



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

**Case No. EA/2012/0150**

**ON APPEAL FROM:**

The Information Commissioner's  
Decision Notice No: FS50434129  
Dated: 26 June 2012

**Appellant: MR GANESH SITTAMPALAM**

**First Respondent: INFORMATION COMMISSIONER**

**Second Respondent: THE HOME OFFICE**

**On the papers: 19 NOVEMBER 2012**

**Date of decision: 21 DECEMBER 2012**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**GARETH JONES and PAUL TAYLOR**  
Tribunal Members

**Written Representations:**

For the Appellant: Mr Ganesh Sittampalam

For the First Respondent: Mr Adam Sowerbutts, Solicitor for the Information Commissioner

For the Second Respondent: Mr Charles Banner, Counsel instructed by the Home Office

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

**Case No. EA/2012/0150**

**Subject matter:**

**FOIA**

Vexatious or repeated requests s.14

**Cases:**

*Wise v Information Commissioner* GIA/1871/2011 and *Bell v Information Commissioner* GIA/1880/2010

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 26 June 2012 and dismisses the appeal.

**REASONS FOR DECISION**

Introduction

1. The Appellant had requested information about the handling of a previous information request that he had submitted to the Home Office.
2. That previous request had resulted in full disclosure to him but there had been a delay of two months and the Appellant was dissatisfied with that and wanted to know the reasons for the delay.

The request for information

3. On 19 September 2010 the Appellant wrote to the Home Office requesting information in the following terms:

I would like a copy of all records – including internal and external correspondence, with the exception of correspondence to or from me – relating to your handling of my recent FOI request (and associated internal review) in which you took over two months to produce what turned out to be a very small amount of information.

I believe your reference for the request is CR14968, and in case there is any ambiguity, the request can be identified from its WhatDoTheyKnow thread....”.

4. The Home Office responded on 29 September 2010 indicating that it considered the request to be vexatious. The Appellant had already made a formal complaint regarding the delay involved in the previous request and the Home Office considered that the request lacked any serious purpose or value.
5. The Home Office had applied section 14 (1) on the basis that the Appellant often submitted requests on similar subjects to the Home Office and then made subsequent requests about the handling of those information requests if there was any delay or information was not disclosed.
6. The Home Office conducted an internal review and wrote to the Appellant on 28 October 2010 indicating that its original decision about its vexatious nature had been reviewed and upheld.

#### The complaint to the Information Commissioner

7. The Appellant, in his complaint to the Information Commissioner, stated he did not accept that his request lacked “purpose or value”. He believed that section 14 (1) FOIA had been incorrectly applied by the Home Office and the Commissioner himself.
8. The Commissioner had considered the issues against his published guidance in relation to section 14 FOIA and the five criteria set out for

consideration when deciding whether a request was vexatious. The five criteria – for reference – are:

- (i) Whether compliance would create a significant burden in terms of expense and distraction;
- (ii) Whether the request is designed to cause disruption or annoyance;
- (iii) Whether the request has the effect of harassing the public authority or its staff;
- (iv) Whether the request can fairly be characterised as obsessive or manifestly unreasonable;
- (v) Whether the request had any serious purpose or value.

9. The criteria at (iii) and (iv) had not been considered because they were not advanced before the Commissioner by the Home Office.

10. The Commissioner did not find that the criterion at (ii) was met in this case because there was no evidence of an intention on the part of the Appellant to cause disruption.

11. The Commissioner concluded that – although there was some serious purpose or value to the request in terms of (v) – it was not significant

12. He did however find that the substance of (i) was met and – when balancing the significant burden caused by responding to the request against the limited nature of the serious purpose or value of the request – he found that the request was vexatious.

13. He did so because the Home Office presented a background and context to the request as having been a series of requests made by the Appellant for financial reports and accounts provided to the Home Office by the Association of Chief Police Officers (ACPO). A previous request to the Home Office for ACPO funding information for 2006/2007 onwards had met with delay. The Commissioner had considered this context and background.

14. The Appellant had made requests for similar information and then submitted procedural complaints and further meta-requests about the handling of those information requests. The Home Office believed that set up a pattern of behaviour which had been on-going and which imposed a significant burden on the Home Office. The Home Office estimated it had spent over 100 hours in responding to the Appellant's requests relating to ACPO's grant aid.
15. The Home Office was concerned that the burden of compliance with the requests was set to continue and increase. It amounted to a type of procedural campaign by the Appellant which created a significant burden on the Home Office.
16. The Commissioner was not provided with any evidence to suggest that the Appellant's pattern of behaviour would stop in the near future. He had concluded that the Appellant's own arguments regarding the serious nature of his meta-requests suggested that his FOIA "procedural campaign" would continue for as long as the Appellant made requests for related information to the Home Office.
17. The Commissioner considered that complying with the cycle of information requests followed by complaints and follow-up correspondence and meta-requests on related issues created a significant burden for the Home Office.
18. The Commissioner accepted that meta-requests could not - and should not - be refused solely on the basis that the requests were about other requests and he noted that the Home Office did not refuse to comply with the request simply because it was a meta-request.
19. Before the Commissioner, the Appellant had justified making meta-requests of this nature on the basis that there was a strong public interest in uncovering the FOIA procedural failures of public authorities.

20. The Commissioner noted that there were mechanisms already in place to make complaints regarding FOIA procedural failings or customer service issues as well as the Appellant's right to apply for a decision from the Commissioner and the subsequent right of appeal to the Information Rights Tribunal. The Commissioner accepted that the request had, at least, some value.
21. The Commissioner concluded that – when seen in the context of the Appellant's history of correspondence with the Home Office – compliance with the request in this case would pose a significant burden on the Home Office. On that basis the Commissioner concluded that the request was vexatious.

#### The appeal to the Tribunal

22. The Appellant questioned the basis in law of the balancing exercise undertaken by the Commissioner in respect of the serious purpose of the request when set against the significant burden that the request represented.
23. The Appellant's core points in the appeal were expressed as follows (in his final submissions):

My essential point is that the bar for vexatiousness cannot be set too low, otherwise a huge number of requests could be brought within the ambit of s.14. My case is one where even at its highest the total burden on the Home Office had not been much more than the costs limit for requests spread out over the same year would imply solely for reckonable tasks (and I do realise that it's a limit not a target!), the Commissioner at least acknowledges a serious purpose, and no other vexatious "categories" from the Commissioner's guidance have been argued to this point (the Home Office did raise some in its internal review but the Commissioner dismissed this and the Home Office has not sought to revive them in its arguments so far).

24. The Appellant described his main objection to the Commissioner's finding to be the fact that the Commissioner failed to consider the

reasons behind the time the Home Office had spent on dealing with his requests. He believed that requests including internal reviews of legitimate requests – and occasionally chasing incomplete and the late replies – should not be used to substantiate a finding of “significant burden and disruption” based on the context of the request.

25. His request had a significant “serious purpose and value” and every request imposed burdens and disruptions on a public authority. He was surprised that the Commissioner had even seriously considered the s.14 claim in this matter, let alone accepted it.

### Conclusion and remedy

26. The Tribunal, in considering the application of the Commissioner’s five criteria, agrees that the five questions set out there were likely to overlap and that the weight which could be placed on each would depend on the circumstances.

27. The criteria could guide an assessment of the overall balance of the case. In terms of context and history, it was quite permissible to take account of the wider context and history of any request when considering the questions in the criteria.

28. A request, of itself, might not be vexatious in isolation but when it was considered in context – for instance, when it was the latest in a long series of overlapping requests or correspondence – it might well form part of a wider pattern of behaviour that made it vexatious.

29. The Tribunal also found the observations of Upper Tribunal Judge Jacobs in *Wise v IC* [GIA/1871/2011] helpful in determining this appeal. At Paragraph 10 Judge Jacob stated that

Inherent in the policy behind section 14 (1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it.

30. It is clear that the Home Office – in the period from September 2009 to the time of the internal review in October 2010 – had spent over 100 hours dealing with various requests from the Appellant. The Tribunal considers that the meta-request behind this appeal crosses the line in terms of proportionality and becomes vexatious.

31. On that basis, the Tribunal is satisfied – unanimously – that both the Commissioner and the Home Office applied s.14 FOIA correctly. This is not a gross or flagrant example of s.14 behaviour but that section was correctly applied given all the background facts and the context being considered by the Home Office and the Commissioner.

32. As a result, this appeal fails.

33. There is no order as to costs.

Robin Callender Smith

Judge

21 December 2012