



NCN: [2025] UKFTT 00214 (GRC)

Case Reference: FT/EA/2024/0135

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

**Decided without a hearing
Decision given on: 21 February 2025**

Before

**JUDGE SHENAZ MUZAFFER
MEMBER EMMA YATES
MEMBER PAUL TAYLOR**

Between

CHARLES WELSH

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is dismissed.

REASONS

1. This is an appeal against a decision of the Information Commissioner (the "Commissioner") dated 13 March 2024, reference IC-259298-K0W4 (the "Decision Notice").
2. The parties opted for a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing in accordance with rule 2 and rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 (as amended).

Factual background

3. The appeal relates to the application of the Freedom of Information Act 2000 (“the FOIA”). It concerns information held by the Old Somerby Parish Council, Grantham, Lincolnshire (“the Council”).

The requests and responses

4. The appellant made the first request (“the first Request”) which is the subject of this appeal on 16 June 2023 in writing as follows:

“Please provide copies of all communications between yourself/OSPC and PKFL (including phone calls in respect of which you will have made a file note) that relate to their costs, as well as any such communications you/OPSC may have had since with them”.

5. The Council issued a refusal notice on 12 July 2023 stating that it regarded the request to be vexatious. The Council stated that *“We have taken into account very recent correspondence in which you once again make reference to the same subject matter that you have repeatedly raised on a very great number in previous correspondence over a number of years”*. The Council also noted that the Appellant was the subject of a Determination pursuant to the Council’s Abusive, Persistent or Vexatious Complaints Policy, which had been initially made on 05 August 2019 and subsequently renewed due to the repeated correspondence from the Appellant to the Council regarding the subject matter of the first Request.
6. The Appellant requested an internal review of the decision to withhold the requested information on 24 July 2023. The Council acknowledged the request for an internal review on 14 August 2023 and indicated that they would deal with the request within forty working days of the initial request. In the same correspondence, the Council referenced a meeting of the Council that had occurred on 07 August 2023, at which *“an amended version of the Complaints Procedure suggested by Lincolnshire Association of Local Councils”* was accepted, as was a Risk Assessment.
7. The Appellant responded in writing on 15 August 2023. In that response, he made the second request (“the second Request”) which is the subject of this appeal as follows:

“I note [name of Clerk redacted] refers to a risk assessment. Please provide a copy of it together with copies of any communications relating to it (including phone calls in respect of which file notes will have been made).

Please also provide copies of all communications with LALC (also including notes of phone calls) in connection with the amended complaints procedure to which [name of Clerk redacted] also refers in his letter.

He also makes reference to a locum clerk. Please identify who that person is and provide their contact details”.

8. The Appellant initially contacted the Commissioner in relation to the delay in receiving the outcome of the Council's internal review regarding the first Request on 29 August 2023. He contacted the Commissioner again on 15 September 2023 in relation to the delay in the Council responding to the second Request.
9. The Council provided the outcome of its internal review on 09 October 2023. Whilst both requests were referenced in the Council's decision notice, the Council only expressly reviewed their decision regarding the first Request. The Council upheld its decision to refuse the first Request on the ground that the request was vexatious for the purpose of section 14(1) FOIA 2000. The letter accompanying the decision notice read:

"The Council must warn you that it will not respond to further requests for information from you in relation to the historical and current allegations of collusion and wrongdoing being made by you and it will not respond to further requests that continue to suggest that the council is not complying with its legal duties that appear to be part of a campaign of bullying, harassment and abuse towards Councillors, the Clerk and Internal Auditor. We will not write to you to refuse these requests".

10. Whilst the Council did not expressly refer to section 14 FOIA in relation to the second Request, it is clear from the wording and tenor of the above letter that the second Request was also viewed as being vexatious as it followed the same pattern as the first Request. The Council also expressly stated that they would not respond to subsequent requests, which would include the second Request.
11. On 11 October 2023, the Appellant contacted the Information Commissioner and requested an investigation into the Council's response to both the first and the second Requests.

Decision notice

12. The Commissioner decided that the Requests were vexatious, and that the Council was therefore entitled to refuse them under section 14(1) FOIA 2000. He did not require the Council to take any steps.
13. In summary, the reasons for the Commissioner's decision were:
 - a. Section 14(1) FOIA 2000 is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress, although public authorities must recognise that meeting their underlying commitment to transparency and openness may involve them absorbing a certain level of disruption and annoyance;
 - b. The Appellant had sent a large volume of correspondence and information requests to the Council, specifically 67 emails since 2019, comprising of 661 paragraphs and 64 attachments, including audio clips;

- c. The Council was a small organisation with limited resources and the Clerk only worked part-time on a voluntary basis. Whilst compliance with the Requests in isolation may not impose a significant burden on the Council, the aggregated burden of dealing with the overall correspondence will have placed a significant burden on them.
- d. Whilst the Appellant may have had a genuine issue when he started to contact the Council, he had now pursued the issues well beyond the point of reasonableness. Compliance with the Requests would likely generate further correspondence and requests, thus placing a further burden on the Council and its limited resources.

14. The Commissioner concluded that:

"...the Council has demonstrated that the requests in this case are part of a wider pattern of requests, complaints and challenges made by the complainant. When viewed in that context, they go beyond what it would be reasonable to expect a small parish council, with limited resources and a member of staff who works 2.5 hours a week, to absorb in the name of transparency and accountability. He considers that the Council has shown that it is having to spend disproportionate amounts of time and resources in dealing with the complainant's approaches to it and that this risks undermining its ability to carry out its core functions".

Grounds of appeal

15. The Appellant appealed on 09 April 2024.

16. The Grounds of Appeal are, in essence, that:

- a. The Commissioner was wrong to conclude that responding to the Requests would place an undue burden on the Council – the requested information was limited in extent and readily available and the Council, when it had committed to the Neighbourhood Plan that formed the background to the Requests, had also committed to ongoing increased levels of community engagement and accountability;
- b. The Commissioner was wrong to accept the assertions made by the Council that the issues raised in the Requests had been addressed on previous occasions;
- c. The Commissioner erroneously presumed that issues relating to the Neighbourhood Plan were historic and wrongly concluded that it was unlikely that the provision of the requested information would resolve the Appellant's concerns.

The response of the Commissioner

17. The Commissioner's response, dated 21 May 2024, maintains that the Decision Notice was correct. He places reliance on the Court of Appeal decision in *Dransfield v*

Information Commissioner & Devon County Council [2015] EWCA Civ 454 (which he noted did not depart from the Upper Tribunal findings in *Information Commissioner v Dransfield [2012] UKUT 440 (AAC)*).

The Appellant's reply to the Commissioner's response

18. In his reply dated 12 June 2024, the Appellant queried whether the Commissioner's decision as per his response dated 21 May 2024 had been made with the fullest regard to his submissions which had only been sent to the Commissioner on 20 May 2024. The Appellant asserted that he had been denied the opportunity to comment on the response that was provided on behalf of the Council to questions posed by the Commissioner's case officer, and invited the Tribunal to make directions that would enable him to adduce further material that would demonstrate that the Clerk of the Council had been acting in his own interests, with the support of the Councillors, when responding to his requests for information. He also made representations in relation to the format of the final determination of the appeal.

The Appellant's further response

19. The Appellant submitted a 27-page document entitled 'Appellant's main statement' and an accompanying bundle, dated 16 October 2024, to the Tribunal. In his statement, he provided extensive details about the incident that occurred on 07 July 2023, the sequence of correspondence with the Commissioner, the accounting procedures of the Council, the background to the Neighbourhood Plan, the application of Council policies, and the perceived governance issues within the Council. Much of the information that was provided is not directly relevant to the matters that the Tribunal needs to determine in this appeal.

20. In addressing each of the factors listed in *Dransfield*, the Appellant submitted as follows:

- a. His enquiries over time fell within the scope of the community engagement which the Council had committed to in conjunction with the Neighbourhood Plan;
- b. His motive was to ensure that public interest opportunities could be reinstated by enabling the community to be consulted on a revision of the Neighbourhood Plan;
- c. His requests both had a serious value and purpose. The first Request related to the transparency and accountability of the Council regarding costs incurred by them, and the second Request related to attempts that were being made to discredit him and which should not be allowed to be hidden;
- d. Those who put themselves forward for public office should not feel harassment or distress when having to deal with issues that may seem to be difficult.

Legal Framework

21. The relevant provisions of FOIA are as follows:

s.1 General right of access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

.....

s.14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
- (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

22. Section 17 provides, so far as relevant:

s.17 Refusal of request

.....

- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
- (6) Subsection (5) does not apply where –
 - (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

23. The FOIA does not provide any assistance as to what is meant by 'vexatious'. The Upper Tribunal gave guidance in *Information Commissioner v Devon County Council and Dransfield* [2012] UKUT 440 (AAC), as upheld and clarified by the Court of Appeal in *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454.

24. As noted by Arden LJ in her judgment in the Court of Appeal in Dransfield, the hurdle of showing a request is vexatious is a high one: *"...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"* (para 68).
25. Judge Wikeley's decision in the Upper Tribunal sets out more detailed guidance that was not challenged in the Court of Appeal. The ultimate question is, *"is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?"* (para 43). In the context of reviewing the Commissioner's Guidance, Judge Wikeley highlighted *"the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (para 45). Arden LJ in the Court of Appeal also emphasised that a *"rounded approach"* is required (para 69).
26. The Upper Tribunal set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious:
- a. **The burden imposed on the public authority by the request.**
This may be inextricably linked with the previous course of dealings between the parties. *"...the context and history of the previous request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor"* (para 29).
 - b. **The motive of the requester.**
Although FOIA is motive-blind, the Upper Tribunal observed that *"what may seem like an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority"* (para 34).
 - c. **The value or serious purpose of the request.**
Regard should be had to the inherent value of the request, specifically *"does the request have a value or serious purpose in terms of the objective public interest in the information sought?"* (para 38), albeit that a lack of apparent objective value cannot provide a basis for refusal on its own.
 - d. **Any harassment of, or distress caused to, the public authority's staff.**
Vexatiousness *"may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of*

criminal behaviour or is in any other respects extremely offensive" (para 39), although this is not a prerequisite for concluding that a request is vexatious.

27. Overall, the purpose of section 14 is to "*protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA*" (Upper Tribunal, para 10).

The role of the Tribunal

28. 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 an exercise of his discretion, whether he ought to 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.

Issues

29. The issue for the tribunal to determine is whether the Information Commissioner's Decision Notice was in accordance with the law and whether the Information Commissioner was correct in upholding the decision of the Council to rely on section 14(1) in refusing or not responding to the Appellant's two Requests.

Evidence

30. We read and took account of an open bundle containing 494 pages including indexes.

Discussions and conclusions

31. The Tribunal considered the non-exhaustive list of issues as set out by the Upper Tribunal in *Dransfield* and the overall circumstances of the case, including the history of the relationship between the Appellant and the Council.
32. **The burden imposed on the public authority by the request.** This is a key factor relied upon by the Council. Whilst the mere fact that a responding to a request may be burdensome, that in itself does not absolve the Council from their legal obligations under FOIA. However, each request must be considered in context, and the Tribunal has therefore taken the previous dealings between the Appellant and the Council into account when assessing whether the two Requests are vexatious.
33. The Tribunal notes that, since March 2019, the Appellant has sent 67 emails to the Council, frequently comprising of multiple paragraphs and containing attachments and audio clips. The summary of those communications provided by the Council (page B138) indicates that there were at least three further FOI requests made to the Council during that period, as well as a Subject Access Request. The protracted communications between the Appellant and the Council date back to at least 2017 (page B82), and include a further FOI request in April 2018. He has also raised objections with the external auditors regarding the Council's Annual Governance

and Accountability Returns for three consecutive years. The fee charged in relation to the 2021-2022 by the External Auditors for responding to the Appellant's requests equated to over one third of the Council's precept for that year.

34. The Appellant states that the information sought is limited in extent and readily available. He also submits that, by undertaking a Neighbourhood Plan, the Council committed to enhanced levels of community engagement and accountability in the implementation and review of that plan. Given that the background to his Requests are concerns that the plan was improperly made, he submits that the Council cannot now rely on a claim of undue burden in light of their enhanced commitment.
35. The Tribunal accepts that, in isolation, each Request may be easy to answer. However, we have considered the aggregated burden of dealing with the volume of correspondence from the Appellant, noting in particular that this is a small Council of only five members, and that the (unpaid) clerk is only expected to provide 2-2 ½ hours per week to the Council and yet is spending up to 50+ hours per year dealing with the communications from the Appellant. In addition, over 30 hours of officer and councillor time were spent in preparing for the internal review meeting that took place in October 2023.
36. **The motive of the requestor.** It is the case generally that the application of FOIA and any request made under it is not dependant on the motive behind the request. However, section 14 is an exception to this principle. The motive of the requestor can be an important factor as to whether a request is vexatious in the wider context of the dealings between an individual and a public authority. In this case, the Appellant says that his motive for making the request relates to concerns that he has that the Neighbourhood Plan (which commenced in 2016 and was approved in 2021 following a statutory consultation) was improperly made, that it was brought forward for consultation and examination under false pretences, that public funds were misused in relation to a Consultant, and that the plan was demonstrably not in the public interest.
37. The Tribunal is satisfied that the history and content of the communications between the Appellant and the Council demonstrate that, in reality, the FOIA requests are being used as part of a campaign to undermine the Parish Council, in particular the Clerk, and to thwart the ability of the Council to carry out its core functions. Such conduct appears to be fuelled, at least in part, by the Appellant's disquiet over decisions that were taken in 2016-2017 by the Council which led to him resigning from his role as Consultant in relation to the development of the Neighbourhood Plan.
38. Whilst it is not determinative, we note that there is no suggestion that other members of the community are raising similar allegations of collusion and conspiracy against the Council. The communications from the Appellant and his submissions in relation to this case demonstrate a particular animosity towards the Clerk of the Council, to the extent that the Appellant suggests on the GRC1 form that there is a question over

whether the Clerk has been acting unilaterally in his own interests and that, as such, the Tribunal may instead wish to direct any correspondence to the Council via the South Kesteven District Council instead.

39. **Value or serious purpose of the request.** The Tribunal recognises the clear public interest in accountability and transparency of Council decisions, particularly where the spending of public funds are involved. We note that the Council's accounts are regularly checked by its lead Councillor for Finance and its Internal Auditor, and that the Annual Governance and Accountability Return is reviewed by the External Auditor (PKFL) and published, along with the associated documents, on its website. The accounts are also open for inspection by members of the community. The original invoice and credit note that relate to the first Request were published as part of the Council's accounts. Minutes of Council meetings – including the outcome of any external reviews – are also published, and meetings themselves are held in public, save for which confidential matters are discussed. Council policies – including the amended Complaints Policy – are also available and decisions made pursuant to them are kept under review. In addition to the External Auditor, matters raised by the Appellant have been considered by Lincolnshire Police and the Monitoring Officer of South Kesteven District Council. Against that backdrop – and in the wider context of repeated requests which have been previously addressed – we are satisfied that neither Request has a value in relation to the public interest in transparency and accountability of Council activities.
40. **Any harassment of, or distress caused to, the public authority's staff.** The Appellant's communications with the Council, and his submissions in relation to these Requests, make repeated allegations of wrongdoing – including of conspiracy and collusion between the Clerk and the Internal Auditor, that the Clerk has abused the trust placed in him by virtue of his public office, of unresolved conflicts of interest, complicity in falsifying records, and denial of natural justice.
41. In August 2019, the Council decided to impose restrictions on the Appellant's contact with the Council in light of the nature of his communications with them, applying their 'Abusive, Persistent or Vexatious Complaints Policy'. One restriction imposed on the Appellant was that all communications to the Council should be sent via the Clerk and not copied directly to each Councillor. It is apparent that the Appellant has entirely disregarded this restriction, continuing to send all communications – including both Requests – to all Councillors.
42. In July 2023, an incident took place at a council meeting which led to the Council undertaking a risk assessment in relation to future public meetings (and which relates to the second Request). Whilst we make no findings of fact in respect of that incident, we do accept that it evidently caused the Council to have a heightened regard for the safety of attendees of council meetings.
43. We recognise that the Appellant has not used the extreme type of language referred to in *Dransfield* and nor can his behaviour be categorised as '*extremely offensive*'.

However, we do find that the repeated attempts to reopen issues that have been resolved and to continue to raise unsubstantiated, often personal, allegations would have caused distress to the Clerk and to the other Council members.

44. Having considered all of the circumstances of this case, the Tribunal finds that both the first and the second Request were vexatious. Whilst the Appellant asserts that his requests are in the public interest, we agree with the assessment of the Council that the Appellant *“is undertaking a campaign of burdensome attrition to bring the parish council to a standstill and incurring extra costs by submitting Freedom of Information requests and the other allegations to the external auditor”*. It is not in the public interest for the limited resources of the Council to be disproportionately spent on replying to the Appellant’s requests, undermining their ability to carry out their core functions for the benefit of the wider community.
45. The Tribunal has taken into account the underlying purpose of section 14 FOIA and accordingly finds that the Council was entitled to rely on section 14(1) FOIA to refuse to reply to the request of 16 June 2023 and to refuse to respond to the request of 15 August 2023.

Ancillary Issues

46. On 20 May 2024, the Appellant made an application, via form GRC5, for a case management direction. He repeated this request in his reply to the Commissioner’s response, dated 12 June 2024. In essence, he submitted that he had been denied the opportunity to place all material that he deemed to be relevant before the Commissioner as that information had only come into his possession after the Commissioner had issued the Decision Notice. In particular, he stated that he had not had the opportunity to comment on the response submitted by the Council to the questions posed by the Commissioner’s case officer.
47. The Appellant invited the Tribunal to ask the Commissioner to confirm whether he would accept that any such comments would be material to a decision on whether his Requests could be considered vexatious, and whether his opportunity to make representations should be reinstated.
48. It does not appear from the bundle that this application for a case management direction was ever expressly addressed by the Tribunal. Even if it had been, it is not the role of the Tribunal to dictate how the Commissioner conducts his investigation, nor to order that certain matters could or should be taken into account.
49. We also note that, on 16 November 2024, Judge Buckley gave permission for the Appellant to file additional written statements by 16 November 2024 (whilst the Case Management Directions state ‘October’, it is clear from the date of the order that this must be a typographical error). We are therefore satisfied that the Appellant has had a full opportunity to place all matters that he considers to be relevant before the Commissioner and the Tribunal.

50. The Appellant also suggested that issues relating to the governance of the Council were relevant to the Appeal and should be considered by the Tribunal. Such considerations do not fall within the remit of the Tribunal's considerations which, pursuant to section 57 FOIA, are limited to a consideration of the Decision Notice.

Conclusion

51. The Tribunal dismisses the appeal for the reasons given above.

Signed: Judge Shenaz Muzaffer

Dated: 03 February 2025