



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL UNDER  
SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

**Appeal No. EA/2016/0038**

**BETWEEN:**

**TIM BROWN**

**Appellant**

**-and-**

**INFORMATION COMMISSIONER**

**First Respondent**

**-and-**

**DONCASTER METROPOLITAN BOROUGH COUNCIL**

**Second Respondent**

**Before**

**Brian Kennedy QC**

**Anne Chafer**

**Professor Darryl Stevenson**

**Date of Hearing: 15 July at Doncaster Court & 23 August 2016, at Fox Court, London.**

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**DECISION**

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**Subject matter:** Application of section 14(1) of the Freedom of Information Act 2000 ("FOIA").

**Authorities considered:**

1. *Dransfield v IC* [2015] EWCA Civ 454; [2015] 1 WLR 5316
2. *IC V Devon CC and Dransfield* [2012] UKUT 440 (AAC); [2013] 1 Info LR 360
3. *Tonks & Tonks v ic & Financial Ombudsman Service* (EA/2014/0004)
4. *Kell v IC* (EA/2015/0244)

The Tribunal dismisses the appeal.

## **REASONS**

### **Introduction:**

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”) The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 1 February 2016 (reference FS50586968) which is a matter of public record. The Tribunal have been provided with an Open Bundle (“OB1”) with indexed pages 1 – 693, and further additional papers, submissions and authorities by the parties herein.

### **Factual Background to this Appeal:**

2. Full details of the background to this appeal, Mr Brown’s request for information and the Commissioner’s decision are set out in the Decision Notice and not repeated here, other than to state that, in brief, the appeal concerns the question of whether Mr Brown’s requests for metadata from Doncaster Metropolitan Borough Council (“the Council”) regarding its interactions with the Commissioner were vexatious.

### **Relevant Legislation:**

3. ***FOIA s14 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.

**Chronology:**

4. 4 Sept 2009 The Council withdraws funding for its United Nations Day, including Black History Month
- 11 Sept 2009 Letter issued from Council regarding cuts, using the name of an official apparently without their consent
- 25 Feb 2010 Appellant's request to Council for information on who authorised the funding decision and its legality.  
Information released by Council.
- 4 June 2013 Appellant's requests for all materials and correspondence re alleged faking of the official's signature.  
Initially determined that 'briefing notes' were not held but subsequently discovered and disclosed. Tribunal accepted that the Commissioner's information led him to conclude the notes were not held, and the Council had made extensive searches despite an "ineffective and unreliable record management system".
- 28 Dec 2014 Appellant requests all metadata relating to the previous request.
- 27 Jan 2015 Council refuses, citing s14
- 5 Feb 2015 Appellant requests internal review. No response from Council.
- 23 June 2015 Complaint to the Commissioner. Not upheld.

**The Commissioner's Decision Notice:**

5. In the DN the Commissioner considered the following;

a) That the Council made the following points:

i) ***Volume of Requests***

From May 2009 the Appellant made 25 requests and 7 internal review requests (working out at 0.4 requests a month for 67 months).

ii) ***Scope of Request***

Owing to the scale and tone of the Appellant's requests, the Council imposed a single point of contact with him on 7 June 2013. Keyword searches for the present request led to thousands of documents, and because the Council does not "hive off" metadata from the documents the only way it could retrieve it would be to search the file storage (known as SAN) for a specific document or a specific location containing all the required documents, then enabling the attributes that it would need to report on, which would prove extremely time consuming. Similarly, all emails would need to be opened and examined individually.

iii) ***Unreasonableness of Appellant***

The majority of the Appellant's communications concern allegations of discrimination (particularly race discrimination) on the part of the council and individual staff members, as well as malpractice and alleged cover-ups, with repeated engagement on the same theme – such as the alleged 'fake email signature' issue. The Appellant repeatedly ignores the single point of contact, copying in a wide range of councillors into his correspondence. For example, the single point of

contact had received 75 emails from him as of the 22 October 2015 and on occasions has cc-d up to 42 others. He had also written to 26 other officers and 20 members, again cc-ing up to 42 others.

Furthermore, the Tribunal ruled on the previous occasion that there was no further documentation to disclose beyond what had already been provided to the Appellant, and yet rather than bring finality to the issue the Appellant used it as a springboard for further requests

iv) ***Tone of the Communications***

The Council states that the Appellant's often-accusatory tone goes beyond mere reasonable criticism, to the extent that it has had an aggravating and negative impact on staff.

b) The Appellant provided the Commissioner with the 2010 Corporate Governance Inspection, which heavily criticised the Council and its senior members, reporting some general concerns about the approach to vulnerable and minority groups.

c) The Appellant also provided a BBC article on the forged email signature issue. He fears that the Council is using the refusal to disclose as a delaying tactic to prevent him appealing to the Upper Tribunal.

d) It is understandable, the Commissioner held, that the Appellant could be lead to believe that the Council did hold more information, given that his previous finding that other information was not held turned out to be mistaken, and the inefficiency of the Council's record management system. However he had not provided any strong evidence that the Council was deliberately withholding any further correspondence that it knows is in existence.

e) The Commissioner did not condone accusations against named individuals, and put significant weight on this in determining the request vexatious.

f) The Commissioner saw this to be a finely balanced case; he accepted that there would have been significant burden placed on the council in responding to the complainant on this issue as a whole.

g) The Commissioner also understood why the complainant would want to follow up a line of enquiry when he still had doubts about the council's handling of his previous request; however, the Commissioner and Tribunal had made their findings on the previous request. If the complainant considered there may have been more information not provided or the information provided was inaccurate in some way, then the route to appeal the Tribunal decision would be through the Upper Tribunal. Circumnavigating the appeal process lessens any public interest there may be in the council responding to this request. This in turn increases the disproportionate burden being placed on the council in having to respond to this request. (Our emphasis).

**Grounds of Appeal:**

6. In summary, the Appellant's appeal can be described as follows;

In such a finely balanced "decision notice", the ICO Decision Notice has failed to give sufficient weight to:

- i) The bad faith of the fake email signature correspondence;
- ii) Doncaster Council failing to apologise for the distress inflicted upon the complainant after the BBC article confused two different letters.
- iii) Doncaster Council's historical poor information management systems which can be seen to have contributed to the vast majority of emails and follow up regarding the belated finding of the "equalities briefing notes",

- iv) The evidence provided to the Commissioner suggesting that there was more than one officer who was involved in sending the FOI Letter with a fake signature;
- v) The Council's failings as identified in the Corporate Governance Report.

The Appellant argues that the Commissioner allowed the Council to conflate 6 years of emails, contacts and correspondence without clearly showing how they relate to this particular request, and without providing evidence as to how this particular request would cause them a disproportionate burden or harassment.

The Single Point of Contact imposition is, he argues, unfair as it effectively means that the Council employee is judging his or her own case. Furthermore, the Council, he argues, has not provided the Appellant with the opportunity to change their behaviour as per ICO Guidance. The appellant argues that in its haste to label the Appellant 'vexatious', he argues, the Council is undermining his legitimate democratic rights.

### **The Commissioner's Response:**

7. The Commissioner argues that the Appellant's request is for metadata, and this does not correspond with the Grounds of Appeal, which he argues seeks an apology and an explanation. The previous appeal, the Commissioner asserts, related to whether the Council held the briefing notes requested, and any meta data held by the Council is likely to relate only to information concerning searches carried out for the briefing notes and correspondence relating to procedural matters concerning the appeal. It is unlikely, the Commissioner argues, that the present request would meet the concerns of the Appellant or further his aims outlined in the grounds of appeal or indeed be of wider benefit to the public. This, the Commissioner contends, restricts the value of the request, even if there were a serious purpose behind it.

The Commissioner also argues that the value of the request is further diminished by:

- i) The information requested was eventually disclosed to the Appellant.
- ii) The Tribunal did not take issue with the Council's contention that all the requested information had been provided to the Appellant.
- iii) If the Appellant were not content to accept that the Council had disclosed all the information, he would have had the opportunity of appealing the decision and is now circumventing this appeal process with a new request.

The request, the Commissioner argues, is a "fishing expedition" that would impose a disproportionate burden on the Council. The Council does not as a rule hive off metadata from its documents. It is reasonable to take account of previous FOIA requests and other communications between the Appellant and the Council which all arise out of the same underlying issues.

When approaching the issue of the Appellant's distress at the process, the Commissioner submitted that the Tribunal is not obliged to consider or give weight to the effect of any underlying issues upon the requester but to focus on the burden imposed on the authority. In response to a point raised by the Appellant in his Grounds of Appeal, the Commissioner pointed out that his Guidance is not legally binding upon public authorities, and the Commissioner therefore did not err in law in failing to consider whether the Council complied with specific parts of the guidance.

**The Council's Response:**

8. ***The Council make the following points in relation to the appeal;***

**Email issue** – the Appellant was sent a FOIA response on which the electronic signature of Mr M. was placed, when in fact a different Council officer had drafted the letter. It is, the Council argue, unfair and inaccurate to



refer to the matter as ‘faking’ Mr M’s signature, and the matter was fully investigated through an internal grievance procedure initiated by Mr M.

**Burden** – there are three facets to the excessive burden:

- i) ***This Request*** – necessarily encompasses a very wide range of information that would need to be searched in a very time-consuming fashion as set out in the DN. As such the Council “strongly suspects” that the request would also fall under the s12 cost exemption.
- ii) ***History of Requests*** – 32 requests from this appellant between May 2009 and December 2014 that are not focussed or self-contained but rather variations on the themes of alleged discrimination, malpractice and cover-ups. The requests often follow each other closely in time, indicating he will not be satisfied with any response and he copies in a wide range of council employees.
- iii) ***History of Correspondence*** – the single point of contact imposed on the appellant is actually the Chief Executive of the council, and this is one example of the measures taken by the Council to attempt to correct or manage the offending behaviour. The volume of correspondence is unmanageably large and “shows no sign of improving”. Whilst not directly relevant to this request, the Council notes that since s14 was used on 27 January 2015 the Appellant wrote to the Council a further 75 times by October 2015. This does not include the correspondence from the Appellant on behalf of his father, nor his regular attendance at and contributions to Council and Cabinet meetings. The Council should have cited s14 at an earlier stage.

**Motive/Value/Purpose** – this is an attempt to collaterally undermine the related Tribunal decision. The Notice of Appeal explains the purpose behind the request as examining the harm caused to the equalities agenda through the briefing notes and email signature – this is “incoherent” and these issues are not actually addressed in the wording of the request. The issue of late disclosure of the

information was discussed in the previous Tribunal judgement and any conspiracy allegations the Appellant wishes to explore are more appropriately ventilated in that forum.

**Harassment** – the tone of correspondence vacillates between polite and accusations of serious misdemeanours directed at named individuals but in particular the three statutory officers.

**The Appellant's Response:**

9. The Appellant argues that the Commissioner did not appreciate that the poor behaviour of the Council generated much unnecessary correspondence: "The Information Tribunal Hearing will be invited to consider whether for example the FOI Letter with fake signature attached against the wishes of the most senior Asian Chief Officer would have been resolved if DMBC had simply apologise for sending me this letter in the first place?"

The Appellant goes on to describe the Council's behaviour as "abusive", "irrational" and "bad faith". He accuses the Council of colluding with barristers from 11KBW to undermine his rights prior to his second request.

*"I respectfully ask the Tribunal to help determine whether there was more than one officer involved in the faking of Mr M's signature against his consent by asking DMBC to release the email that was referred to by the ICO's Mr W."*

The imposition of a Single Point of Contact, the Appellant argues, was unfair and irrational he states; *"The normal rules about people not being allowed to be a judge in their own cause appears to be lost on DMBC's Chief Executive when in para 4 she inexplicitly suggests that the appellant was not "wronged" by receiving a FOI response with a fake signature of Mr M attached against his consent!"*

He continues; *“A simple apology by DMBC (to Mr.M) would have helped to put this matter to bed long ago. The bottom line is that it only takes one irreconcilable inconsistency to destroy all confidence in any further submissions.”* (See OB1) Effectively this Tribunal are of the view that the Appellant is admitting he will not be satisfied by any response from the Council.

The Appellant further raises the issue that the Council was inappropriate to bring into consideration the issue relating to a close family member of his, but confirms that he has a grievance against the Council regarding how they treated this family member. While the tribunal acknowledge this, having listened carefully to the Appellant, we are not satisfied that there is any evidence to indicate this plays any significant part in his motivation for the request.

The Appellant was not advised to narrow his request, but states that he would have been open to do so. He specifically requests sight of a report by Hazel Salisbury into the workings of the Council. *(It should be noted that the Appellant has now been provide with a copy of this report).*

“The real shock, according to the Appellant, was to hear the evidence at the oral hearing of this appeal, from DMBC’s Director of Finance Mr Simon Wiles that Mr M’s “equalities briefing notes” had not been given to the democratically elected mayor and the decision making process that lead to the stated significant harm to the equalities agenda in Doncaster. This is, he maintains is what prompted the request for meta data, in order to understand how this irreconcilable inconsistency could have happened in Doncaster. **If racism were not an issue in Doncaster then this behaviour would be considered totally unacceptable.** [Our emphasis]

The Appellant states that the current Mayor and Deputy Mayor have smeared and defamed the former mayor Peter Davies, and since he was voted out of office in 2013 the Council has done little to address the harm occasioned to the

equalities agenda. He wishes for Mr Davies to be able to “set the record straight” and criticises the Council for concealing information from him whilst he was in office.

**Witness evidence of Peter Davies:**

10. He was Mayor of the Borough 2009-2013.

During his tenure he considered BME events to be divisive and recommended the removal of certain events from the Council’s annual calendar. However, he was not provided with briefing notes that had been prepared by the Equalities Officer regarding these events. The Council commissioned Hazel Salisbury to investigate Mr Davies’ conduct regarding his decision to remove funding from Black History Month and exonerated him from wrongdoing regarding this decision. He was not aware of the forged email signature. He states that the current Deputy Mayor has accused him of causing significant harm to the equality agenda, and disputes this. He makes general criticisms of the Labour administration in Doncaster, their “lip-service to multiculturalism” and the low number of BME staff in the Council. He demonstrates concern that his reputation as Mayor is being impugned whilst he is not invited to attend the Tribunal.

He believes that the request is reasonable: “it will improve the understanding of why Equalities Briefing Notes were withheld from the Elected Mayor and the decision making process in Doncaster. The democratic deficit and lack of confidence in local government will never be addressed or sorted if important information is continually withheld from concerned citizens.”

**Witness evidence of Chrissy Meleady:**

11. Mrs Chrissy Meleady has provided documentation including the Council’s calendar with briefing notes regarding equality matters. She also provides copies of correspondence between her and the Council’s

CEO in which it is confirmed that the Council offered a “sincere apology” regarding the fake email issue. It is also clear that as far back as 2013 she has been communicating with the Appellant and writing to the Council raising his issues in tandem with his communication.

**Witness evidence of Simon Wiles:**

12. An accountant who was appointed as Director of Finance and Corporate Services with the Council in early 2011 and is familiar with the appellant and his communications with the council. He provided a detailed and comprehensive witness statement dated 2 June 2016 (see OB1 - pages 466 – 486, and a further witness statement dated 13 July 2016, in which he gave a detailed account of the history and background pertinent to this appeal. He gave extensive additional evidence to, and was cross-examined at length during the oral hearing before this Tribunal. He dealt with all relevant issues and we comment on his evidence below.

**Discussion:**

13. In short the Tribunal accept and adopt the reasoning of the Commissioner in the DN and in his arguments before this Tribunal and as summarised above. We have not been persuaded that the Commissioner has erred in Law.

14. On considering the evidence before us, and taking a holistic view of the history and context of the appellants’ request, the subject of this appeal, we find it was unduly burdensome and harassing to the Council staff in all the circumstances.

15. In the course of time and of this appeal, the Appellant, (and his witnesses) have strayed well beyond the scope of the Request and its

purported purpose and motivation. The appellant appears to completely misunderstand the function and scope of FOIA and the purpose and powers of this Tribunal. This tribunal is not a wide-ranging public inquiry into the diverse and complex aspects of local government in Doncaster or various allegations raised by the appellant, and to an extent by his witnesses.

16. We accept that the ICO's guidance, while clearly good practice, is not legally binding upon public authorities.

17. We find that the imposition of a Single Point of Contact ("SPOC"), on the complainant, is neither unfair nor irrational. This is a common method for the focus of requests and inquiries such as being made by the appellant in this case. SPOC only related to correspondence and did not try to restrict his other roles including the representational one, which the Council welcomed. It is not only an efficient way of dealing with multiple issues and queries but also an effective way of coping with same. We find, on the evidence before us in this appeal, that it was entirely reasonable, and in practice did not deny the appellant of any of his rights. In particular we rely upon the explanation given to the Appellant at pages 488 – 490 of the OB1 before us, which sets out in clear detail the background and need for the implementation of SPOC. Again at pages 592 and 593 of the OB1 before us, we accept the basis by which the Chief Executive of the Council explains the purpose and need for "SPOC" in careful, patient and polite terms. Again the review on 7 June 2014 demonstrates the care applied by the Council in dealing with the appellant's queries. In deed this correspondence illustrates, well, the nature and extent of the burden and harassment being caused to the Council by the appellant in the circumstances. Having considered all the evidence before us we are of the view that we find no evidence whatsoever to indicate that the Appellant has ever been treated

differently on grounds of his race. Further we have been impressed with the Councils' handling of correspondence with him over the last couple of years.

18. On the evidence before us we find that Mr Davies, as Mayor, was not the type of person who wanted to have to deal with voluminous papers and he encouraged summaries and concise briefings from staff, in deed he welcomed delegation. This is by no means a criticism of him. In fact it allowed him to pay more attention to the needs of his constituents. However he did not get the opportunity to read detailed reports and research, much of which was dealt with directly by council officials on his behalf.

19. On the question of the alleged fake signature, we accept that this description is incorrect and misleading, and it was dealt with by internal investigation in the circumstances, The emotional references to racial discrimination within the Council were also, in our view misplaced and we are of the view that these matters are emotive and in our view improperly raised in the context in which they have been in this appeal.

20. We found the evidence of Mr Wiles to be compelling and pragmatic – further, most conciliatory and responsible. He clearly welcomes the social input and support provided to the community by the appellant and expressed his admiration for it but patiently explained that the Council had simply been overwhelmed by the extent and nature of his correspondence on the voluminous issues raised by him.

21. This Tribunal have noted the Appellants grievances but accept the Commissioners' contention that it is not within our ambit or the scope of this appeal to investigate these concerns however genuine the Appellants' concerns may be. The difficulty for the Appellant is that

despite his concerns, such as they are, they do not demonstrate an error of law on the part of the Commissioner in his DN, which is the subject matter of this appeal. On the facts and in the circumstances of this appeal, particularly with the history as set out above and in the papers before us, inter-alia a previous First Tier Tribunal appeal, we can see no grounds for finding that the Commissioner erred in law in his DN or in the reasons for his finding that section 14(1) was applied correctly by the Council.

22. Accordingly we dismiss the appeal.

Brian Kennedy QC

23rd August 2016.