



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)**

Case No. EA/2010/0004

**ON APPEAL FROM:
Information Commissioner
Decision Notice ref FS50233971
Dated 30 November 2009**

Appellant: David Young

Respondent: Information Commissioner

Determined on papers

Date of meeting: 21 June 2010

Date of decision: 23 June 2010

Before

HH Judge Shanks

Dave Sivers

Gareth Jones

Subject area covered:

Vexatious or repeated requests s.14

Cases referred to:

Rigby v Information Commissioner & Blackpool, Fylde and Wyre NHS Trust
(EA/2009/0103)

Young v Information Commissioner (EA/2009/0057)

Decision

For the reasons set out below the appeal is dismissed.

Reasons for Decision

Background facts

1. In the early hours of 6 May 2006 the Appellant, David Young, was arrested by Kent police for persistently soliciting a woman for prostitution from a motor vehicle. He was subsequently prosecuted and found guilty of that offence and received a conditional discharge.
2. There is no record of any appeal against that conviction but Mr Young made more than 20 complaints against the police about his arrest and detention which were referred to the Independent Police Complaints Commission; it appears that the only complaint which was upheld related to the mis-recording of one letter of his vehicle registration number by an officer in his pocket book. He also made a request for information relating to the incident to the Kent Police under the Freedom of Information Act 2000 on 11 April 2008 which was refused under section 40(5) of the Act (and which itself led to an unsuccessful appeal to this Tribunal in *Young v Information Commissioner* (EA/2009/0089)).

3. This appeal concerns a number of requests for information made by Mr Young to the Kent Police on 7 October 2008 which were in these terms:

Please inform me of the name, number and rank, probably constable, of the female officer who was on duty in Maidstone Road, Chatham, Kent on Saturday 6 May 2006 between 0200 and 0400 hours and conveyed an arrested female to Maidstone police Station.

Her accompanying male PC's number and name is also required.

Please provide me with a copy or details of the caution given to [name redacted] ... at Maidstone Police station on Saturday 6 May 2006.

Please also provide copies or details of any other cautions or convictions of the above named female from the age of criminal responsibility up until present date including any pending convictions, charges.

4. By letter dated 24 November 2008 the Kent Police refused to comply with those requests in reliance on the exemption at section 14(1) of the Act on the basis that they were vexatious. That letter led to four letters from Mr Young all dated 8 December 2008, of which we have seen the two which seek internal reviews in relation to those requests. The Kent Police upheld their earlier decision in a review letter dated 30 December 2008 and the review decision led to a complaint to the Information Commissioner which was rejected by a decision notice dated 30 November 2009 and in due course to this appeal.

Issue on appeal

5. The only issue to be resolved on the appeal is whether, in the light of all the relevant material now before the Tribunal, the Commissioner was wrong to conclude in his decision notice that Mr Young's requests were indeed "vexatious" within the terms of section 14(1) of the Act.
6. We have been referred by the Commissioner to paragraphs 27 to 32 of the recent Tribunal decision of *Rigby v Information Commissioner & Blackpool, Fylde and Wyre NHS Trust (EA/2009/0103)* which in our view helpfully sets out the correct approach to be adopted by public authorities, the Commissioner and the Tribunal when applying section 14(1) of the Act. The Tribunal at paragraph 31 of that

decision sets out five questions which the Commissioner's own Awareness Guidance 22 focuses on and at paragraph 32 states that they provide a "...useful guide to public authorities when navigating the concept of a 'vexatious' request." We propose to consider this case by reference to those five questions which are as follows:

(1) Could the request fairly be seen as obsessive?

(2) Is the request harassing the authority or causing distress to staff?

(3) Would complying with the request impose a significant burden?

(4) Is the request designed to cause disruption or annoyance?

(5) Does the request lack any serious purpose or value?

(1) Obsessive?

7. In the light of the history of unsuccessful complaints we have set out above and the fact that the requests in this case clearly related, like the one in appeal EA/2009/57, to the same incident, which had taken place almost 2 ½ years before, we consider that, on balance, this request can fairly be seen as part of an obsessive course of conduct.

(2) Harrassing or causing distress to staff?

8. We cannot see that the requests in this case could possibly cause distress to staff of the Kent Police. However, there are two indications in the papers that they may involve harassment to them and we accordingly agree with the Commissioner's broad conclusions on this question:

(1) In the very full "notes detailing his rationale" made by Michael Doherty, the Kent Police's Head of Information Compliance Unit who was responsible for the review of 30 December 2008, there is a description of the contents of two of Mr Young's letters dated 8 December 2008, which shows him at that stage making somewhat personal attacks on Mr Amos (who was responsible for the original decision on this request) and ACC Ainsworth (the head of the Professional Standards Dept of the Kent Police) and shows him taking a

rather pedantic approach to terminology used by others. Although we have not seen these two letters, Mr Doherty's description of their contents has not been challenged by Mr Young.

- (2) It is clear that Mr Young's intention, if and when his request was answered, was to seek further information from the officers who took the "arrested female" to Maidstone police station on 6 May 2006, which would no doubt potentially involve them as individuals in time and trouble for no discernible purpose (as we find below).

(3) Significant burden?

9. It was not suggested by the Kent Police that responding to these requests would involve a really significant burden in itself but Mr Doherty's notes and the Commissioner's decision notice refer to the possibility that compliance with the request would lead to further correspondence as Mr Young attempted to re-open the case, which would itself involve a "significant burden." We doubt that this is a very relevant consideration in itself without taking into account the merits of any attempted re-opening of the case (as to which the final question is more relevant: see paragraph 11 below).

(4) Designed to cause disruption and annoyance?

10. This was not relied on by the Kent Police or the Commissioner and we can see no evidence to support any such assertion.

(5) Purpose or value?

11. Against the background of our conclusions on questions (1) and (2) this seems to us the most important consideration in this case. In response to the Tribunal's direction that Mr Young should explain his purpose for requiring the information he stated as follows:

My purpose ... is to trace the two police officers who were witnesses to the amount of money in the possession of the prisoner who they conveyed to the police station. The arresting officer stated £500 at the time of arrest but only accounted for £170 at the police station...

I do not want to complain about the police officers, all I want is their help as they were witnesses.

In his letter dated 17 June 2010 he also states that the officers “were vital witnesses to a discrepancy in an amount of money recorded.” We are afraid we are at a loss to see how his avowed purpose for wanting this information can be of any real help or value to him or anyone else, particularly in the light of the following statement in a document supplied to the Tribunal by him without explanation which we take to be an extract from an IPCC decision [see bundle page 67]:

The officers have denied the allegations; the other officers that the complainant refers to have not been identified. The young female has not complained about any missing money; she has been questioned again and confirms the amount of money in her possession, this corroborates the officer’s evidence.

12. In the light of this new material (which was not before the Commissioner) we therefore accept the Kent Police’s position which was not accepted by him that these requests really served no useful purpose.

Overall conclusion

13. Taking account of our answers to questions (1), (2) and (5) we have concluded (though narrowly) that the Commissioner was right to find that the requests in this case were vexatious. We make it clear that it is no part of our decision that Mr Young is himself “vexatious” and that we have no reason to doubt that he sincerely believes that he “was wronged badly.” His appeal, however, must be dismissed.

14. Our decision is unanimous.

15. Finally we note that although this case started as an appeal to the Information Tribunal, by virtue of The Transfer of Tribunal Functions Order 2010 (and in particular articles 2 and 3 and paragraph 2 of Schedule 5) the Tribunal dealing with it is now constituted as a First-tier Tribunal. Under the rules of procedure now applying an appeal against this decision on a point of law may be submitted to the Upper Tribunal. A party wishing to appeal must make a written application

to the Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify the error or errors of law relied on and state the result the party is seeking. Relevant forms and guidance can found on the Tribunal's website at www.informationtribunal.gov.uk.

Signed:

HH Judge Shanks

Dated 23 June 2010

IN THE UPPER TRIBUNAL
Administrative Appeals Chamber
Judge: P L Howell QC



File No: GIA 2048/10

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
Tribunal Procedure (Upper Tribunal) Rules 2008 SI No 2698
FREEDOM OF INFORMATION ACT 2000

**APPLICATION FOR PERMISSION TO APPEAL FROM DECISION OF FIRST-TIER
TRIBUNAL**

<i>Applicant:</i>	David Young
<i>Respondent below:</i>	Information Commissioner
<i>First-tier Tribunal:</i>	Information Rights
<i>Tribunal case ref:</i>	EA/2010/0004
<i>Decision dated:</i>	23 June 2010

NOTICE OF DETERMINATION OF APPLICATION

I refuse permission to appeal.

REASONS

No arguable error of law in the tribunal's decision is shown. An appeal to the Upper Tribunal can only be brought on some question of law: section 11 Tribunals, Courts and Enforcement Act 2007. No such question is identified in the application and the tribunal's decision that on the facts of this case the applicant's request fell within the exception in section 14 of the Freedom of Information Act 2000 for "vexatious" requests was properly based on the evidence before it and one the tribunal was entitled to reach, applying any reasonable meaning of that term; the reasons for that conclusion being clearly and adequately set out in the statement issued with the decision.

(Signed)

P L Howell
Judge of the Upper Tribunal
8 September 2010

Under rule 22(3)-(5) of the Upper Tribunal Procedure Rules the applicant may apply for this decision to be reconsidered at an oral hearing but any such application must be made in writing and received by the Upper Tribunal within 14 days after the date on which this notice is sent to the applicant.