



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

Appeal Reference: EA/2017/0019

**On appeal from:
Information Commissioner's Decision Notice FS50636996, FS50637737,
FS50637994, FS50639222
Dated: 10 January 2017**

**Appellant: NEIL GILLIATT
Respondent: THE INFORMATION COMMISSIONER**

**Before
JUDGE ANNABEL PILLING
TRIBUNAL MEMBER ANNE CHAFER
TRIBUNAL MEMBER JEAN NELSON**

Subject matter:FOIA - vexatious requests s14(1)

**Representation:
For the Appellant: Neil Galliatt
For the Respondent: Leo Davidson**

Decision

For the reasons given below, the Tribunal refuses the appeal and upholds the Decision Notice.

Reasons for Decision

Introduction

1. This is an appeal against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 10 January 2017.

2. The Decision Notice relates to 6 requests made by the Appellant under the Freedom of Information Act 2000 (the 'FOIA') to North East Lincolnshire Council (the 'Council') for information relating to the Council's administration of Council Tax, encompassing individual officers who carry out that function on behalf of the Council. The Council determined that each of the requests is vexatious, applying section 14(1) of FOIA, and did not provide the information requested. It upheld those decisions on internal review.
3. Following complaint by the Appellant, the Commissioner investigated the way in which the requests had been dealt by the Council. The Commissioner concluded that the Council had correctly applied section 14(1) and that the requests are vexatious within the meaning of that provision.

The appeal to the Tribunal

4. All parties agreed that this was a matter that could be dealt with by way of a paper hearing.
5. The Tribunal was provided in advance of the hearing with an agreed bundle of material, and written submissions from the parties. We cannot refer to every document and submission but have had regard to all the material when considering the issues before us.

The Issues for the Tribunal

6. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.
7. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious.

8. The term “vexatious” is not further defined in the legislation. The Upper Tribunal¹ has considered the approach which should be taken when reaching what is ultimately a value judgment as to whether the request in issue is vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.
9. It cautioned against a too rigid approach to deciding whether a request is “vexatious”; it is important to remember that Parliament expressly declined to define the term. It did not purport to lay down a formulaic checklist or identify all the relevant issues, but suggested four broad issues or themes as relevant to the determination of whether a request is “vexatious” or “manifestly unreasonable” (under the similar provision for dealing with requests for environmental information under the Environmental Information Regulations 2004) - i) the burden on the public authority and its staff, ii) the motive of the requestor, iii) the value or serious purpose of the request and iv) any harassment or distress of or to staff. These are not exhaustive nor create a formulaic check list; it is an inherently flexible concept which can take many different forms.
10. The Court of Appeal upheld the decision of the Upper Tribunal and, although the guidance formulated was not the subject of the appeal, Lady Justice Arden considered, in the context of FOIA, that *“the emphasis should be on an objective standard and that 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 requestor, 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 this is consistent with the constitutional nature of the right”*.
11. We have read all the Appellant’s submissions and comments with care, which set out in some detail his concerns.

¹ Information Commissioner v Devon County Council and Alan Dransfield [2012] UKUT 440 (AAC) (‘Dransfield’)

12. In Dransfield, the Upper Tribunal emphasised the importance of viewing a request in its context which in this case we consider requires us to consider the history of previous requests to the Council. We have read the correspondence from the Council to the Commissioner setting out the context of the requests. These six requests are only some of the numerous requests made by the Appellant in 2016 alone, through the “*What do they know*” website either in his own name or using pseudonyms such as “*fFaudwAtch UK*”. All the requests relate to the Council’s administration of Council Tax and are described as having recently extended to particular officers of the Council involved with the handling of these issues and his correspondence. The Appellant has been making requests to the Council through the “*What do they know*” website concerning Council Tax since 2011.
13. In his written submissions, the Appellant has set out in detail the “background” to his requests, and includes several pages of examples of a “sample of errors/areas of concern” which have been highlighted to the Council by his requests over the relevant period of time. It is clear that he remains dissatisfied with enforcement action taken by the Council in respect of his liability for Council Tax. He has taken a number of steps to further this, including challenges in the courts, reporting an allegation of perjury to the police and a complaint to the Local Government Ombudsman. He explains why he is dissatisfied with the outcome and/or limitations of these steps, and why pursuing requests for information under FOIA is far from vexatious. This Tribunal is not, as the Appellant concedes, the appropriate venue to explore whether the Council is processing liability for Council Tax effectively. In his opinion “[i]t is obvious that the motive for the Council applying section 14(1) has been to avoid disclosing anything that would expose it for its actions which have been to defend the indefensible.”
14. Although a requestor does not have to provide justification or explanation for a request for information, this does become relevant when assessing whether a request, or a series of requests as here, is

vexatious. The Appellant maintains that his requests for information have serious purpose, and that the consequence of the original error in respect of his liability for Council Tax is material "*in compounding the injustice further and possibly preventing years of criminal wrongdoing by the Council being uncovered.*"

15. We recognise that in some circumstances the importance of the information that has been requested will outweigh the factors relevant to assessing vexatiousness. However, we are not persuaded that this is the case in respect of these six requests. The Appellant's firm belief in wrongdoing by or on behalf of the Council is not of significant importance to outweigh the factors relevant to assessing vexatiousness.
16. We are satisfied that the Council has offered advice and assistance to the Appellant, pointing him to the Commissioner's guidance on making an information request and setting out examples of what should not be included. It advised the Appellant that he might do better to explore whether there are other more suitable channels through which to take up his concerns. It also reminded the Appellant that processing any information request involves some cost to the public purse and to give "*ample opportunity*" for any previous requests to be addressed before submitting new ones. The Council provided an example of the Appellant raising a query with the Council's Monitoring Officer and then within 24 hours making a request under FOIA asking what actions or progress has been taken in relation to the matters raised.
17. In terms of the burden on the Council in dealing with the Appellant's requests for information, we have been assisted greatly by the information provided by the Council to the Commissioner of the wider context and history. The Council explained to the Commissioner that if considered in isolation, these six requests may not place a significant burden on the Council, when taken together in what the Council regards as a concerted campaign intended to frustrate and challenge their ability to effectively administer and collect Council Tax, the impact

in terms of responding to them is both unjustified and disproportionate. His requests make reference to previous correspondence and often include hyper-links to other documents. We agree with the Commissioner that this would inevitably result in staff being diverted from other information requests or other public function.

18. The Council informed the Commissioner that it had offered to meet with the Appellant to discuss and attempt to address and resolve his issues but this offer had been rejected.
19. The Council provided a detailed example of information being provided in response to a request under FOIA, which was later followed by a similarly worded request for the same information. We agree with the Council that this demonstrates the Appellant's persistence in continuing to pursue his grievance against the Council through the FOIA regime.
20. At some point, the persistence of the Appellant in pursuing his grievance against the Council's actions in respect of Council Tax has become vexatious as a matter of law. We are satisfied that these six requests were all made after that point in his dealings with the Council.
21. Parliament provided public authorities with limited ability to refuse to engage with those making requests for information under FOIA. The Upper Tribunal described section 14(1) *"as a sort of legislative "get out of jail free card" for public authorities. Its effect is to relieve the public authority of dealing with the request in issue, except to the limited extent of issuing a refusal notice as required by section 17. In short, it allows the public authority to say in terms that "Enough is enough...."*
22. Using a different analogy, drawn from the world of football, parliament has provided public authorities with yellow cards and red cards. A yellow card allows the public authority to give a warning to a requestor that they need to alter their request in some way, for example, where the cost of complying might exceed the appropriate limit, the public authority may choose to engage with the requestor (fulfilling its duty to provide advice and assistance under section 16) but is not required to

provide the information. Section 14(1) however operates as a red card; to use the words of the Upper Tribunal it allows the public authority to say "enough is enough; we do not even need to engage with you."

23. The Council attempted to engage with the Appellant. It is clear from the material before us that the Council have provided some information in response to requests under FOIA from the Appellant but has reached the point where the burden has become unjustifiable for a public authority with responsibilities and accountability for public resources, both in terms of the financial costs and available resources.

24. This is a clear example of a manifestly unjustified and improper use of FOIA and we agree with the conclusion of the Commissioner. The Council correctly applied section 14(1) and is not obliged to provide the information requested to the Appellant.

25. We therefore dismiss this appeal.

26. Our decision is unanimous

Signed: Annabel Pilling
Judge of the First-tier Tribunal

Promulgated 9th June 2017