theory at the ONS

which he complained had led to significant harassment under the Equality Act of liberal anti-racists. He made nine specific complaints against the ONS BAME network, the Civil Service Race Forum, Mr. Bell, the ONS legal team, those involved in the 13 August FOI release, the internal communications team and various members of staff who he said had used emails or Yammer posts to attack Mr. Boswell's character.

33. In the same letter on 14 October 2020 Mr. Boswell made his first subject access request (SAR) for a 'complete copy of his file at employment relations in order to fully understand the nature of the communications surrounding my protest to date.' This was responded to on 13 November 2020.
34. No further requests were made until just over a year later in December 2021.
35. On 19 October 2020 in an email to the whole organisation, Ian Diamond, the National Statistician in which he stated as follows:

"Recently, I've been made aware of some behaviours from a small number of people that are not reflective of the kind of organisation we want to be – behaviours that are causing offence and distress to colleagues. Behaviours that I feel have no place at the ONS, in our offices, or on any of our corporate channels, be it email, Reggie, or Yammer.

We have clear policies in place that govern how we should be using ONS' corporate communication channels and our responsibilities, both inside and outside of the workplace as Civil Servants, are clearly laid out in the Civil Service Code. Any breaches of these rules will not be tolerated and may result in temporary or permanent loss of access to some channels and possibly disciplinary action.

...

Anyone who has been affected by the behaviour of another colleague should raise their concerns immediately through formal channels, either via your Line Manager, the Speaking Up Framework, or in the case of Reggie or Yammer, through the Internal Communications Team.

All complaints are taken seriously, and I want to reassure you all that we are taking action where required.

...[we] urge everyone to report any behaviours that are not in line with our ambitions and values. We will listen and we will take action."

36. On 4 March 2021 Mr. Boswell received an outcome to his complaint relating to the reading list that had appeared on the BAME network. This had been reclassified as a whistleblowing complaint and Karen Campbell-White, one of the co-chairs of the BAME network, had been asked to investigate. The conclusions in relation to the reading list complaint were, in essence, that the link came from the Civil Service Race Forum and was considered a trusted source and was removed as soon as it became evident that it had offended a member of staff. Mr. Boswell disputes this outcome for a number of reasons and complains that Ms Campbell-White was, in effect, investigating herself.
37. On 30 October 2021 a further article appeared in the Mail on Sunday, discussing in detail the reading list published on the ONS BAME network, which had been passed to the Mail on Sunday. The article discusses the reading list in detail, highlights issues in relation to impartiality and includes quotes from a spokesman of the ONS and Toby Young.
38. On 9 December 2021 Mr. Boswell wrote to HR asking for information. This request was headed 'Request for information from HR specifically' and began with the sentence 'Can I please get some answers to the following four questions ASAP, or at least a week before my first Resolution Meeting, in order to give me time to prepare'.
39. This email was passed to Legal Services. Part of it was treated as a SAR (the second SAR). In that part he asked for copies of emails relating to the decision to release his email as part of the FOIA release to MC in August 2020. This was responded to on 12 January 2022. Mr. Boswell also requested copies of three Yammer threads that had been removed and replaced in edited versions in late July/early August 2020. This was treated as a FOI request. It was responded to on 1 April 2022 providing the Yammer threads with personal data redacted.
40. After an investigation by the Home Office professional standards unit and two dispute resolution meetings in December 2021, on 7 January 2022 the ONS gave its decision in relation to Mr. Boswell's grievance. The outcome is a ten-page letter which acknowledged some of the issues raised by Mr. Boswell and partially upheld two of the complaints. The ONS did not uphold the other complaints.
41. Mr Boswell appealed the grievance outcome on 7 February 2022. Part of that appeal was a complaint of 'ideological harassment of liberal antiracists by Ian Bell'. This included a complaint about Ian Bell's comments in the Your

Call session on 2 July 2020 set out above. That appeal also included a complaint of 'ideological harassment of liberal antiracists by [seven named more junior members of staff]' by the use of mass emails, private emails and Yammer posts to attack Mr. Boswell's character. There is no reference in this part of the grievance appeal to potential allegations of harassment arising out of private emails sent to Mr. Bell.

42. On 25 February 2022 Mr. Boswell made his third SAR/an amendment to his previous SAR to include correspondence between his line manager and human resources for two weeks from 3 August 2020. This was responded to on 25 March 2022.
43. In the same letter on 25 February 2022 Mr. Boswell also made a nine-part request for information covering a wide range of information related to his grievance. This was treated as a FOI request by ONS. Many parts of that request specifically ask for names to be included, 'I hope I am entitled to see names') although the bullet point that includes the Request in this appeal does not.
44. The ONS wrote to Mr. Boswell on 1 March 2022 informing him that the first part of his request would be treated as a SAR and the rest under FOIA because the majority of the information requested was not his personal data.
45. Mr. Boswell responded on 11 March 2022 identifying which bullet points he considered were requests for his personal data. This did not include the bullet point equivalent to current Request.
46. The 25 February FOI request was refused under section 14 (vexatious requests) on 29 March 2022, in essence on the basis that the scope of the request was very wide and carried a disproportionate burden given the limited wider public interest in the information. The response states that the ONS had considered whether or not the request should be treated as a SAR and concluded:

"For the small amount of information that would directly consist of your personal data, we would deem it manifestly unreasonable and excessive to conduct a search of this scale. Should you wish to make a new subject access request, we would strongly recommend that you take the opportunity to limit the scope of your request to reasonable search parameters over a specific time period."

47. On 29 March 2022 Mr. Boswell contacted Legal Services by telephone in relation to the response to the nine-part request.
48. On 7 April 2022 Legal Services emailed Mr. Boswell with a further explanation of the response to the request and gave Mr. Boswell some advice about narrowing the size and scope of any new request. They stated 'if you are unhappy with your response, you can request an internal review. But equally, please email us any questions if you would like to submit a narrower request and we will assist where we can.'
49. On 15 April 2022 Mr. Boswell emailed Legal Services with 21 detailed questions. Most of these are questions about why his FOIA request of February 2022 was refused or questions about the response to the December 2021 FOIA request for Yammer threads, mainly about the redactions that had been made.
50. On 20 April 2022 Mr. Boswell emailed the Head of Internal Communications indicating that he wished to go ahead with complaints about the makers of the Yammer thread comments that had been released to him with names redacted. He asked for the names of the authors to be confirmed so that he could make the complaints. This was passed to Legal Services on the basis that it would be 'inappropriate' to provide any information 'outside of this process' and the request was refused.
51. On 18 May 2022 Mr. Boswell emailed the Head of Legal Services asking a series of questions about the response to the MC FOI request and asking for the names of the individuals involved in responding to that request. This was passed to the Appeal Manager who responded on 24 May 2022.
52. On 19 May 2022 Legal Services responded to the 21 questions. In that letter Legal Services reiterated the invitation to Mr. Boswell to consider narrowing his request to more reasonable parameters, while flagging up that this did not mean that other exemptions would not apply.
53. On 24 May 2022 Mr. Boswell made a request for 'the full paper-trail' for the FOI request which led to the disclosure of his email in August 2020. He asked for the request to be treated as a SAR and not a FOI request. In that email he stated, 'As you know I have various requests for information I would like to make, which might take a few days to put together, but to get the ball rolling, here's the first...' This request was treated as a SAR and responded to on 21 July 2022.

54. Mr Boswell submitted requests for information to the ONS on 25 May 2022, 27 May 2022 and 1 June 2022. They were made under FOIA and under data protection legislation. In summary, those requests were for:

- 54.1. Copies of emails received by Iain Bell in response to the email that he sent on 8 June 2020 and any ensuing correspondence.
- 54.2. The video recording, the minutes and the attendees of the BAME Network session held following Mr. Boswell's email of 13 July 2020.
- 54.3. Copies of emails received by Iain Bell concerning Mr. Boswell's email of 13 July 2020, Mr. Bell's replies and any ensuing correspondence.

55. On 25 May 2022, Mr. Boswell submitted the request in issue in this appeal. It is referred to in this decision as the Request. The Request was for:

"Copies of every email received by Iain Bell (at any of his email addresses, including those of his secretaries) in response to his "Black Lives Matter!" email of the 8th of June 2020. I would also be interested in any of Iain's replies to these messages, and any ensuing correspondence."

56. The request made on 27 May 2022 was said by Mr Boswell to be a subject access request. He asked the ONS to let him know if they felt that particular elements of the request could only be released under FOIA, and he would make a further request under FOIA. The 27 May request was for:

"The video, the minutes, and the attendee list of the "closed session" of the BAME Network which was convened to discuss my open email to the ONS, sent on the 13th of July 2020. I presume the session was held that Monday or Tuesday, but it could have been any time that week. I would also be interested in any follow-up sessions."

57. On 30 May 2022 Legal Services wrote to Mr. Boswell in relation to both requests. It stated that the 24 May request had been logged and they were conducting a search. In relation to the Request on 27 May Legal Services stated that:

"You have asked that we disclose copies of every email received by Iain Bell (at any of his email addresses, including those of his secretaries) in response to his email relating to Black Lives Matter dated the 8 June 2020, including any responses to these messages and ensuing correspondence."

We have previously received an FOI request asking for the disclosure of all emails involved in this matter. Our response to this can be found here. Documents in scope of your request can be found in the associated downloads (Doc.2_Responses_to_5_Proposals_Redacted). Our position on the information withheld for the purposes of FOI has not changed and we maintain the use of exemptions found under s.40(2) and s.41(1).

We have also considered your request under the subject access provisions of the UK GDPR. To the extent that any emails received or sent by Iain Bell contain your personal data, these also contain the personal data of those that wrote the emails, including their own thoughts and feelings in relation to the matters being discussed. Where those emails were also sent to single recipients those writing would have a high expectation of confidence. For these reasons we consider that it would be unfair to release any more information than has already been released under the FOI request linked, and that any further information is exempt from release under subject access (in accordance with Part 3 Schedule 2, Data Protection Act 2018)."

58. The request made on 1 June 2022 was also said by Mr Boswell to be a subject access request. As with the request on 27 May Mr Boswell asked the ONS to let him know if they felt that particular elements of the request could only be released under FOIA, and he would make a further request under FOIA. The 1 June request was for:

"Copies of every email received by Iain Bell (at any of his email addresses, including those of his secretaries) concerning my open reply to his "Black Lives Matter!" email. My email was sent on the 13th of July 2020, so the emails to Iain will begin at this point. I would also be interested in any of Iain's replies to these messages, and any ensuing correspondence. I hope I am entitled to see names, given that these emails concern me directly."

59. A joint response to the above three requests was provided on 6 July 2022, refusing the requests on the grounds that they were vexatious.

Factual background after 6 July 2022

60. The following is only relevant and taken into account by the tribunal to the extent that it sheds light on the position at the time of the response to the Request.

61. On 22 July 2022 Mr Boswell wrote to the individual who had signed the letter of 6 July 2022 requesting an internal review and an apology. In relation to the apology request he stated:

"I am writing to request an immediate apology for your email of the 6th of July in which I feel you have allowed your personal biases to tip into harassment. I understand that you have a job to do, and I will contest the substance of your judgments through the proper processes, but there is no excuse for the unprofessional excesses of your tone or the evidence-free accusations you have levelled against me on the basis of my beliefs.

I would remind you that until a final judgement is reached in my forthcoming appeal meeting, it is Legal Services that remain under suspicion of having colluded in the harassment of liberal antiracists at the ONS. I would strongly prefer it if you apologised now rather than embroil yourself in that larger dispute.

I think the following five false accusations warrant an apology:

- 1) You accuse me of being motivated by a "personal grudge" against Iain Bell and others.
- 2) You accuse me of "targeting" colleagues on the basis of their having disagreed with me.
- 3) You accuse me of making an "unsubstantiated accusation" against those colleagues in attendance at the closed session of the BAME Network, or those colleagues who emailed Iain Bell about me. In particular you claim that I am holding them responsible for my having been punished.
- 4) You accuse me of pursuing a "personal agenda" with no public interest.
- 5) You accuse me of ignoring your advice as to what might constitute a vexatious or excessive request."

62. Mr. Boswell raised queries about 'gaps' in the information provided in response to his request of 24 May 2022 in emails dated 27 July, 23, 26, 28,

and 29 September and 5 October 2022. These were responded to by Legal Services.

63. The reliance on section 14 in relation to the three requests was upheld on internal review on 7 September 2022.
64. On 22 November 2022 Mr. Boswell resubmitted his request for information made on 1 April 2022 for the Yammer threads with 3rd party personal data unredacted and asked for it to be treated as a SAR. This was refused on 6 December 2022.
65. On 10 January 2023 Mr. Boswell made an FOI request for Yammer comments posted and subsequently deleted by users or admins. This request was refused on 3 February 2023 on the basis that it was a vexatious request.
66. Mr. Boswell's grievance appeal was heard by Ed Humpherson. The written outcome was provided on 15 November 2023. Mr. Humpherson gives the following summary of his decision:

"In summary, I have:

- Upheld Joe's appeal on the FOI process aspects of Grievance 7, but not the whistleblowing aspect of Grievance 7;
- Partially upheld Joe's appeal on Grievance 4;
- Proposed different outcomes (i.e. performance feedback) for two individuals in Grievance 9; but
- Not upheld all other aspects of Joe's appeal."

67. Mr. Boswell was dismissed with effect from 27 June 2023. The reason given was that he had failed to maintain an acceptable level of attendance and was unable to return to work within a timescale that the decision maker considered reasonable.

Request, Decision Notice, and appeal

The request and the response

68. The Request on 25 May 2022 which is in issue in this appeal was described by Mr Boswell as 'a mix of FOI/SAR'. The Request was for:

“Copies of every email received by Iain Bell (at any of his email addresses, including those of his secretaries) in response to his “Black Lives Matter!” email of the 8th of June 2020. I would also be interested in any of Iain’s replies to these messages, and any ensuing correspondence.”

69. The letter including the Request states:

“When considering the FOI element, I'd like Legal Services to consider the public interest here. Iain's original email was essentially endorsing a contentious political philosophy (Critical Race Theory), the tenets of which include "systemic racism" and "white privilege", which redefine racism (i.e. racial discrimination by any individual against any other individual) as an exclusively "White" problem for which "White People" share collective guilt, irrespective of their behaviour. Iain also namechecked the political group / social campaign known as "Black Lives Matter". For more info on the political nature of both, I attach two videos in which I explain the history of these concepts:

<https://we.tl/t-jb73ik67hX>

(N.B. These clips are taken from my decision meeting, but they are edited to ensure they contain only my voice, only my likeness, and only information that is already 'public' knowledge within the ONS.)

Iain's email has already been the subject of attention in the national press, but I consider the replies to his email to be in the public interest because the public should understand the degree of support and/or criticism that this kind of politicisation of the Civil Service received within the ONS.

While most of these emails do not concern me directly (apart from one I sent myself), I consider this partly SAR because Iain Bell later took to an open 'Your Call' session to describe "some" of the emails he received (including mine, presumably) as "shocking" and "uneducated".

When considering the necessity of redactions or omissions of third-party data, I would like you to consider that the information is extremely important to my upcoming appeal meeting with Ed Humpherson, bearing as it does on the question of whether Iain Bell

was receiving genuinely shocking emails, or if he himself was expressing a bigoted view towards liberal antiracists such as myself.”

70. On 30 May 2022 the ONS wrote to Mr. Boswell referring him to the response to the MC FOI request (see factual background above) and stating that it maintained its position in relation to those emails.
71. On 6 July 2022 the ONS issued a joint response to the three FOIA and subject access requests made on 25 and 27 May and 1 June 2022. The ONS refused what it termed ‘the FOI elements’ of the requests under section 14(1) FOIA (vexatiousness). It refused the requests where Mr Boswell asked for information about himself on the basis that they were manifestly unfounded and excessive under the Data Protection Act 2018.
72. The ONS upheld its position on internal review on 7 September 2022.

The decision notice

73. In a decision notice dated 12 February 2023 the Commissioner decided that the elements of the three requests that were covered by FOIA were vexatious requests under section 14 FOIA.
74. The Commissioner stated that at the time of the requests Mr. Boswell had been in dispute with the ONS about a particular matter for approximately two years. The Commissioner found that while the original requests may have had a serious value and purpose, that value and purpose had diminished two years later. The Commissioner noted that ONS had confirmed to Mr. Boswell that he did not need the information he was seeking in order to progress a complaint with ONS.
75. The Commissioner found that by May/June 2022 Mr. Boswell appeared to be mis-using FOIA to pursue a grievance against ONS and to progress matters that are more appropriately dealt with through other channels. The Commissioner found that Mr. Boswell’s requests – including earlier requests and the requests sent in succession in this case – and related past behaviours – such as attempting to acquire redacted information (individuals’ names) from other parts of the organisation - were not those of an individual using FOIA reasonably and responsibly. The Commissioner considered that, in view of the background and circumstances, Mr. Boswell’s requests would be likely to cause ONS staff to feel distressed and harassed. The Commissioner found that the ONS’ evidence suggested that, as well as generating new requests

from Mr. Boswell, responding to the three requests would also cause a burden to the ONS.

76. Since the Commissioner considered that the purpose and value of the requests was minimal, he was satisfied that that burden would be wholly disproportionate. The Commissioner decided that the ONS was entitled to refuse the requests under section 14(1) of FOIA.

Notice of appeal

77. In essence, the grounds of appeal are:

77.1. That the Commissioner was wrong to conclude that the Request submitted on 25 May 2022 (DPR-000188) was vexatious. Mr Boswell raises issues in relation to value or serious purpose, burden, motive and harassment.

77.2. That the Commissioner was wrong to consider the other two requests dealt with in the decision notice as freedom of information requests, because they are subject access requests.

78. For the reasons given above, the second ground of appeal is outside our remit.

The Commissioner's response

79. The Commissioner submits that a requestor cannot stipulate the information access regime that a request should be processed under. That is dictated by the information requested. The Commissioner states that it appears that the requests were dealt with as hybrid requests, parts of which were dealt with under the Data Protection Act 2018 (DPA). The Commissioner remains of the view that some of the information that may fall within the scope of the above two requests may not constitute Mr. Boswell's own personal data and therefore this would need to be processed under FOIA rather than the DPA. The Commissioner therefore submits that he was correct to investigate the handling of all three requests (at least partially) under FOIA.

80. The Commissioner's view is that at the point the three FOIA requests were made, the legislation was being used as another means of pursuing a complaint which was already being dealt with by ONS within its internal complaints procedures.

81. Whilst the internal complaint was not resolved at the time the requests were made, the Commissioner cannot see how making these requests under FOIA

in quick succession would assist in bringing the complaint process to resolution. Those dealing with Mr. Boswell's complaint within ONS will be able to view any required evidence to assess the complaint even if this evidence cannot be shared with Mr Boswell. ONS confirmed to Mr Boswell that "they do not need this information, and that they should not be undertaking their own investigations".

82. Although Mr. Boswell states in his grounds of appeal that he is happy for personal data to be redacted, the Commissioner submits that it is clear that he does wish to establish the identity of staff who have been involved in the issue.

83. In terms of the burden the Commissioner submits that whilst Mr Boswell has argued that the requests were made over a ten-day period in an attempt to 'whittle down' nine burdensome requests this has not under the circumstances significantly reduced the collective burden imposed.

84. The Commissioner submits that Mr. Boswell's motive is quite clearly to pursue his complaint as he has confirmed this within the grounds of appeal. Whilst there is some serious purpose and value in the wider public interest in this information, this is outweighed by the collective burden of responding to FOIA requests on this subject matter when it is already being addressed by ONS via the appropriate complaints process.

85. The Commissioner remains of the view that given the background and circumstances, Mr Boswell's requests would be likely to cause ONS staff to feel distressed and harassed.

Mr. Boswell's reply to the Commissioner's response

86. Mr. Boswell submits that the assertion that a requestor cannot specify the regime under which a request is processed does not have any grounding in law.

87. Mr. Boswell notes that the Commissioner has stated that some requests may need to be dealt with under multiple regimes. If that is the case, Mr. Boswell asks, why did ONS refuse to process the same requests made in February 2022 as hybrid requests? He submits that it was in order to be able to refuse the requests as vexatious under FOIA.

88. Mr. Boswell submits that it was wrong for ONS to process the requests as hybrid requests. They could instead have processed them under the DPA

and redacted the parts that were not personal data. It did not make sense to consider the requests under FOIA unless specifically asked to do, because they had already considered them under FOIA in February 2022.

89. Mr. Boswell states that he is, in any event, only appealing the decision on DPR-000188 (the Request made on 25 May 2022).
90. Mr. Boswell asserts that it is a vast oversimplification to state that the complaints against the ONS and the information requests relate to the email of 8 June 2022.
91. In relation to the assertion that those dealing with Mr. Boswell's complaint will be able to view any required evidence even if could not be shared with him, Mr. Boswell makes the following points:
 - 91.1. It is naïve to suggest that the HR department can be truly impartial, because the ONS has a clear interest in not getting to the bottom of the issues he has raised.
 - 91.2. As of May/June 2022 neither HR nor the Appeal Manager had ever indicated any willingness to request this information for their own inspection.
 - 91.3. ONS is currently (in March 2023) taking the position that they will not request the information until after his appeal meeting. Mr. Boswell is keen to be able to study the information in advance of the meeting in order to present his take on it.
 - 91.4. ONS is currently reserving the right to refuse to request the information if, after the appeal meeting, they deem it unnecessary.
 - 91.5. The Commissioner is ignoring the evidence presented to him in the grounds for appeal that the ONS had effectively endorsed his information requests as a means of advancing my complaints.
92. In relation to the latter point Mr. Boswell submits that it is ONS which is wasting public money on FOI processes when they could provide the information to Mr. Boswell directly:
 - 92.1. He had the full backing of HR and the appeal manager to be making these requests for information
 - 92.2. On 1 April 2022 he asked the Appeal manager to request the information directly, and he refused, stating instead: "I do think it would be better to have resolved these information requests with the relevant [legal] team before we hold the appeal meeting."

- 92.3. On a prior occasion (9 December 2021), when he approached HR for a piece of information from them specifically, they took the decision to pass the request to Legal Services.
93. Mr. Boswell submits that ONS has never told him that he should not be undertaking his own investigations contrary to paragraph 17 of the Decision Notice. Further, he submits that the Commissioner has conflated two complaints investigations. The information requests were made in support of complaints lodged in October 2020. Paragraph 17 of the Decision Notice concerns a complaint submitted in August 2022.
94. In relation to the assertion that Mr. Boswell does wish to establish the identity of staff who have been involved in the issue, Mr. Boswell submits that he has never taken an interest in the names in DPR-000188 (the 25 May Request). He accepts that he has taken an interest in the names of other individuals involved in his complaint.
95. In relation to the 1 June request he states that he is interested in names because he is interested in establishing whether the BAME Network organised an email writing campaign to Mr. Bell and this would be evidence in his outstanding complaint against the BAME Network. However, Mr. Boswell submits that there is a difference between hoping for names and nevertheless respecting the judgment of Legal Services and being happy for Legal Services to redact them.
96. In relation to his email to the Head of Internal Communications, Mr. Boswell submits that it was not unreasonable to request the names of those against whom he wished to complain via internal ONS processes even though they had been redacted under FOIA.
97. In relation to the discussions with the Head of Legal Services, Mr. Boswell submits that the Commissioner is wrong to state that 'While ONS initially provided answers on an informal basis, the complainant began asking for information that had been redacted from previous FOIA requests and so ONS terminated communication.' He submits that the correspondence shows that as soon as the Head of Legal Services told him to go back to HR/the Appeal Manager to lift the redactions he was concerned about, that is the first thing he did.
98. In relation to reducing the burden of the previous nine-part request, Mr. Boswell submits that four requests are fewer than nine. He submits that he

had removed the request that spanned a two-year period and that the four requests that remained were highly specific.

99. Mr. Boswell notes that the Commissioner has revised his view that the value and purpose of his requests had diminished after two years and recognises that there is some serious purpose and value in the wider public interest in this information. He submits that the public value of the information is more than enough to justify the release.
100. In relation to harassment and distress Mr. Boswell submits that:
 - 100.1. The only person who stands to be embarrassed by the release of DPR-000188 (the 25 May Request) has already left the organisation.
 - 100.2. The ONS believes he would use this information to instigate new complaints, but the onus is on the ONS to prove that he has ever complained about individuals purely for disagreeing with him. He states that he knows that for a fact that the individuals involved in the 25 May request were not harassing him, because they sent their emails prior to him making his views known at the ONS.
 - 100.3. The ONS has a policy that complaints must be lodged within three months of the wrongdoing. He could not complain about these emails even if he wanted to.

The updated response of ONS (23 September 2023)

101. The ONS submit that the 15 May request is one in a long series of SARs and FOI requests made by Mr. Boswell to the ONS during the period October 2022 to date which are on the same topic and have been made to support Mr. Boswell's grievance arising out of Mr. Bell's email of 8 June 2020. The grievance was investigated and determined in January 2022. In February 2022 Mr. Boswell appealed and continued to make requests with a view to securing evidence to support the appeal. Two years on from the incident the ONS took the view that any public interest value in the information was disproportionate to the burden and ongoing harassment to ONS staff.
102. In relation to each of the three requests, the ONS submits as follows:
 - 102.1. In relation to the 25 May request: it is apparent that Mr. Boswell was seeking disclosure of the private email responses from individual members of staff to Mr Bell's email of 8 June 2020 and personal data

which had been withheld on confidentiality and data protection grounds in response to the similar MC FOI Request of 13 July 2020. In his request, when seeking to justify disclosure of this private information under FOIA, Mr. Boswell characterised Mr Bell's email as endorsing critical race theory and Black Lives Matter and argued that disclosure of individual staff replies was in the public interest because "the public should understand the degree of support and/or criticism that this kind of politicisation of the Civil Service received within the ONS". Mr. Boswell stated that the information was also important to his upcoming grievance appeal meeting, bearing on whether Mr Bell had in 2020 expressed "a bigoted view towards liberal antiracists."

102.2. In relation to the 27 May request: it is apparent that Mr. Boswell was trying to find out the names of individual members of an ONS BAME staff group who had attended a private meeting in July 2020 and what they had said. In seeking to justify his request, Mr. Boswell stated that he wanted to discover whether members of staff who he described as "harassers" were present at the meeting. He stated that the information was important to his upcoming appeal meeting, bearing on accusations he made of ideological harassment by individual members of staff.

102.3. In relation to the 1 June request: it is apparent that Mr. Boswell wanted to see private emails sent to Mr Bell by members of staff in response to Mr Boswell's email of 13 July 2020 without redaction of personal data such as names. In seeking to justify his request, although Mr. Boswell acknowledged that he had not been disciplined for his email of 13 July 2020, he accused members of staff who had sent emails to Mr Bell of "discussing my data with a view to having me punished in some way"; and he accused Mr Bell and members of staff who were members of the BAME network of "ideological harassment". He stated that the information was important to his upcoming appeal meeting, bearing on accusations he made that Mr Bell and individual members of staff were engaged in ideological harassment.

103. The ONS sets out the correspondence received from Mr. Boswell following the response to the request, including further SAR and FOI requests.

Value

104. The ONS submits that there is no significant public interest value in the information. Mr. Bell's email of 8 June 2020 and the "reply all" responses have already been disclosed under FOIA, subject to redaction of personal data, in response to the MC FOI Request of 13 July 2020.
105. Mr. Boswell, by his request, was seeking in addition disclosure of the private email responses from individual members of staff, and the personal data redacted from the "reply all" emails. The ONS submits that the private email responses included individual staff members' personal experience of and views on the topic of racism. They are accordingly both personal and sensitive in nature and were sent in expectation of confidence. It is submitted that there is no public interest in disclosure of such private emails, nor in disclosure of the names of those staff members who replied to all. Contrary to Mr. Boswell's submission, it is argued that it does not follow from the fact that Mr Bell's original email received press attention that there is any proper public interest in individual staff members' private replies.
106. Even if the information were to assist Mr. Boswell advance his grievance appeal, by definition, that is a private and not public interest. In any event, the ONS does not accept that disclosure of information through FOIA is necessary for the appeal to be fairly determined. Mr Boswell has been advised that he does not need the requested information nor individual names to make complaints and should not be undertaking his own investigations.

Burden

107. The ONS submits that the burden of response has to be judged against the wider background of previous requests seeking information on the same topic and for the purpose of furthering his personal grievance and complaints against individual staff members. The ONS provided information and Mr. Boswell's own personal data in response to all of those requests, except FOI 3972. It is submitted that was a difficult and time-consuming process, in particular given the need to consider and protect the personal data of other members of staff in the context of a highly sensitive dispute.
108. As a result of its constructive engagement with Mr. Boswell's communications, the ONS was responding to Mr Boswell's requests and related communications throughout the period December 2021 to May 2022.

109. Four requests, including the three in issue, were made within a few days of each other in May/June 2022. It is submitted that the ONS was entitled to consider the requests together when considering burden.
110. In order to respond to the requests in issue it is submitted that the ONS would have been required once again to conduct searches for emails, records and communications dating back to 2020, and once again to consider the difficult issue of protecting the personal data of other members of staff. It is submitted that the burden of responding was clearly disproportionate, when considered against the time and resources already spent in dealing with Mr. Boswell's requests on the same topic.
111. ONS submits that Mr. Boswell was showing unreasonable persistence. A very similar request had already been responded to (the MC FOI request). It appears that Mr. Boswell was attempting to require ONS to revisit the question of whether there should be disclosure of the personal data of staff.
112. It is submitted that the burden is more pronounced considered against the background of the extensive investigation into Mr. Boswell's grievances over a 15-month period. In continuing to make requests after the grievance decision had been made, with a view to obtaining new evidence to support an appeal, it is submitted that Mr. Boswell was placing a wholly disproportionate burden on those tasked in the ONS with dealing with his requests, complaints and related communications.
113. Further it is submitted that the ONS reasonably took the view that any response would be likely to lead to further communication and dispute. The conduct of Mr. Boswell after the response shows that this was reasonable and justified including:
 - 113.1. Mr Boswell's response to the ONS refusal of his requests under section 14(1) FOIA, (in which he accused the Legal Services officer of unprofessionalism, bias and harassment on the ground of his beliefs as a "liberal anti-racist").
 - 113.2. His response to DPR 184 (where he repeatedly telephoned and emailed Legal Services arguing with its response and pursuing his request for other staff members' personal data).
 - 113.3. His further requests to date on the same topic.

Motive

114. It is submitted that the purpose of FOIA is to promote the public interest in transparency and accountability, by conferring a right to information about the activities of public bodies. It is not part of the legislative purpose to enable individuals to obtain communications sent by fellow members of staff in order to pursue personal grievances and complaints.
115. The ONS reasonably believed that, through the 25 May request, read together with 27 May and 1 June requests, Mr Boswell was seeking fresh evidence which could support complaints against members of staff – either existing complaints in the grievance, or new complaints.

Harassment

116. The ONS submits that the 25 May request, taken in context, was harassing of staff. His complaints against Mr Bell and other members of staff had already been investigated and determined through the grievance process. Nevertheless, Mr. Boswell continued to make the same accusations. He had also recently (in February 2022) made the accusation that the grievance decision was itself a cover-up of serious wrongdoing. To support these accusations, he again sought the personal data of staff, despite having been repeatedly told that such data was required to be redacted in accordance with data protection principles. In all these circumstances, the ONS was entitled to take the view that Mr. Boswell's communications, including the requests, had crossed a line. The requests had become unreasonably persistent and, given their nature, were harassing and distressing for other members of staff. The ONS was also concerned that providing a full response, even if personal data were redacted, would have a negative emotional impact on the members of staff involved.
117. Further, it is submitted that members of the Legal Services teams had, by late May 2022, been dealing with numerous and lengthy communications from Mr. Boswell over a period of months, by telephone and email. He had consistently questioned the responses and advice he received, in lengthy emails posing multiple questions. This culminated in him accusing the Legal Services Officer who responded to the requests of unprofessionalism, bias and harassment. It is submitted that Mr. Boswell's communications had accordingly become harassing and distressing to deal with for the members of staff who were tasked with responding.

Mr. Boswell's reply to ONS' updated response

118. Mr Boswell confirms that if the tribunal finds that the three requests should be considered together, he disputes their vexatiousness.
119. Mr. Boswell submits that ONS have downplayed the underlying dispute to a significant degree. He submits that the ONS have omitted to mention certain relevant facts (which the tribunal has noted and taken into account where relevant).
120. Mr. Boswell submits that the ONS have also downplayed the MC FOI release. Mr. Boswell states that he has made three internal complaints about this FOI release including an accusation that Senior Leadership at the ONS used the MC FOI release to harass him with the support of Legal Services, Digital Publishing, Security and HR. He sets out the basis of his accusations of harassment (which the tribunal has taken into account where relevant).

Value

121. In relation the assertion that it is not in the public interest to release the private responses to Mr. Bell, which contain personal views and experiences of racism and are therefore personal and sensitive in nature, Mr. Boswell asserts that it was Mr. Bell who first breached the confidence of those individuals in the video call on 2 July 2020. Further Mr. Boswell asserts that it is reasonable to expect that the responses contained a mix of personal and professional aspects. They were invited to give their views on how the ONS could do things differently and better and therefore should not in any event be automatically exempt from public scrutiny. Mr. Boswell further submits that personal views are not exempt from release under FOIA.
122. Mr. Boswell submits that the public should understand the balance of support and criticism received by Mr. Bell. It is in the public interest to substantiate the claim made by a staff member and reported in the Daily Mail that "The ONS is completely divided" over the issue and that "People are in absolute shock that [Iain] can stand by the actions of BLM".
123. Mr. Boswell further submits that the emails to Mr. Bell are relevant to further public debate about 'the blob' i.e. the accusation that civil servants tend to form an ideologically homogeneous block unreflective of wider society. If it turns out that the response to Iain included a significant amount of criticism that would refute the idea of "the blob".
124. In relation to the assertion that Mr. Boswell was improperly seeking disclosure of the personal data withheld in the MC FOIA release, Mr. Boswell

submits that is untrue. He submits that the “reply alls” had begun on 13 July 2022 in response to Mr. Boswell’s email entitled “Re: Black Lives Matter / 5 Proposals”. The 25 May request seeks the private responses to Iain Bell’s email entitled “Weekly Message - Monday 8 June 2020” sent one month earlier. Mr. Boswell asserts that the MC FOIA request muddled the two emails, stating that Mr. Bell’s original email was sent on 13 July 2020, but the 25 May Request does not make that mistake.

125. Further it is submitted that it stretches credulity that Mr. Boswell would use an information request to seek unredacted copies of ‘reply alls’, given that he, like all ONS employees had already seen them unredacted.
126. Mr. Boswell submits that his personal grievance appeal has significant public interest because he is attempting to hold the ONS accountable for breaches of the Civil Service Code (especially political impartiality) and for the harassment of staff for their deeply held liberal principles (in colour blindness, for example).

Burden

127. In relation to the submission by ONS that it had already done lots of work on six separate requests, Mr. Boswell submits that his second and third SARs were an attempt to target a particular bit of information that should have been released in response to the first SAR. The decision to log as three separate SARs was taken by Legal Services.
128. Mr. Boswell submits that the request made on 9 December 2021 was intended to be aimed at HR not at Legal Services. It was headed ‘Request for information from HR specifically’. HR took the decision to pass it on to Legal Services.
129. Mr. Boswell submits that the request submitted on 24 May 2022 should not be considered as part of a previous burden but should be considered as part of the sequence of requests including the three in issue in this appeal.
130. On this basis Mr. Boswell submits that it is more reasonable to count two not six previous requests which was not an unreasonable burden.
131. Mr. Boswell notes that Legal Services actively sought to interpret other questions as additional FOI requests, to which Mr. Boswell stated that his preference was that they should simply answer the questions.

132. In relation to the technical difficulties in extracting long deleted Yammer threads, Mr. Boswell submits that this could have been avoided if ONS had responded when he first approached Internal Communications on 27 July 2020.
133. In relation the burden said to arise from the “need to consider and protect the personal data of other members of staff in the context of a highly sensitive dispute” Mr. Boswell submits that this would not have been more difficult than the MC FOI release from August 2020. He accepts that the Yammer release was longer, but the MC FOI release was redacted by a single member of staff working for one hour and therefore the Yammer threads should have taken three hours not three months to redact. He submits that the delay was instead caused by internal inference from ‘people higher up’.
134. Mr. Boswell submits that the Yammer threads could simply have been reinstated on Yammer, because they were removed by senior management, not by those making the comments. In the alternative Mr. Boswell submits the comments could have been passed directly from Internal Communications to HR (and, the tribunal presumes, have been provided to Mr. Boswell other than under FOIA).
135. Mr. Boswell submits that the claim that Legal Services were compelled to repeatedly explain their approach between December 2021 and May 2022 is exaggerated. He submits that the only serious disagreement arose in March 2022 when the nine-part request was refused as vexatious. It was only because Legal Services refused a request for a phone call and asked for written questions that there was a need for two further lengthy emails.
136. In relation to the claim that the ONS had already conducted an “extensive investigation over a 15-month period, and reached a decision”, Mr. Boswell submits that the investigation was conducted by the Professional Standards Unit at the Home Office and it took eight months.
137. Mr. Boswell submits that the notion that it was disproportionate to ask for more information at the appeal stage is contradicted by guidance he received from Legal Services on 26 November 2020 which stated:

“I am given to understand that you currently have an ongoing grievance pending and as such, you may receive further information within your response to that. If, after having received said response, you believe there to be additional information outstanding, it is within your rights under GDPR to request sight of that information.”

138. In relation to the claim that it was reasonable to assume that responding to the requests would lead to further communications and dispute Mr. Boswell notes that the ONS relies on:
- 138.1. His request for an apology on the grounds of unprofessionalism, bias and harassment.
 - 138.2. The fact that in response to the provision of the response to the request made on 24 May 2022 Mr. Boswell repeatedly telephoned and emailed Legal Services arguing with the response.
139. In relation to the former Mr. Boswell submits that his request for an apology did not arise from the refusal of the request but from the way in which the policy officer responded. It does not cast light on the way he would have responded to a more courteous refusal.
140. In relation to the latter Mr. Boswell states that he has no memory or record of any telephone conversations in relation to the response to the request made on 24 May 2022. In relation to his assertions of gaps, Mr. Boswell stands by these and submits that he was vindicated by the provision of further information in September 2022.

Motive

141. In relation to his assertion that ONS gave Mr. Boswell backing to make his information requests in support of his appeal, he relies on:
- 141.1. His telephone call and follow up email with the joint head of HR in January 2022.
 - 141.2. His communications with the appeal manager between March and May 2022.
 - 141.3. The email from Legal Services on 26 November 2022 quoted above.
 - 141.4. A phone call with Legal Services on 24 February in which he confirmed that his upcoming requests would be relevant to his outstanding grievance process, to which Steph Turner replied 'That's fine, that's your right don't worry'.
 - 141.5. The same phone call when Steph Turner stated that 'if you know that there are certain areas that you want us to search, that is something that we will definitely do. We'll be able to direct it at all of those areas.' This informed Mr. Boswell's request on 25 February.
 - 141.6. Mr. Boswell was actively invited to resubmit a narrower request when the request of 25 February was refused.

142. Mr Boswell submits that it is not an improper use of FOIA to serve a private interest and relies on the Commissioner's guidance. He submits that it is perfectly normal for requests to have multiple purposes - and while the private purposes don't support the validity of an FOI request, neither do they detract from it.
143. Mr. Boswell submits that it was the ONS who first used FOIA to supply information related to his complaints procedure in response to his request on 9 December 2021.
144. Mr. Boswell submits that he has been clear that the requests pertained to his existing grievances and that it was unreasonable of ONS to suspect that he was using them to lodge new complaints.
145. Mr. Boswell submits that the complaints about the Yammer comments are a special case because he had lodged his interest in making those complaints in July 2020 but the relevant evidence had been withheld by ONS until April 2022.

Harassment

146. In relation to the assertion that Mr. Boswell continually and repeatedly sought the personal data of his colleagues despite advice that this went against data protection principles, Mr. Boswell submits:
 - 146.1. The requests in which he requested personal data were SARs or mixed regime requests so he has not directly requested personal data under FOIA.
 - 146.2. He has only sought personal data of colleagues to the extent that it is part of his own personal data. He never demanded others' personal information but asked the ONS to consider the reasonableness of releasing it.
 - 146.3. The advice given to Mr. Boswell on personal information and data protection has been contradictory. Given these mixed signals he made several attempts to clarify the position but was often rebuffed on the basis that the ONS did not have to explain itself.
147. In relation to the assertion that he disputed redactions in the Yammer threads, Mr. Boswell submits that he has never disputed the redaction of third-party data under FOIA, and it is legitimate to question the redaction of third-party data under Subject Access if that data overlaps with your personal data, if it is "generally known" to you, and/or it has significant value

to you. Mr. Boswell makes the same argument in relation to the challenge to various redactions made in the request dated 24 May 2022.

148. On the grounds that Legal Services had not properly considered the Yammer comments as his data under SAR, he asked for a second time in November 2022 that the names be considered under a pure SAR. He is appalled by the balance struck by the ONS who considered that the rights of those individuals engaged in alleged harassment trumped the rights of the alleged victim to know who had harassed them.
149. In relation to the assertion that Mr. Boswell questioned the Head of Legal Services about who played what role in the release of the MC FOI request, Mr. Boswell asserts that it is not reasonable to conflate the direct correspondence with Mr. Riches, in his capacity as respondent to his complaints, with the formal information requests and related queries directed at Legal Services. He submits that this exchange was not harassment.
150. In response to the claim that it was harassing to repeat his accusations against Mr Bell et al. in the text of his requests, Mr. Boswell submits that he did this because he was attempting to follow the Data Protection principles with regards to the release of third-party data, specifically the ICO's comment that "The importance of the information to the requester is also a relevant factor". Further Mr. Boswell submits that his grievance was ongoing because the appeal had not been decided.
151. In relation to the claim that the requests 'given their nature' were harassing the individuals targeted, Mr. Boswell submits that this is vague. It is unclear who Mr. Boswell is said to be harassing. Further Mr. Boswell submits that the ONS was operating in the grip of Critical Race Theory-style assumptions about who is automatically innocent and who is automatically guilty.
152. Mr. Boswell submits that the request for an apology from Legal Services made on 22 July 2022 is strictly irrelevant because it took place after the response to the requests. He states that it does not throw light on the circumstances at the relevant time. In any event he submits that whether or not his response to the policy officer was reasonable depends - almost entirely - on whether the five accusations she made about him were true or not. He submits that the email cannot legitimately be described as threatening.

Legal framework

S 14(1) Vexatious requests

153. 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).
154. 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. 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).
155. The test under section 14 is whether the request is vexatious not whether the requester is vexatious. 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.
156. 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. 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.
157. 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 checklist.
158. Guidance about the motive of the requester, the value or purpose of the request and harassment or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.

159. 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. 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.
160. 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.
161. 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..."

162. 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.
163. 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

164. The tribunal's remit is governed by section 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

165. We had before us and took account of where relevant:
 - 165.1. An updated open bundle to pages A1 to D1196.
 - 165.2. A witness statement from Mr. Boswell dated 2 December 2023.
 - 165.3. A pdf document entitled 'Applnt's Supporting evidence - ONS Final DP Response to DPRs 188, 189 and 190 (18 August 2023)'.
 - 165.4. A pdf document entitled 'Applnt's Supporting evidence - RE Joe Boswell's hospitalisation, whistleblowing, dismissal and appeal outcome'.
 - 165.5. A pdf document entitled 'Applnt's Supporting evidence - RE Joe Boswell's communications with the ICO'.
 - 165.6. A word document entitled 'Applnt's Supporting evidence - Whistleblowing Outcome (4 March 2021)'.
 - 165.7. Two videos submitted by Mr. Boswell entitled 'What is Black Lives Matter' and 'What is Critical Race Theory'.

165.8. The first 6 minutes 27 seconds of an audio recording dated 24 February 2022.

165.9. An audio recording entitled 'Ben Finch Worse Emails'.

165.10. A pdf document entitled 'Interview Summary' dated 11 March 2021.

165.11. A skeleton argument and an updated chronology from ONS.

166. The latter two documents were emailed to the tribunal on 17 July 2024 as a result of a misunderstanding by Mr. Boswell that there would be a section of the tribunal hearing for the parties to produce additional evidence that had not been previously provided. I am grateful to Ms Ivimy for taking a pragmatic approach and not objecting to the inclusion of these documents at such a late stage.

167. The open bundle contained a witness statement from Will Laffan, Head of Policy Group at the ONS and we also heard oral evidence from Mr. Laffan.

Mr. Boswell's oral submissions/skeleton argument

168. In his skeleton argument Mr. Boswell has helpfully consolidated all his arguments set out in the various pleadings and the grounds of appeal. The tribunal has read and taken account of that document but it is not necessary to set out those arguments here.

169. We listened carefully to Mr. Boswell's oral submissions both in opening and in closing and took them fully into account where relevant to the issues we had to determine.

170. In summary Mr. Boswell outlined the factual background to his request and his objections to what he saw as the promotion of a political agenda and the activist doctrine of Critical Race Theory, which included inter alia the emails from Mr. Bell, the promotion of the reading list on the BAME network homepage, and a series of meetings. He opposed this on the grounds that he believed it violated the conscience of principled anti-racists such as Mr. Boswell who believe in a colour-blind society and he believed it violated the impartiality of the Civil Service. He made these points in the mass email of 13 July 2020 in response to which he received a groundswell of support from across the ONS. He submitted that there was a 'crackdown' on this opposition and that since then there has been a protective cover-up.

171. He submitted that Mr. Bell's email of 13 July 2020 in which he stated that 'any reference to black lives matters is not made as a political statement it is about how we treat people individually and as an organisation' cannot be

taken seriously and that it is not possible to retroactively change the meaning of a phrase that has a commonly understood meaning. He submitted that in the context of the toppling of the Colston statue and the killing of George Floyd everyone knew that this was the rallying cry of global protestors. Further Mr. Bell referred specifically to a political podcast and incorporated the vocabulary of Critical Race Theory in his email.

172. Mr. Boswell referred to the removal of Yammer threads, correspondence between the BAME Network Allies and the Senior Management Team in July/August 2020, the email from Ian Diamond on 19 October 2020 and the comments by Mr. Bell in the 'Your Call session' as part of what he saw as the 'crackdown' on this opposition. Mr Boswell set out his concerns about the handling of the MC FOI request, which he asserts was used to harass him for speaking up and noted that the grievance appeal outcome recognised the failings in the way this request was handled.
173. Mr Boswell set out his concerns about the way his grievance was handled, including the passing of the complaint about the reading list to the co-chair of the BAME network for investigation, the independence of the decision maker and his disagreement with the process and the outcome.
174. Mr Boswell then outlined the lead up to the Request and the other requests made at a similar time. He highlighted that after he made the SAR in October 2020, Legal Services had told him that he should wait until after the outcome of the investigation by the professional standards unit which he did before submitting the nine-part request in March 2022.
175. He submitted that the request on December 2021 should not count as a FOIA or SAR request because he had intended it to be dealt with by HR as a request for information to be provided to him only for the purposes of his grievance.
176. After the March request was refused, he was invited to submit a narrowed down request which led to the series of requests in May/June 2022.
177. Mr Boswell submits that it is not appropriate for Legal Services to take into account that senders of emails/attendees of the BAME network meeting may be caused distress when approached because they are potential harassers, and this is presuming in advance who is innocent and who is guilty.
178. Finally, Mr. Boswell highlighted what he says is the public interest in the requested information. He says that the information is valuable to his

campaign for justice and simultaneously valuable to the public because in the upcoming employment tribunal he is defending a fundamental principle of UK democracy, namely the independence of the Civil Service. He submitted that the press interest in 'wokeness' in the Civil Service is not just an arbitrary fixation of the Conservative media. It is in the interests of the public to be governed democratically and not according to the whims of an unelected activist class within their institutions.

179. Further he submitted that this is a bullying scandal and there is a public interest in natural justice in relation to bullying. He highlighted the personal impact on him and other colleagues. Mr. Boswell submitted that Mr. Bell, in describing his opponents as shocking and uneducated and calling for a culture in which such people were challenged at work was bullying people for expressing a widely shared view amount the public that Martin Luther King was correct and that we should be colour blind. He submitted that the release of the requested information will establish that Mr. Bell was bullying people for expressing those views and that the emails were not shocking or uneducated as he claims.
180. Mr Boswell submitted that the ONS core duty is to collect accurate statistics and that there have already been serious consequences as a result of the influence of activists including the fact that the 2021 census data on gender identity was rendered almost meaningless as a result of the question design which could not be understood by large swathes of the British public.
181. Mr Boswell submitted that it is important for the public to see the replies that Mr. Bell received because the public need to know if the ONS is concerned with rigorous question design or whether it is concerned with pandering to fashionable ideological trends.
182. Mr Boswell submitted that as the email from Mr. Bell was professional and political it is likely that the responses would be professional and political. In so far as personal stories were shared it was done so with the implicit acknowledgement that it was being used to try and drive change and so it cannot be automatically exempt from scrutiny.
183. Mr. Boswell submitted that there is a public interest in understanding how widespread the problem of politicisation is in the ONS, which could be seen from whether the emails to Mr. Bell showed widespread support rather than challenge. There is also a public interest in the underlying debate, not just from the Daily Mail but all papers to the right of centre. He submitted that disclosure of these particular emails would illuminate the comments made by

Mr. Bell in the Your Call session and would be 'incredibly potent' and 'really tell a story' and speak to the general problem ONS has with activist capture (by which we understand Mr. Boswell to be referring to a situation where internal company issues are hijacked by militant activists for their own purposes).

184. Mr. Boswell submitted that his private interests in obtaining information in support of his grievance appeal overlap strongly with the public interest. He submits that he was pursuing his grievance appeal for the public good at a high personal cost.
185. In relation to burden, Mr Boswell submitted that the fact that the Yammer threads were burdensome to extract could not be blamed on him and in any event, they managed to extract them fairly quickly. The request was logged on 16 December and by 24 February Legal Services confirmed that the source of the delays was 'people higher up' scrutinising the redactions that had already been made.
186. Mr Boswell submitted that there was nothing wrong in asking Mr Wheeler directly for the names after having received the FOIA release. He understood that there were different rules for disclosure within a grievance process and disclosure via FOIA. He had asked for the names so he could make a complaint, the respondent did not get back to him and then when the release was made via FOIA the names were not included.
187. In relation to Ms Ivimy's submissions that there was a theme of requesting names, and that he was seeking names in order to make further complaints against colleagues, Mr. Boswell submitted that he never requested names in a FOIA request. In relation to the Request in issue he did not request names. He followed the ICO guidance in relation to when other people's personal data should be disclosed in SARs and the wording of his SAR requests reflects that.
188. Mr. Boswell submitted that he had no interest in names in relation to this particular Request, and the ONS was wrong to expect that he would have challenged any redactions of personal data.
189. He submitted that the MC FOI request was, in his view, clearly requesting emails in response to his reply all email of 13 July 2020, but if he is wrong in that, he did not intend to make an overlapping request and therefore it should not be held against him. He intended to request the private emails, not the reply all emails.

190. Mr Boswell submitted that he had asked the appeal manager to treat the appeal as a rehearing because that was permitted by the policy in exceptional circumstances, but this was refused.

Oral submissions/skeleton argument of the ONS

191. Ms Ivimy submitted that an important part of the background is that as part of his grievance appeal as well as complaints about Mr. Bell, Mr. Boswell had made complaints about, and was seeking ultimately to have disciplined, seven more junior members of staff who he was accusing of harassment.

192. In terms of burden Ms Ivimy submitted that the burden had to be considered in context, including the other requests made at the same time and the requests made in correspondence over the six-month period from about December 2021 to May 2022.

193. In relation to the multi-part request made in December 2021, Ms Ivimy submitted that Mr. Laffan's evidence was that the request for Yammer threads took a long time to respond to, in part because it was technically difficult because the material had been deleted. It was also difficult from a personal data perspective. Once they were provided Mr. Boswell's response was to contact the communications department to ask for the names of the authors of the comments to be released. Mr. Ivimy submitted that bearing in mind that the FOI team had just gone to great lengths to redact personal data, Mr. Boswell then asked for the names to be released via another route so he could make complaints against them.

194. Ms Ivimy submitted that the request of 25 February 2022, which in part extended the dates for a previous SAR which was responded to and included nine bullet points, sought a very large range of information. Ms Ivimy submitted that a common theme of the nine parts of the request was that Mr. Boswell is after the names of everyone involved in these difficult and distressing discussions prompted by the exchanges of emails in June 2020.

195. Ms Ivimy outlined the correspondence leading up to and following the response to that nine-part request. She submitted that the 21 questions sent by Mr. Boswell on 15 April 2022 are wrongly characterised by Mr. Boswell as him simply trying to find out how he could 'do better'/ reframe his request. Instead he is arguing with the respondent's approach. She submitted that the ONS spent a lot of time on their response and answered all 21 questions.

196. In relation to the question of which regime a request is dealt under, Ms Ivimy submitted that this is not a matter of discretion or choice it is a matter of law. She submitted that it is not possible for either a requestor or the public authority to 'game the system'. She submitted that ONS quite properly considered the requests under both regimes.
197. She submitted that on any view there was extensive correspondence about the February 2022 request up to May 2022 which took a very substantial time for ONS to deal with. All the correspondence and previous requests since December 2021 related to topics relevant to Mr. Boswell's grievance.
198. In relation to the four requests made in May/June 2022 it is accepted that they were an attempt to narrow down his previous request. However Ms Ivimy submitted that Mr. Boswell, despite having been told why the requests have been treated as FOIA requests, keeps insisting that the requests be treated as SARs and continues to insist on data being released to him which cannot properly be released under data protection principles.
199. Ms Ivimy submitted that the fact that ONS responded to the first May request was not inconsistent with categorising the other requests as vexatious. Instead she submitted that it showed that the ONS approached its duties seriously and carefully and considered requests on a case-by-case basis and the balance lay in favour of responding in relation to the first May request.
200. In relation to the 27 May 2022 request, Ms Ivimy submitted that Mr. Boswell was again looking for personal data, specifically names, to try and 'dig around a bit' on the subject of harassment even though it was a private meeting which he did not attend. The request on 1 June also requested the identity of the individuals and tries to justify the release of names.
201. Ms Ivimy submitted in closing that the information covered by the Request in issue is the whole correspondence generated and started by the 8 June request. She noted that Mr. Boswell specifically asked, 'when considering the necessity of redactions or omissions of third-party data, I would like you to consider that the information is extremely important to my upcoming appeal meeting'. Ms Ivimy submitted that this reflected the constant theme of wanting other people's personal data.
202. Ms Ivimy submitted that the information that has not yet been made public consists of the private emails sent by individual members of staff at the ONS in response to Mr Bell's original email of 8 June and any reply all emails post-

dating the 13 July 2020. Mr Bell's emails have already been put in the public domain.

203. Ms Ivimy reminded the tribunal that it is the public interest in the requested information specifically that is in issue, not the public interest in the topic as a whole or in Mr. Boswell's grievance.
204. Ms Ivimy submitted that there is no or no significant public interest in disclosure of those private staff emails. Ms Ivimy stated that she understood Mr. Boswell to advance three main arguments in relation to the value of the requested information:
 - 204.1. That there is a public interest in disclosure of these personal views because the June Weekly Message "endorsed" a political movement (BLM) and a contentious political philosophy (Critical Race Theory) contrary to the Civil Service Code which requires civil servants to be politically impartial, and the public should understand "the degree of support and/or criticism that this kind of politicisation of the Civil Service received within the ONS".
 - 204.2. The June Weekly Message was the subject of attention in the national press which continues to be interested in the issue.
 - 204.3. The information was important for his upcoming appeal "bearing as it does on the question of whether Iain Bell was receiving genuinely shocking emails, or if he himself was expressing a bigoted view towards liberal antiracists such as myself".
205. In relation to the first, the ONS does not accept the premise of the argument. Mr. Bell publicly clarified in his July Weekly Message that the reference to Black Lives Matter is not made as a political statement and this was stressed in the statement accompanying the release of emails in the response to the MC FOI request. Any public interest in that debate has been met by the publication of relevant emails and 'reply alls'.
206. It was submitted that there is no significant public interest in also publishing the private emails. Ms Ivimy submitted that it was fanciful that ad hoc replies sent individually by members of staff would somehow reveal the degree of support and/or criticism within the ONS for politicisation of this sort. She submitted that it would do nothing of the kind and would simply be random samples of individual emails saying one thing or another from different perspectives. She submitted that it would not shed any significant light on the topic.

207. In relation to the second point, Ms Boswell submitted that a section of the press will always be interested in articles about alleged 'wokeness' but that does not mean that there is a public interest in disclosure of the information sought.
208. In relation to the third point, ONS accepts that Mr Boswell has a private interest in those emails because Mr. Boswell wanted to advance his grievance but furthering understanding on this point is not in the public interest. There is no public interest value in sorting out this particular issue.
209. In relation to Mr. Boswell's private interest in the information Ms Ivimy submitted that:
- 209.1. The appeal process has mechanisms for information to be provided directly to the decision maker and it is for the decision maker to decide what information is useful to him. This is the appropriate process to deal with information in a proportionate way.
 - 209.2. Using FOIA to try and get information into the public domain and then use it in his private grievance is an unnecessary and inappropriate use of FOIA. It is not the purpose of FOIA to further private grievances in that way.
 - 209.3. By this stage in the grievance the particular point has become attenuated and remote. It is not the centre of the grievance and is an attempt to create a new ground of complaint against Mr. Bell. It is at the furthest reaches of what is an appropriate complaint to be making as part of the grievance and something which was for the decision maker to decide on. This appeal was a review rather than a de novo rehearing.
210. Finally, Ms Ivimy submitted the focus must always be on whether the information is of objective public interest. The question is whether the request has a value or serious purpose in terms of the objective public interest in the information. The private interests of the requestor may overlap with the public interest so that carries weight in the scales, but where it does not and it is a purely private interest that would not be sufficient to weigh in the balance, and which would have very little if any weight in the balance. She submitted that the main focus is on the public interest value not on its private use to an individual.
211. In relation to the burden of the Request in issue Ms Ivimy submitted that it included the personal data of the staff who sent the emails. She submitted

that it can be a very difficult and time-consuming task to deal with requests that involved determining what is and what is not personal data, what should be dealt with under which regime, difficult balancing exercises to be conducted and whether people should be approached for consent.

212. Ms Ivimy submitted that the evidence showed that this was a deeply upsetting incident for a lot of people and these requests two years down the line are asking the ONS to dredge up this information again and potentially to consult with the people who are affected.
213. Although it is a relatively short request Ms Ivimy submitted that it should be seen in the context of the difficult issues that arise in relation to requests of this nature and the fact that it substantially overlapped with the MC FOI request, although it would require a fresh consideration and ONS could not 'cut and paste' their response to the MC FOI request. Ms Ivimy submitted that the request was in effect asking the ONS to reconsider that request and go back over all the same issues 2 years after the original request had been dealt with. On this basis Ms Ivimy submitted that Mr Boswell was showing unreasonable persistence in the sense that this was a repetition of an exercise that had largely been done 2 years ago.
214. In terms of motive, Ms Ivimy submitted that this overlaps with purpose and the clear purpose of the request was to support Mr Boswell's grievance appeal. She submitted that the motive was to further his complaints and to do so against named members of staff.
215. In relation to distress and harassment, Ms Ivimy submitted that this is an objective test and that it not necessary that there is any intention to harass. She submitted that the effect of the request was to dredge up difficult matters from 2 years earlier which is likely to cause anxiety and distress to the individuals affected and that this was difficult, burdensome and distressing for the Legal Services team.
216. Overall Ms Ivimy submitted that the value of the information being requested was minimal but the burden in the round was very extensive.

Discussion and conclusions

Section 14

Preliminary observations

217. In Kennedy v Charity Commission [2014] 2 WLT 808, Lord Sumption, with whom Lord Neuberger and Lord Clarke agreed, said as follows, at para 153:

“The Freedom of Information Act 2000 ... introduced a new regime governing the disclosure of information held by public authorities. It created a *prima facie* right to the disclosure of all such information, save in so far as that right was qualified by the terms of the Act or the information in question was exempt. The qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure. The Act contains an administrative framework for striking that balance in cases where it is not determined by the Act itself. The whole scheme operates under judicial supervision, through a system of statutory appeals.”

218. It is important to remind ourselves of those observations. FOIA creates prima facie right to disclosure of information held by public authorities, save in so far as that right is qualified by the terms of FOIA or the information in question is exempt. Further, we remind ourselves that the qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure.

219. The purpose of section 14 is “to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA.” (UT, *Dransfield*, para 10). In order to achieve this purpose, as the Court of Appeal noted (CA, *Dransfield*, para 68), Parliament has chosen to use a strong word, and therefore the hurdle of satisfying it is high.

220. Section 14 must not be interpreted in a way that in effect introduces a ‘public interest’ threshold that all requestors have to pass. If no exemption is engaged, there is a right to disclosure of information held by public authorities whether or not there is any public interest in disclosure.

221. We note what the Upper Tribunal said in **Dr Yeong-Ah Soh v Information Commissioner and Imperial College London** [2016] UKUT 0249 (AAC) [79] and [80] (**Soh**):

“79. The FTT’s reasons conclude that “at the time the requests were made they were vexatious in their content by reason of the burden on the [second respondent] ... and the distress to the second mentor ...; the benefit sought from the disclosure was [the appellant’s] private interest ... not the public interest. It was an inappropriate use of the

FOIA and therefore vexatious". From these words, I find it inescapable that, at the least, a factor in the FTT's decision was the perceived lack of any public interest in the appellant's request for information.

80. However, it seems to me that the real issue is whether there was a value or a serious purpose to the appellant's request. A request can have a value or a serious purpose while serving an entirely private interest. Judge Wikeley referred to objective public interest. He later stated at paragraph 14 that "of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14". He continued, "..., unless there are other factors present which raise the question of vexatiousness".

81. It appears to me that the FTT would err in law if it considered that the request was vexatious for lacking public interest alone."

222. Nor should section 14 be interpreted in such a way that it operates as a 'catch all' exemption. It should not be used to avoid the need to consider whether the authority is entitled to rely on an exemption to withhold the information, even where it might appear obvious to the authority, the Commissioner or to the tribunal that the requested information ought to be withheld either in the public interest or for some other reason. Parliament has chosen which exemptions to include and determined how those exemptions operate in order to embody the 'careful balance' identified above. Section 14 is not designed to avoid the need to consider the application of individual exemptions.

Scope of request

223. Although Mr Boswell focussed on the privately sent emails (rather than reply alls), the request objectively construed in the light of the surrounding circumstances is for:
- 223.1. All emails, whether private or 'reply all' received by Iain Bell (at any of his email addresses, including those of his secretaries) in response to his "Black Lives Matter!" email of the 8th of June 2020.
 - 223.2. Any of Iain Bell's replies to these messages.
 - 223.3. Any ensuing correspondence.

Application of section 14

224. 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, although some elements do not fit neatly under one heading. In adopting this structure, 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.

Burden

225. In assessing burden the number, breadth, pattern and duration of FOIA requests are relevant to the question of misuse of FOIA by an individual. Related correspondence can also be taken into account. In **Soh**, the Upper Tribunal stated:

“94. The issue of burden was addressed by Judge Wikeley in *Dransfield* as involving questions as to the number, breadth, pattern and duration of FOIA requests in terms of the misuse of the FOIA by an individual. However, it is clear that related correspondence can also be considered.

95. ... the Court of Appeal has clearly warned against applying bright line rules as to what evidence should be taken into account when addressing the question of whether a request is vexatious. A rounded approach is required. Thus, I consider that a DPA request can properly be addressed in determining whether a FOIA request is vexatious, to the extent that it is relevant. I accept the general proposition that the decision maker should consider all the circumstances in order to reach a balanced conclusion as to whether a request is vexatious, without artificially excluding particular types of evidence.”

226. Mr Boswell submitted that certain requests should not be taken into account when assessing burden because they were not made under FOIA, but we are entitled to take account of any related correspondence.
227. We accept that the ONS as an organisation was also carrying the significant burden of responding to the related grievance. That grievance was partially upheld, and for the purposes of assessing the vexatiousness of the request in issue we do not place significant weight on the separate burden which arose out of investigating and responding to the grievance.
228. There is a significant gap in time between the SAR made in October 2020 and the next request in December 2021. Ms Ivimy in her submissions focussed on the burden on ONS from December 2021 and in our view it is right to

focus primarily on the burden from December 2021. We do not place significant weight on any burden prior to December 2021.

229. We do accept that the December 2021 request, which asked for copies of the Yammer threads removed by the ONS, whether responded to under FOIA or otherwise, carried a significant burden because of the technical difficulties in retrieving deleted threads.
230. It is not clear what the ONS process, if any, is for individuals wanting to request information to be disclosed to them individually in order to consider whether to make a complaint or as supporting evidence in a complaint already made.
231. It is unclear to us if HR or those involved in the grievance processes appreciate that not all requests for information are FOIA requests, and that just because a FOIA request is refused, that does not mean that the *individual* is not entitled to see that information as part of the grievance process. The question of whether an individual should be provided with evidence or information as part of grievance process is very different to the question of whether information should be disclosed to the world.
232. To give an example, the tribunal has considered the hypothetical situation where male employees had discussed a female employee in posts on Yammer. Yammer is not anonymous and can be viewed by all employees. We assume that a number of those individuals made remarks that were offensive and sexual in nature. We assume that those posts had then been deleted from Yammer by the ONS.
233. It seems bizarre to us that the woman in question, in order to consider whether she wanted to make a formal complaint of sexual harassment and in order to decide against whom that complaint should be made, should have to have her request to HR treated as a FOIA request.
234. This requires her, in many circumstances, to justify why this information should be provided to the world at large. It requires the ONS, in many circumstances, to consider the impact on the individuals accused of harassment of having their comments released to the world. This latter aspect appears to us to carry a risk of Legal Services becoming unnecessarily entangled in considerations of the merits of the harassment claim before that matter has been properly determined.

235. Further the individual potentially faces the argument that FOIA is not intended to be used for 'private interests' being used by the employer, as ONS does in this appeal, to submit that there is no relevant value in the request for the purpose of considering vexatiousness.
236. Further, if such an individual had already made a complaint and had reasonable grounds for suspecting that there was further evidence in, for example, private emails between those individuals, it is not clear to us whether there is any mechanism for a request for that potential evidence to be disclosed to the individual to be considered without being redirected into FOIA or DPA with the consequences set out in the preceding paragraph.
237. Mr Boswell's original request for the deleted Yammer threads was made a matter of weeks after their deletion on 27 July 2020. The request was made as a request to the Head of Internal Communications, Adam Wheeler, for them to be disclosed to Mr. Boswell personally so that he could decide whether to make a complaint, because, he stated, they contained some serious and, in Mr Boswell's view, bullying accusations.
238. Mr Wheeler took some advice and his understanding was that Mr Boswell was not 'entitled directly' to the comments other people, but a request could be made through HR. Nobody ever replied to Mr Boswell or informed him of this.
239. Mr Boswell next requested the Yammer threads from HR, specifically for the purposes of his grievance/complaints in December 2021. This request was headed 'Request for information from HR specifically' and began with the sentence 'Can I please get some answers to the following four questions ASAP, or at least a week before my first Resolution Meeting, in order to give me time to prepare'. This was treated as an FOI request.
240. In our view at least some of the burden of the FOI request in December 2021 might have been avoidable if someone had responded to Mr Boswell in July 2020 and if there had been a clear mechanism for requesting information to be disclosed to an individual for the purposes of grievances/complaints as discussed above.
241. Further, when Mr Boswell, having been provided with the Yammer threads with the names redacted under FOIA, approached Mr Wheeler again for the names of those individuals so that he could consider making a complaint, we do not see that as unreasonable persistence. Again this was redirected to Legal Services whose reply was, we think, in the email of 19 May 2022 which

stated that names were not included because disclosure under FOIA is disclosure to the public.

242. After the December 2021 request, on 25 February 2022 Mr. Boswell made a further SAR/amendment to his previous SAR and a nine-part SAR/FOIA request in the same email. There was some burden in responding to the SAR/amendment. The nine-part request was treated as a FOIA request.
243. We accept that there was a reasonably significant burden on the ONS arising out of the refusal of the nine-part request on the grounds that it was vexatious. First, there were a number of emails and telephone calls in which Mr. Boswell persistently challenged the response and insisted that at least some of the parts of the request should be treated as SAR requests. This included an email sent to Legal Services on 15 April 2022 with 21 detailed questions. These were responded to in detail by ONS. We do not accept that these questions were simply Mr. Boswell attempting to narrow his request.
244. As part of these discussions with Legal Services they did invite him to resubmit a narrowed request or requests. The four requests sent on 24, 25 and 27 May and 1 June 2022 were, we accept, Mr. Boswell's attempt to narrow his request sent on 25 February 2022. They do, taken together, ask for less information than was requested in the February 2022 request, but there is still a burden on the ONS caused by each of those requests and exacerbated by making multiple requests at the same time.
245. Overall we accept that by July 2022 looked at as whole the course of dealings was placing a not insignificant burden on ONS' resources.
246. We have taken account of the evidence from ONS as to the likely burden of responding to the Request in issue in isolation. It is not, in our view, an excessive burden. The respondent has already located the relevant emails. If it intends to maintain its refusal to disclose under section 41 the burden is minimal. If it intends to make redactions and consider the application of section 40, we accept that there will be some burden involved, but it would not in our view be excessive or unmanageable for the ONS.
247. The request does overlap, in part, with the MC FOI request. The overlap is limited to any private, rather than 'reply all', emails sent between 8 June and 13 July. We accept that Mr Boswell honestly did not appreciate that there was any overlap and so, as set out below, we do not impute any inappropriate motive or unreasonable persistence as a result of this overlap. However the overlap is also relevant in considering the burden of the request.

248. We note that the private emails were refused, as a category, under section 41. To the extent that the ONS intend to take the same approach and apply section 41, most of the work has already been done and the burden would be minimal. To the extent that the ONS intend to take a different approach, the burden involved in this request is not increased by any overlap. Further the overlap is limited to a specific period. Any emails post-dating 13 July are outside the scope of the MC FOI request. For those reasons we do not accept that there is any significant increase in the burden of this request arising out of the overlap with the MC FOI request and there is likely to be some reduction in the burden.
249. Further, we consider that some steps could be taken under section 16 to attempt to narrow down the request and avoid some of the consequences that the ONS are concerned about. Mr. Boswell has been clear that he is largely interested in the emails in order to test Mr. Bell's assertion in the Your Call meeting on 2 July 2020 that he was 'quite shocked by some responses to my email which said that there was no racism and they didn't need to educate themselves (was almost the tone)'. Mr. Boswell could be asked if he would agree to limit the request to emails up to and including 2 July 2020. This was before the reply all sent by Mr. Boswell and presumably would exclude many of the emails containing 'personal stories' sent to Mr. Bell.
250. We do accept that this request was likely to carry a future burden. In the light of Mr. Boswell's general approach we accept that he was unlikely to accept a decision to withhold information or substantial redactions without persistent challenge.
251. Overall, we accept that the burden of this Request, looked at in the context of the whole course of dealings and the likely future burden, is reasonably significant for an organisation like the ONS.

Purpose or value

252. Mr Boswell submits that there is a public interest in disclosure of the requested information because the public should understand the degree of support and/or criticism that this kind of politicisation of the Civil Service received within the ONS. We agree with Ms Ivimy that it is fanciful that ad hoc replies sent individually by members of staff would somehow reveal the degree of support and/or criticism within the ONS for politicisation of this sort.

253. Although we accept that the underlying issues are of significant public interest, the initial emails, any reply all emails up to 13 July and the reading list were already in the public domain at the relevant date and have been reported in the press. We have not seen the relevant emails and it is difficult to determine to what extent there there might be some additional contribution to the general public debate by the publication of these emails, but it is likely, in our view, to be limited.
254. We do not accept Ms Ivimy's submission that when considering vexatiousness the focus must always be on whether the information is of objective public interest. We do not agree that the question is whether the request has a value or serious purpose in terms of the objective public interest in the information. The private interests of the requestor are relevant even where they do not overlap with the public interest. There is no public interest threshold that requestors have to pass.
255. We have already cited paragraph 79 of the Upper Tribunal decision in *Soh*. In that decision the Upper Tribunal makes clear that the real issue is whether there is a value or serious purpose to the request and that a request can have a value or serious purpose while serving an entirely private interest.
256. We accept that Mr Boswell has a serious purpose in making the request. He has a private interest in the requested information. He asserts that it will be of assistance in his grievance appeal. In the letter which contains the request he states:

"I would like you to consider that the information is extremely important to my upcoming appeal meeting with Ed Humpherson, bearing as it does on the question of whether Iain Bell was receiving genuinely shocking emails, or if he himself was expressing a bigoted view towards liberal antiracists such as myself."

257. The respondent submitted that the information, if it would be relevant to the appeal, could be obtained in the course of the grievance proceedings by the decision maker. We note the following paragraphs from ***Soh***:

"87. ...it is difficult to ignore the comment in the FTT's conclusion at paragraph 30 that "it would be inappropriate for this tribunal to justify disclosure in the public interest of material for the purpose of litigation before another tribunal when that Tribunal (which is far better placed to understand the issues it needs to resolve) is in a position to make that order". The issue for the FTT was not to

consider whether it was appropriate for it to order disclosure – but whether it was an inappropriate use of the FOIA to request it. By this comment, the FTT clearly appears to make the possible availability of the requested information through the ET a factor in its decision.

88. If it did, in my view, it was not entitled to do so. The issue before it was whether the applicant had a serious motive in requesting information. This was the assessment of the merits of her potential claim to the ET and its potential use as evidence in those proceedings. It might well have been that, upon sight of the requested information, she would have decided not to bring or to discontinue ET proceedings. The fact that she might have obtained the same material by way of an application to the ET does not diminish the seriousness of the purpose for which it was sought. In any event she had no right to the requested material through the ET proceedings, but a possibility that an employment tribunal judge might have ordered disclosure.

89. It appears to me that, to the extent that it placed weight on this issue, the FTT has misdirected itself on the question of whether the request was vexatious for lack of serious purpose, or has alternatively taken an immaterial consideration into account.”

258. Similarly the question for us is whether there is a serious purpose in requesting the information. As stated above it is not clear to us whether there is any mechanism for Mr Boswell to obtain the information for use in his grievance appeal, but he certainly does not have any right to that information, nor can he insist upon the decision maker requesting the information or taking the material into account. There is only a possibility that the decision maker might have obtained the information.
259. The respondent submits in any event that this particular point has, by this stage in the grievance, become attenuated and remote. Ms Ivimy submitted that it is not the centre of the grievance and is an attempt to create a new ground of complaint against Mr. Bell. She submitted that it is at the furthest reaches of what is an appropriate complaint to be making as part of the grievance and notes that the appeal was a review rather than a de novo rehearing.
260. We accept that this issue is not the central complaint against Mr Bell, but we do find that it is closely related. In particular we do not accept that the Request is an attempt to create a new ground of complaint against Mr Bell to add to the grievance. Mr Boswell submitted his grievance appeal in February 2022, before the Request in issue was made. Part of that grievance appeal

was the assertion that 'Sam [who decided the grievance] also fails to mention that Iain had used his Your Call session of July the 2nd to lambast the critics of his June email as shocking and uneducated'. Further the allegation also falls under 'theme two' of the grievance appeal 'Ideological harassment of liberal antiracists by Ian Bell...' and reference to the comment in the Your Call session appears in the chronology in the first page of that section of the appeal document.

261. We accept that in normal circumstances an appeal against a grievance outcome is intended under the ONS procedure to be a review rather than a rehearing. It is clear from the quote above that Mr Boswell certainly took the view that this had been raised with the original decision maker and at the relevant time Mr Boswell was, in any event, attempting to persuade the appeal manager to exercise his power to rehear the grievance. For all those reasons we do not accept that this is a 'fishing' attempt in order to find a new ground of complaint to add to the grievance appeal
262. Ms Ivimy submitted that Mr Boswell was unreasonably persistent. She submitted that he had made his complaint about the original email from Iain Bell on 8 June 2022, which had been deal with by way of a clarification by Mr Bell on 13 July 2020. He had received the outcome to his grievance, which had, in the main, not been upheld. He had been provided with information in response to number of requests. She submitted that he was being unreasonably persistent in pursuing his complaint about the original email, and that he was being unreasonably persistent in repeatedly requesting personal information of other members of staff and by insisting that requests be treated as SARs, despite being repeatedly told the ONS' position.
263. If we had been considering a request made today, we would have agreed with the ONS on this issue. Mr Boswell continues (although not in the Request in issue) to repeatedly request personal data. He continues to insist that particular requests are treated as SARs. The underlying grievance has now been exhaustively considered and addressed. His persistence has, by the time of the tribunal hearing, become unreasonable.
264. However, at the time of the response to the Request, we accept that Mr Boswell's private interest in the information shows that there was a serious purpose behind the complaint. The requested information, which we have not seen, was at least potentially of relevance to his grievance appeal and therefore at least potentially of value to him in pursuing his grievance.

Motive

265. We do not accept that Mr Boswell's motive for making the Request in issue was a 'fishing expedition' for evidence to support new harassment complaints against colleagues. We have already dealt with the question of whether this was an attempt to make a new complaint against Mr Bell.
266. In relation to colleagues, the Request in issue first appeared as part of the multi-part request made on 25 February 2022 that was refused as vexatious. Although many parts of that request sought individuals' names, the bullet point equivalent to the current request did not. That is presumably because the purpose of the request is to obtain evidence in support of the complaint against Mr Bell.
267. Although the Request itself does ask the ONS to consider the necessity of redactions or omissions of third-party data, this point is specifically made with reference to those emails described by Mr Bell as 'shocking' which the context suggests are emails supportive of Mr Boswell rather than emails containing matters that could form the basis of additional harassment complaints by Mr Boswell.
268. We do not accept that this particular Request was intended to unearth evidence that would form the basis of new complaints against either Mr Bell or colleagues.
269. We have already stated above that we do not accept that Mr Boswell deliberately made a request that overlapped with the MC FOIA request to cause disruption or annoyance.

Harassment and distress

270. Up to the relevant date, Mr Boswell had adopted a moderate and courteous tone in his correspondence and telephone conversations with the respondent. We accept that individuals working in Legal Services felt uncomfortable with talking to a FOI requestor by telephone, as a result of the direct access which was available to Mr Boswell as an employee. We accept that dealing with the burden set out above was annoying and probably stressful. We do not accept, at the relevant date, that this reached the threshold of harassment or distress.
271. Circumstances arising after the date upon which the request was responded to by the public authority are not relevant unless they cast light on the position at the relevant date. We do not accept that the letter of 22 May 2022

in which Mr Boswell accuses the legal officer who sent the response of unprofessionalism, bias and harassment casts any light on the position at the time of the response to the request.

272. If this letter had been sent before the response to the Request, we would have taken the view that Mr Boswell's immoderate tone and specific targeting of the individual who wrote the response was likely to cause distress to that individual.
273. We have also considered the potential for distress to those individuals whose emails fall within the scope of the request. We accept Ms Ivimy's submission that the ONS will 'potentially' have to contact those individuals. They may not have to if they rely again on section 41. They are not obliged to attempt to seek consent to disclosure.
274. The ONS may be able to make a judgment on whether or not disclosure of any 'personal stories' or personal opinions of those who are not supportive of Mr Boswell is reasonably necessary for the purposes of his identified legitimate interests without contacting those individuals.
275. As identified under burden above, in our view it might be possible under section 16 to suggest to Mr Boswell that the request be limited to those emails up to and including 2 July 2020, which would exclude any emails sent after Mr Boswell's open email and, we anticipate, most of the 'personal stories' emails.
276. However, we do accept that the ONS will at least potentially have to contact some or all of the individuals when considering the exemptions. Further, in the event that ONS adopt a different approach to the MC FOI request and decide to disclose some of the private emails, the ONS are likely to have to contact those individuals.
277. Although we have not seen the relevant emails, we accept that some contain personal stories of harassment or discrimination. Further we accept that some individuals clearly found the entire incident stressful and upsetting. For those reasons we accept that responding to the request has the potential to cause upset to some employees and we take that into account.

Conclusions

278. 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. It is important for that qualified right of access that vexatiousness is a high hurdle. Further, whilst we have structured our discussion around a number of convenient headings, we must take a holistic approach to our assessment and we bear in mind that the fundamental question is whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

279. In our view, at the relevant time, the burden of this particular request, even looked at in the context of the entire related course of dealings, was reasonably significant but not disproportionate. We accept that there was some potential distress to some individuals and this points towards vexatiousness. We accept that Mr Boswell had been extremely persistent, but in the relevant period, we find that this persistence had not yet become unreasonable. We do not accept that there was an inappropriate motive for making the request. We accept that there was purpose and at least potential value to Mr Boswell in making the request. We do not accept that this was an inappropriate or improper use of FOIA or a request without reasonable foundation.

280. Having considered the matter carefully and in the round, we find that this Request did not reach the high hurdle of vexatiousness and the appeal is allowed.

Observations

281. This does not form part of our reasoning, but we wish to draw Mr Boswell's attention to the fact that many features of his approach to this issue point increasingly towards vexatiousness. This is particularly so when including his conduct following the response to this Request and taking into account the outcome of his grievance appeal. Had we taken this into account, we would have categorised his conduct overall as unreasonably persistent, disproportionately burdensome and likely to cause distress to employees of ONS to the extent that a similar request today would, in our view, have been likely to reach the high hurdle of vexatiousness.

Signed

Date:

Sophie Buckley

28 August 2024

Promulgated
September 2024

4

