



**IN THE FIRST-TIER TRIBUNAL** **Case No. EA/2016/0015**  
**GENERAL REGULATORY CHAMBER**  
**INFORMATION RIGHTS**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50592924**

**Dated: 7 December 2015**

**Appellant:** Governing Body of the University of Bolton

**Respondent:** Information Commissioner

**Heard at:** Fox Court, London

**Date of hearing:** 14 June 2016

**Date of decision:** 20 June 2016

**Date Promulgated:** 21 June 2016

**Before**

Angus Hamilton

Judge

and

Andrew Whetnall

and

Dave Sivers

**Subject matter: s 14 Freedom of Information Act 2000**

**Cases considered:**

*Dransfield v IC and Devon County Council [2015] EWCA Civ 454 ('Dransfield')*

**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 7 December 2015 and dismisses the appeal.

## **REASONS FOR DECISION**

### Introduction

- 1 Section 1 (1) of FOIA provides that:

*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.*

- 2 Section 14 (1) of FOIA provides that:

*Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.*

### Request by the Appellant

- 3 The Information Commissioner in his Response of 19 February 2016 has correctly set out the background to this appeal and the Tribunal has adopted that description:
- 4 On 2 June 2015 the Requester emailed the Appellant in the following terms:

*“Thank you for sending me a paper copy of the minutes of the Board meeting held on 1<sup>st</sup> October.*

*I am now writing to make a further request under the terms of the Freedom of Information Act for Board minutes and papers as follows:*

*- The agenda for the Board meeting held on 12 November 2015 (sic)*

- *The minutes of the Board meeting held on 12<sup>th</sup> November*
- *The Financial Statements accompanying the agenda of the Board meeting held on 12<sup>th</sup> November in the form that they were submitted [to] the board for that meeting.*

*Please note that in the case of the Financial Statements I am specifically requesting them in the form they were sent to Board members for the meeting of 12<sup>th</sup> November. I am aware that the final version is available on your web site, but this document was amended after the Board meeting.*

*I would be grateful if you could send the documents to my home address which is ...”*

- 5 On 8 and 25 July 2015, having received no reply, the Requester emailed the Appellant asking them to respond to his request.
- 6 On 11 August 2015 the Appellant sent the Requester a statement prepared by its solicitors as its ‘formal response’ to the request. The statement indicated that the Appellant had linked the Requester’s request to a campaign related to the dismissal of two members of the Appellant’s staff and it indicated that it would not be responding to his request for information.
- 7 Following the involvement of the Commissioner, the Appellant provided a fresh response to the Requester by letter on 25 September 2015. The Appellant refused to provide the Requester with the Financial Statements on the basis that this information was exempt under section 22 FOIA. It also informed the Requester that it believed his request was vexatious under section 14(1) FOIA.
- 8 The University subsequently informed the Commissioner, by way or pertinent background information, that since February 2015 it had been subjected to a ‘*vexatious and sustained vendetta campaign collectively orchestrated by a small group of individuals both internal and external to the University*’. It explained that following the commencement of the

campaign it did respond to 6 requests for information, including one from the Requester, which appeared to be related to the campaign. It referred to 2 other complaints that the Commissioner was investigating where it had applied section 14(1) to requests by other individuals which it believed were linked to this campaign.

- 9 The University went on to explain that as part of the vendetta campaign it had received, at the date of the Decision Notice, a total of 28 requests from 12 individuals. The request from the Requester was submitted during the relevant time period. A first request was submitted on 31st of March 2015 and his second request was submitted on 2 June 2015. The University was of the view that the Requester's request should not be considered in isolation but in conjunction with the other requests as part of a wider pattern of collective vexatious behaviour. The University considered that the evidence it had presented demonstrated that there was an association between the request derived not only from timing but also due to the similarities in the information requested. **[DN paras 17-20]**
- 10 The Requester subsequently advised the Commissioner that the reference to '2015' in his request was a typing error: he intended to write '2014'. The Requester also explained that he did not consider his request was vexatious. The Commissioner contacted the Appellant, setting out these points and the Appellant agreed to review its response in light of this.
- 11 The Appellant subsequently reviewed its decision and informed the Requester of the outcome of its review on 21 October 2015. The Appellant said that in relation to the Financial Statements it was applying section 21 FOIA because the information was available on its website. It went on to say that it stood by its decision that the request was vexatious and that section 14 applied.

The Commissioner's Decision

- 12 The Requester complained to the Commissioner about the Appellant's refusal to provide him with the information he had requested and the Commissioner consequently conducted an investigation.
- 13 The Commissioner served a Decision Notice dated 7 December 2015 in relation to this matter in accordance with s. 50 of the Act. The Commissioner found that section 21 did not apply to the part of the request asking for the Financial Statements **[Decision Notice paras 41-47]**. The Commissioner found that section 14(1) of the Act was not applicable **[Decision Notice paras 33-40]**.
- 14 The Commissioner concluded that section 14 did not apply to the whole request for the following summarised reasons:
  - a. the Appellant's case was based on the timing and subject matter of the request; **[DN paras 36 and 37]**
  - b. the Commissioner was not persuaded that the timing and the subject matter of request alone were sufficient evidence to establish that the request was linked to the other requests, particularly given the extensive media coverage and interest in the matter to which the request relates, and in the absence of any evidence to expressly link the request to the campaign group. **[DN para 39]**
  - c. In such circumstances, when considered outside the context of the other requests received, the Commissioner did not accept that responding to the request would have been likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the Appellant or its staff. The Commissioner thus concluded that section 14 was not

applicable. **[DN para 40]**

The Appeal to the Tribunal

- 15 On 15 January 2016 the Appellant submitted an appeal to the Tribunal (IRT). The Notice of Appeal challenged the Commissioner's Decision Notice on grounds that the Commissioner erred in finding that section 14(1) of the Act was not applicable.
- 16 The Commissioner in his Response to the Appeal fairly summarised the Appellant's grounds of appeal into 5 principal, relevant, points:
- a) The Requester's participation in the educational sector does not preclude him from being involved in the campaign **[Grounds para 2];**
  - b) It is not 'improbable' that the Requester would have an association with members of the education and academic sectors related to the campaign **[Grounds para 3];**
  - c) The Requester is not an 'independent arms-length enquirer' and the request was made as part of a campaign of different requesters acting in concert **[Grounds para 4 and 5];**
  - d) The wording of the request in relation to the Financial Statements indicates that the Requester has already viewed the minutes himself or been in contact with someone that has seen the minutes, indicating a an association with a member of the campaign **[Grounds para 6-8];** and
  - e) The wording of the Requester's previous request suggests that the Requester had already had sight of the previous minutes requested which suggests a link or association with others **[Grounds para 10].**

### The Questions for the Tribunal

- 17 The Tribunal judged that the sole question for them was to consider whether the request was, on the balance of probabilities, 'vexatious' within the meaning of s14(1) FOIA. There was, at one stage, some confusion over whether the Appellant was still seeking to rely on s.21 FOIA but in its letter of 9 March 2016 [**A531 of hearing bundle**] the Appellant confirmed it was not pursuing this point.

### Evidence & Submissions

- 18 With the agreement of the parties this matter was dealt with by way of a 'paper' hearing. The Requester was not joined as a party to the proceedings and made no formal representations to the Tribunal.
- 19 On the issue of the meaning of 'vexatious' the Commissioner relied, in his Response to Appeal, upon *Dransfield* in which the Court of Appeal held that there is no comprehensive and exhaustive definition of what is vexatious the purpose of section 14(1), but provided the following guidance as to the provision:

*I consider that the emphasis should be on an objective standard and that the starting point is that the 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 request, if the request was aimed at the disclosure of important information which ought to be made publicly available.*

20 The Commissioner also quoted extracts from the Upper Tribunal's judgement in *Dransfield*:

a) In Dransfield, the UT confirmed that the:

“purpose of section 14 ... must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA”. [para 10]

b) The UT said:

“It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes – (1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff). *However, these four considerations and the discussion that follows are not intended to be exhaustive, nor are they meant to create an alternative formulaic check-list. It is important to*

*remember that Parliament has expressly declined to define the term “vexatious” ... an inherently flexible concept which can take many different forms.” [para 28] (emphasis added)*

c) On how to decide whether a request is vexatious, the UT stated:

*“there is ... no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgment as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA.” [para 43] (emphasis added)*

21 The Appellant did not refer to *Dransfield* or any other case law in its submissions.

22 The Tribunal considered the submissions and other paperwork submitted by the parties. The Tribunal considered that the core initial question to deal with was whether the Appellant had, on the balance of probabilities, established that the Requester was acting as part of a co-ordinated campaign as this was the Appellant’s central argument and would potentially place the Requester within the following part of the *Dransfield* judgement:

*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.*

23 The Tribunal considered that the presentation of the Appellant’s case was less than helpful. Attached to the Grounds of Appeal were some 500 pages of documentation. These pages were not accompanied by any comprehensive index or any narrative explaining the purpose or relevance

of this documentation. The Appellant appeared to expect the Tribunal to read this documentation trying to find for themselves information which might link the Requester to an organised campaign. The Tribunal considered this to be an unreasonable expectation. The Tribunal considered that if the material presented did establish, within the 500 pages, a link between the Requester and an organized campaign then the Appellant should have made the effort to identify the relevant documents or sections within documents.

- 24 The Tribunal accepted that the Appellant had established the existence of a co-ordinated campaign – the ‘Campaign for an Ethical University of Bolton’ (‘CEUB’). The Tribunal also accepted the Appellant’s evidence about the receipt of FOIA requests from people associated with this campaign, namely:

*As part of the campaign the University had received a total of 28 requests from 12 individuals with 7 of the requests related to the Board of Governors and meetings of the Board of Governors. In a press release from the Bolton News dated 26 September 2015, CEUB confirmed that it had ‘submitted more than 20 Freedom of Information requests’ and Issue 6 of the CEUB blog confirmed in writing the requests submitted as part of the campaign by listing them. [Appellant’s Response 9/3/16].*

- 25 The Tribunal then went on to consider the Appellant’s evidence and assertions in relation to a link between the Requester and any organised campaign.
- 26 The Appellant relied on the timing of the request from the Requester. The Tribunal did not consider this to be a compelling point. The Tribunal’s analysis was that simply because the Appellant had received requests that might be or had been deemed vexatious this did not mean that all requests received during the relevant time could be deemed vexatious, even if the request was seeking a similar type of information. The Tribunal

noted in particular that the Appellant had failed to deal with the Commissioner's compelling point that if a public authority engages in controversial decision making (as was the case here in relation to a bridging loan provided to the Vice Chancellor) then it should expect to receive a spate of FOIA requests in relation to that decision. The fact that a number of similar requests were received in a short time period did not mean that those requests were all part of an organised campaign or were potentially vexatious.

- 27 The Appellant also highlighted the fact that the Requester's request included the sentence:

*"I am aware that the final version [of the Financial Statements] is available on your website, but this document was amended after the Board meeting."* **[Grounds para 7]**

And asserted that the Requester would not have known the Financial Statements were amended after the meeting unless he had already seen the minutes or had been informed by someone who had seen the minutes that there were amendments, thereby suggesting an association with the campaign.

- 28 The Tribunal felt that the Appellant did not develop this point at all well in the sense that it failed to establish in any way that someone who was associated with an organised campaign had seen the minutes, or was aware of the alteration to the Financial Statements or had been present at the meeting in question and had then passed information on to the Requester.
- 29 The Tribunal also noted that the Requester had provided the Commissioner with an explanation for his awareness of an alteration which the Commissioner passed on to the Appellant during his investigation on 25 October 2015:

*“The [Requester] has explained that he has looked at the Document Properties of the .pdf file of the downloaded financial statements [available on the Appellant’s website]. This shows that it was created on 17/12/2014 at 10:15 and modified on 18/12/14 at 13.07 by a Mr Daniel Rowles. Under the Document Properties Custom tab there is entry ‘Source modified D:20141114122602’. He believes that this suggests that the document source was also modified 14/11/2014. He accepts that the differences between the document posted on the University’s web site and that considered by the Board of Governors meeting of 12 November are likely to be small but, he believes, could be important if for example additional footnotes to the accounts were added after the meeting.” [Response para 43]*

The Tribunal noted that the Appellant had failed to respond to this explanation but had simply repeated its suspicions in its submissions to the Tribunal.

- 30 The Tribunal noted that in its most recent submissions to the Tribunal the Appellant asserted:

*The University was made aware that Mr W made reference to the Requester in his own appeal against the Information Commissioner. Therefore, Mr W, a self-styled activist who was central to the CEUB activity, must be in communication with the Requester.*

And yet oddly, in the Tribunal’s view, the Appellant failed to provide a copy of any document containing the claimed reference to the Requester or any explanation for failing to do so despite presumably being the public authority in Mr W’s appeal. This therefore deprived the Tribunal of an opportunity to examine the claimed reference or the context in which it was made. The Tribunal also felt that that, even if it was satisfactorily established that Mr W was aware of the request which was the subject matter of this appeal, that would not amount to evidence of collaboration,

or even reciprocal awareness.

- 31 Similarly, in its most recent submissions, dated 9 March 2016, the Appellant made reference to a blog maintained by CEUB stating that it contains a list of FOIA requests submitted to the Appellant without making it in any way clear whether this contains a reference to the Requester's specific request and again without clearly providing the Tribunal with a copy of the blog for its own inspection.
- 32 The Tribunal also took into account that the campaign referred to by the Appellant was inspired by the dismissal of two members of staff and yet this was not an issue referred to by the Requester.
- 33 The Tribunal also concurred with the Commissioner's assessment that:

*The Appellant had not been able to demonstrate any specific link between the request and the campaign/ its members (for instance, emails into which other requesters have been copied or where they have been mentioned, comments on any campaign website, comments in relation to other requests).* **[Response para 35]**

### Conclusion

- 34 The Tribunal first considered its approach towards the term 'vexatious'. All the members of the Tribunal embraced the guidance from *Dransfield* at paragraphs 19 and 20 above.
- 35 The Tribunal concluded, based on the points made above, that the Appellant had failed to establish on the balance of probabilities that the Requester was associated with any organized campaign. The Tribunal concurred with the Commissioner's analysis that the terminology used by the Appellant implied that it considered it was the Requester's task to prove he was not so associated and the Tribunal further concurred that this was not a correct description of the relevant burden of proof:

*Indeed, its use of wording such as 'does not preclude' and '[it is not] improbable' suggests that the Appellant seeks to require proof that there is no connection between the requests rather than supporting its assertion that there is. [Response para 36]*

36 The Tribunal also concurred with the Commissioner's analysis that:

*'when considered outside the context of the other requests received, responding to the request would [not] have been likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the Appellant or its staff' [Para 14c) above]*

Although the Tribunal noted that the Appellant did not in any event contend that this would be the case.

37 Thus the Tribunal concluded, on the balance of probabilities, that the request was not vexatious.

38 The Tribunal's decision to dismiss this appeal was unanimous

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 20 June 2016