



NCN: [2022] UKFTT 00468 (GRC)

Appeal Number: EA/2021/0379

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

Between:

Jenni Gwynne

Appellant:

And

The Information Commissioner

First Respondent:

Avon Fire Authority

Second Respondent

Date and type of Hearing: 23 June, 21 October, and 21 November 2022.

Oral hearing on Tribunal CVP

Panel: Brian Kennedy KC, Susan Wolf, and Jo Murphy.

Representation:

For the Appellant: Jenni Gwynne as a Litigant in person.

For the Second Respondent: Gemma Garvey, Legal Executive and Peter Lockley of Counsel.

Decision: The Tribunal refuse 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 (“DN”) dated 23 November 2021 (reference IC-84864-K9N5), which is a matter of public record.

Factual Background to this Appeal:

- [2] Full details of the background to this appeal, the complainant’s request for information and the Commissioner’s decision are set out in the DN. The appeal concerns a request for information relating to the investigation carried out by Avon Fire Authority (“AFA”). In response, the Commissioner held that the AFA was entitled to rely on section 14(1) to refuse the request.
- [3] The Commissioner maintains the position set out in her DN; namely that the AFA was entitled to rely on section 14(1) to refuse the request. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
- [4] The Appellant now appeals against the DN. The Commissioner opposes the appeal and invites the Tribunal to uphold the DN. The Appellant considers that this is an appeal which may appropriately be dealt with on the papers. The Commissioner agreed with the Appellant’s proposal.

- [5] At a hearing on the papers on 23 June 2022, the Tribunal determined they had insufficient evidence to properly and fairly determine the issues and joined the Avon Fire Authority as Second Respondent, issuing specific and extensive Case Management Directions. The Tribunal later granted the Second Respondent an application to extend time to comply with the Directions and added some further Case Management Directions in ease of the actual oral hearing in due course.

History and Chronology

- [6] On the 25 June 2020 the Appellant wrote to the AFA and made the following request:

“Please provide details of all manual entry errors identified in RAM [Real Asset Management – AFA’s accounting software] including journal type entries etc (i.e. all entries not created by the automated calculations of the reconfigured RAM software), and the corrections made in RAM and/or in the accounts, as well as indicating those errors that have not been corrected in RAM and/or in the annual accounts, including those made in the dozens of RAM categories where I found clearly wrong manual adjustments, some in the millions of pounds.

This information should be readily available, in Deloitte’s detailed investigation and/or audit papers which they will have provided to/consulted over with AFRS [Avon Fire & Rescue Service], and also in the RAM audit trail. I wish to see all such details, no matter what year they relate to, that were incorrect (including historically) as per the RAM entries/figures at the time the figures for the draft 2018/19 accounts were produced.

Please also provide details of the value of individual entries that Deloitte chose to disregard if these were neither identified nor reported.

Please also provide an explanation of the corrections made to the RAM configuration, i.e. impairment treatment etc, following which recalculated depreciation, impairment and revaluation adjustment figures etc were produced from the manual entries.

Please provide the details of all vehicles exported (SWAP [South West Audit Partnership] having reportedly confirmed these with the DVLA [Driver and Vehicle Licensing Agency]) including descriptions, registration numbers and dates of export and transfer of ownership.

Please also provide a list of all other Assets including appliances, ancillary vehicles, IT equipment etc donated by Avon Fire to the Gambia, since these donations began. It is alarming that, when numerous corrections needed to be made to the Asset Register and several years annual accounts, management asked auditors Deloitte not to correct a £714k Balance Sheet misstatement in the 2018/19 accounts, even when the accounts, containing restatements of figures for 2016/17 and 2017/18, the years in question, had not yet been finalised. Please explain how with the error remaining on the Balance Sheet for numerous future years how the RAM and Balance Sheet are to be reconciled each year, or confirm that the RAM has been altered to contain false information.

Having raised the matter in March 2019 I continue to receive no details regarding the capital expenditure totalling £765,297.60 in 2014/15, to land at Temple Back HQ £498,602.98 and Temple Back Fire Station £ 266,694.62, whilst no land appears to have been purchased. Please provide all invoices/sales documents and tenders including any related documents, journals, relating to these Asset purchases/enhancements, clearly showing the itemised details and itemised costs of what was purchased, together with all other of the above mentioned paperwork relating to transactions with the same suppliers if there is any inter-relation with other purchases/expenditure.

Please also provide all detailed invoices, sales documents and tenders (successful and unsuccessful, original and subsequent) relating to past, current and future capital expenditure on the New (or currently being refurbished) Stations: Temple Back Fire Station, Hicks Gate Fire Station and training facilities, and Avonmouth Fire Station. I wish to see the above listed documents for all capital amounts relating to these property and land assets, including legal fees etc.

Please provide the same documents for the Command Unit purchased around 2017. And also for the refurbishment/rebuilding/resiting of Weston-Super-Mare and Bath, as I see several hundreds of thousands of pounds of expenditure has been approved for pre-construction etc.

Please also provide tenders (successful and unsuccessful) for the contract for valuing land and buildings for the financial year 2019/20 onwards, which is reported as being provided by Deloitte.

Having given huge amounts of my time, pursuing the correction of the significant inaccuracies in Avon Fire's Capital Accounting and therefore annual accounts covering the period 2008 to 2019, please provide me with all the corrected RAM balances as at 31 March 2019 for each asset including purchase cost, enhancements, depreciation, revaluation and impairment balances, and revaluation and impairment adjustment balances, in the various categories used in RAM, to date.

Please provide all versions (from 2007/08 onwards) of, both, Avon's Finance Policy and Disposal Policy (including any other documents referred to within these that are relevant to Capital Accounting, Procurement and Asset Disposal.

I imagine AFRS or their auditors will have needed to gather the CIPFA Regulations relating specifically to Capital Accounting, that were applicable during the years since 2007/08 onwards in order to make the required corrections, and if so, please could I have copies of these. Please provide the detailed reports including external professional assessments of the estimated costs of around £7m (elsewhere £9m) mainly re structural building failings at Temple Back HQ used to justify the writing off of HQ buildings, and evidence that an insurance claim for these structural failings was looked into.

Please note I wish to see the RAM information requested above for the years the RAM was in operation including all details up to the point of production of finalised and fully audited accounts to 31 March 2019. At the AGECE [Audit, Governance and Ethics Committee] meeting of 22 May 2020, Deloitte indicated that all outstanding

matters should be finalised in about a week from then. If this is not the case I would like to be provided with all details as they stand now, with the further details occurring between now and the finalised and fully audited accounts to 31 March 2019 being provided as soon as possible.”

[7] The AFA responded on 24 July 2020. It said that the information the complainant requested did not raise any new points beyond the ones it had previously dealt with and that it “*forms part of a matter the Authority now considers closed*”. It declined to comply with the request, noting; “*...the substantial time and resource expended by the Authority to investigate these issues, which has been well over the 18 hours indicated in the FOIA*”, it said that further, similar requests would likely engage the provisions at section 14 (Vexatious or repeated request) of the FOIA.

[8] Inter-alia, the AFA also said:

“- matters pertaining to its accounts were, in any case, exempt from disclosure under section 22 (Information intended for future publication) of the FOIA, as the information would shortly be published in accordance with Regulation 15(2)(b) of the Accounts and Audit Regulations 2015.

- *Similarly, it said that information relating to vehicles sent to the Gambia was due to be published on its website by the end of September 2020, and would also be exempt under section 22.*

- *It said its document disposal policy is updated annually and is based on legislative requirements and good practice guidance from the Information Commissioner.*

- *It said that it could not disclose information which was held by third parties.”*

[9] The Appellant requested an internal review on 28 July 2020. She expressed concerns about AFA’s handling of this, and previous, FOIA requests. She said that she had identified significant inconsistencies and irregularities with its accounting

procedures, which had required correction, and that the concerns she had raised had not been thoroughly investigated. She also disagreed with AFA's suggestion that section 22 would apply to some information.

[10] AFA responded on 24 August 2020. It upheld its decision to refuse to comply with the request.

[11] On 7 September 2020, the Appellant submitted an access request to AFA under the Accounts and Audit Regulations 2015, asking for substantially similar information to that which the Appellant had requested under the FOIA on 25 June 2020. The Appellant referred AFA to its statements that information would be published in accordance with Regulation 15(2)(b) of those Regulations.

[12] AFA responded to the access request on 23 September 2020, confirming the complainant's right to inspect the accounts for the year 2019/20. It also disclosed the following information, with redactions:

“• Invoices and sales documents relating to capital expenditure on the station at Avonmouth during the year to 31 March 2020.

• Invoices and sales documents relating to capital expenditure on the stations at Bath and Weston-Super-Mare during the year to 31 March 2020.

• The correct opening balances for all assets in RAM as at 31 March 2019.”

[13] AFA acknowledged that the information being made available did not include everything that the complainant had requested. Referring to the FOIA request of 25 June 2020, AFA said that it stood by its decision not to disclose all the requested information, for the reasons previously set out in its refusal of the FOIA request.

[14] Following further correspondence with AFA about her concerns involving expenditure relating to Temple Back, which she believed could not be accounted for, the Appellant contacted the Commissioner on 28 January 2021 to complain about the way her FOIA request had been handled. The Appellant disagreed with

AFA's decision to refuse her request, in light of its response to her later access request.

[15] The analysis below considers whether AFA was entitled to rely on section 14 of the FOIA to refuse the request of 25 June 2020.

[16] **Legal Framework**

S1 FOIA – General right of access to information held by public authorities

(1) 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) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

(4) The information—

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.

(5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).

(6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

Section 14(1) FOIA provides that a public authority is not required to comply with a request for information under section 1(1) FOIA if a request is vexatious.

FOIA does not define or give guidance on the interpretation of the term “vexatious”. However, the Upper Tribunal has considered the meaning of the term ‘vexatious’ at Section 14 FOIA in detail in its decision in *The Information Commissioner v Devon CC & Dransfield GIA/3037/2011* [2012] UKUT 440 (AAC). The Upper Tribunal took the view that the ordinary dictionary definition of vexatious is of limited use, as deciding whether a request is vexatious depends on the circumstances surrounding that request. The Tribunal commented that vexatious could be defined as the ‘manifestly unjustified, inappropriate or improper use of a formal procedure’. This definition clearly establishes that the concepts of proportionality and justification are relevant considerations in deciding whether a request is vexatious.

In the Dransfield case, the Tribunal also found it instructive to assess whether a request is truly vexatious by considering four broad issues:

1. The burden imposed by the request on the public and its staff;
2. The motive of the requestor;
3. The value or serious purpose of the request;
4. Harassment or distress of and to staff.

Section 50 Investigation and the Commissioner’s Decision Notice

[17] The Commissioner investigated the matter and held that the AFA was entitled to rely on section 14(1) to refuse the request on the grounds it was vexatious. The Commissioner asked the AFA to confirm if indeed it was relying upon section 14(1)

to refuse this request and if so for its submissions in support of its position. The AFA confirmed it was relying upon section 14(1) FOIA and provided its submissions in support.

- [18] The Commissioner therefore concluded that the scope of her investigation was to determine whether AFA had correctly applied section 14(1) in this case. The Commissioner carefully considered the submissions of both parties and accepted that, in the circumstances of this case, section 14(1) was engaged.

Grounds of Appeal

- [19] The Appellant's Grounds of Appeal detailed that the responses she has received from AFA to the concerns she has raised demonstrate 'repeated obstruction' on their part. Further, the Appellant considered that AFA has falsely claimed that it has dealt with the question raised by her regarding the spend of £765,297.60 in 2014/15 on land at Temple Black. The Appellant refuted the contention that her request is a 'fishing expedition'. In addition, she maintained that she had good reason to submit the FOIA request.

- [20] The Appellant referred to media coverage of the '*Ballooning Costs*' of Avon's extensive building program. The Appellant made reference to evidence she submitted to the Commissioner relating to the investigations AFA commissioned by Deloitte and SWAP against a backdrop of an earlier statutory Home Office investigation, she asserted that her pursuance of these matters has exposed '*catastrophic financial risks*'. The Appellant indicated that the AFA's '*untruthfulness and obstructiveness*', have been acknowledged as a result of this appeal, and by the misstatements she has subsequently identified in the 2020/21 accounts since submitting her complaint to the Commissioner in February 2021.

The Commissioner's Response

- [21] The Commissioner maintained their position as outlined in the DN and resisted the appeal. The Commissioner set out additional observations in respect of the Appellant's Grounds of Appeal.

[22] The Commissioner maintained that due to the breadth of the Appellant's 15-part request and the ongoing burden of continuing to answer information requests on this subject matter, compliance cannot be justified particularly given the size of the public authority and the actions it has already taken to address these concerns. Further, the Commissioner did not disturb the finding regarding the overall burden of complying with this request.

[23] With reference to [§58 DN] the Commissioner recognised that there is significant public interest in the issues identified, however, the Commissioner remained of the view that this ongoing persistence cannot be justified given the independent steps taken to identify and rectify errors. §58 of the Commissioner's DN is as follows:

"The Commissioner considers that there is significant public interest in the issues identified by the complainant in her Public Access Statement of 21 September 2018 being properly investigated. This is evidenced by the LGA's comments, the comments in AFA's letter thanking the complainant and the investigations it commissioned by Deloitte and SWAP. These investigations also took place against a backdrop of an earlier statutory Home Office investigation, which itself found that AFA was failing to comply with the 'best value' duty, under section 3 of the Local Government Act 1999."

[24] The Commissioner adopted their non statutory guidance on vexatious requests with specific reference to the set time limit which is imposed on an authority. Furthermore, the Commissioner referred to *CP v Information Commissioner* [2016] UKUT 0427 (AAC) to state that public interest in the information being requested *cannot act as a "trump card so as to tip the balance against a finding of vexatiousness"*. In addition, a failure to accept the outcomes of independent investigations also may indicate unreasonable persistence see: *Havercroft v Information Commissioner* (EA/2012/0262). The Commissioner submitted that it was entirely correct to rely upon the representations of AFA made during the investigation with regard to the engagement of section 14 FOIA.

Appellant's Reply

- [25] The Appellant provided background information concerning the request and the AFA. In response to *The Information Commissioner v Devon CC & Dransfield GIA/3037/2011 [2012] UKUT 440 (AAC)*, the Appellant refuted the contention that she is vexatious or that she is acting in vengeance. The Appellant maintained that this is not an inconsequential matter. The Appellant raised her displeasure at the criticism she has faced from the AFA and the Commissioner. The Appellant considered that AFA has falsely claimed that it has dealt with the question raised by her regarding the spend of £765,297.60 in 2014/15 on land at Temple Black.
- [26] The Appellant refused to accept the allegation of wrongdoing made by the Commissioner. The Appellant requested an explanation as to why she is not entitled to the information when the public are entitled to it. The Appellant questioned the findings of the Commissioner. In addition, the Appellant stated that the AFA have been misleading.
- [27] The Appellant maintained these are not trivial matters and that she has had non engagement with the AFA in this instance. The Appellant disagreed with the contention that she is conducting a fishing expedition for evidence of wrongdoing. The Appellant argued that the information requested has not been received despite submissions to the contrary.

Appellant's Further Amended Reply

- [28] The Appellant referred to the claim that 241 hours have been spent on requests from 3 May 2017 to 25 November 2020 to state that most of the hours are either not applicable, according to the Commissioner's own guidance, or relate to the authority's denial of facts. The Appellant went on to dispute the quantity of hours involved in handling her requests and refuted the contentions made by the authority and the Commissioner concerning the same. The Appellant rejected the claim that she was abusive.

Witness Statement of Andrew Mullett

- [29] Andrew Mullett provided evidence to the Tribunal by way of witness statement. Andrew Mullett is the Finance Manager of Alive Activities Ltd. He has been in his role since May 2019. Andrew Mullett is the Appellant's manager and has been since July 2021 when she joined Alive Activities Ltd. Andrew Mullett stated that the Appellant is clearly a very thorough and conscientious Finance Officer. Andrew Mullett stated that he has always found the Appellant to be helpful, friendly and considerate. Andrew Mullett contended that the Appellant's concerns deserve scrutiny and it is extremely unlikely that she has been violent, intimidating or abusive to anyone.

Witness Statement of Cheryl Cornelius

- [30] Cheryl Cornelius provided evidence to the Tribunal by way of witness statement. Cheryl Cornelius is a care worker at St Monica Trust and has worked there for several years.

- [31] Inter-alia, Cheryl Cornelius explained how she, and her daughter, who lives with her, *"have many serious physical and also mental health issues. They both caught Covid 19 at the end of March 2020. They received a flyer offering help during the pandemic. The Appellant's number was on the flyer and we rang this number. The Appellant started doing our weekly shop for us. Within a few weeks Cheryl Cornelius was hospitalised and nearly died from Covid"*.

"Both Cheryl Cornelius and her daughter have Long Covid, and the Appellant has continued to support us, by doing our weekly shop, collecting prescriptions, getting top ups for electricity and gas, posting mail etc. which the Appellant only stopped doing in September 2021, when Cheryl Cornelius moved further from where the Appellant lives. The Appellant also has helped with housing issues, benefits paperwork, physical tasks, emotional support etc, which the Appellant continues to do".

- [32] Cheryl Cornelius continued to explain she is aware of the Appellant's concerns regarding Avon Fire and Rescue Service financial matters and can see these are

genuinely held. Cheryl Cornelius knows the Appellant has spent a lot of her own time looking into the details, and from conversations they had it appears that she has come up against a lot of obstruction from AFRS and also disinterest from AFA councillors, on what appear to be serious concerns on how public money is being spent. She avers that: *“The Appellant has been a godsend for Cheryl Cornelius and has always been thorough, reliable and conducted herself in a professional manner”*. Cheryl Cornelius believes she can honestly say she could not have coped without the Appellant's help, especially as she has gone above and beyond to assist Cheryl Cornelius with everything. Cheryl Cornelius indicated she would probably not be here if it weren't for the Appellants determination and kindness, indicating it sounds drastic but true. Cheryl Cornelius avers she can see the impact this case has had on the Appellant and feels the Appellant has been acting with integrity and honesty, adding these are just some more qualities the Appellant possesses. Cheryl Cornelius indicates she cannot speak highly enough for the Appellant and hoped she can get this resolved soon.

Appellant’s Skeleton Argument

- [33]** The Appellant argued, with reference to Dr Craig Baker’s Home Office Statutory Inspection (HOSI) report, that the Second Respondent, she argues, had been conducting themselves to benefit senior officers by providing unjustified additional pension benefits.
- [34]** The Appellant further stated that the requested information concerns asset register balances (*Accounts and Audit Regulations 2015 (AAR)*, otherwise known as *Public Inspection of Annual Accounts / PIAA*). The Appellant detailed what she referred to as *“ballooning costs”* which the Second Respondent has labelled as rebuilds/refurbishments. The Appellant contended that hundreds of thousands of pounds are being spent on architectural designs as opposed to training facilities/new stations for police or ambulance services.
- [35]** The Appellant outlined her concerns in addition to the previous 10 already provided. The Appellant refuted the Second Respondent’s view that they are

irrelevant to the request before the Tribunal. The Appellant rejected the contention that the time to retrieve the requested documents was outside of the cost limit.

[36] The Appellant maintains that the Second Respondent has refused to comply with her requests and provide her with the requested information. The Appellant referred to the witness statements provided in support of her requests. The Appellant argued that Dr Baker expressed reservations as to whether the Second Respondent will make the necessary changes.

[37] The Appellant averred that the Second Respondent has made demonstrably false representations against the Appellant, her concerns and character. The Appellant requested that the Tribunal order the Second Respondent to provide evidence of the £765k spent on Temple Back Land, and for the Second Respondent to comply with the AAR by disclosing the RAM reports requested.

Second Respondent Skeleton Argument

[38] The Second Respondent submitted that the burden of responding to the Request would, on its own, be sufficient to render the Request vexatious. The Second Respondent argued that the Court of Appeal in Dransfield CA made clear that a request may be vexatious solely because of the cost of compliance. The Second Respondent submitted that that would be so here, even if there was a very significant public interest in the subject matter of the Request, the Appellant's motives were pure, and her behaviour was impeccably polite. However, the Second Respondent averred none of those apply in this instance. Rather, the other indicia of vexatiousness further strengthen the case for the application of s.14 FOIA.

[39] The Second Respondent considered that the serious purpose that originally motivated the Appellant's requests has diminished over time to the point where it has very largely disappeared. The Second Respondent stated the Appellant is now fishing for information on topics that have been comprehensively addressed, including by independent auditors, in order to continue a campaign against the Second Respondent. In these circumstances, the Second Respondent argued the

original serious purpose has greatly diminished: this is a classic example of a vexatiousness request by drift.

- [40] The Second Respondent averred that the burden of responding to the sheer volume of the Appellant's requests has, in itself, been demoralising for the Second Respondent's staff, particularly where requests have been couched in hectoring or inappropriate language. Cllr. Davies states that the Second Respondent's Finance Manager left her post, partly as a result of the Appellant's correspondence, and that the audit lead at Deloitte was signed off sick with stress. The Second Respondent argued that the Appellant states that she is aware that the Interim Treasurer went off sick for six months due to the issues she was raising.
- [41] The Second Respondent submitted that the Request clearly passes the high threshold of vexatiousness. It would do so on the basis of cost/burden alone, whatever the value of the Request – but in fact the serious purpose originally underlying the Appellant's concerns has diminished and she is now demonstrating unreasonable persistence in relation to matters that have been resolved by independent scrutiny.
- [42] The Second Respondent referred to the Upper Tribunal's decision in Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC) to state that it has conducted an estimate of the time it would take to respond to the outstanding parts of the Request.
- [43] The Second Respondent stated its estimate is that it would take 170 hours to respond to the outstanding elements of Request, or 150 further hours. Those estimates rise to 380 hours and 360 hours respectively if the more speculative estimate for the time needed to collate information on non-vehicle donations to "The Gambia" is included. Plainly, they argue, that estimate exceeds the appropriate limit identified in the 2004 Regulations by an order of magnitude. Translated back into a cost estimate at the prescribed rate of £25 p/h, the cost of responding is between £3,750 and £9,500 (compared to the prescribed limit of £450).

[44] The Second Respondent invited the Tribunal to find that the Second Respondent was entitled to rely on s.14 FOIA, and to uphold the DN accordingly. In the alternative, the Second Respondent invited the Tribunal to find that the Second Respondent is entitled to rely on s.12 FOIA, and to vary the DN accordingly.

[45] Should the Tribunal disagree and find that neither s.12 nor s.14 applies, the Second Respondent stated the correct course is to remit the Request to the Second Respondent to give its first response in accordance with Part I, including (if appropriate) relying on any exemptions in Part II FOIA.

Evidence:

[46] At the oral hearing on 21 October 2022, Ms. Gwynne was cross examined at length by Mr. Lockley, and this is a matter on record. The Appellant sought and was granted a copy of the oral transcript prior to making her final submissions. In summary the case put on behalf of the second Respondent was that there is a long history of acrimony between the Appellant and the Second Respondent which even included, disruption by the Appellant at Public Meetings, and on occasion verbal abuse by the Appellant to public servants in public, and accusations in the course of this appeal of deliberately misleading conduct within the AFA and implications of fraud on the part of those working within the AFA. At one stage, the Appellant accepted criticism of her conduct indicating *“Perhaps I could have been more diplomatic”*.

[47] Councillor Davies gave further evidence in support of his written statement on behalf of the Second Respondent and referred in detail of the sheer extent of the burden of the request and of the two resulting independent inquiries carried out on behalf of the Second Respondent.

[48] The Tribunal remain unconvinced that the Second Respondent have fully addressed the “Temple Black issue”, but independent audits have been commissioned by the Public Authority and have taken place.

Conclusions:

- [49] The Tribunal have carefully considered the Upper Tribunal's analysis of section 14 (set out in Dransfield and applied also in Ainslie and Craven) - "*What is a "vexatious" request under section 14 of FOIA?*" Headings which may be relevant include the Burden of the request on the Public Authority, the Value or serious purpose of the request, and Harassment of or distress to staff. However, the development of the law on identification of a vexatious request have indicated that a Holistic approach can be taken to all factors under consideration in any appeal.
- [50] The common theme underpinning section 14(1), at least insofar as it applies on the basis of a past course of dealings between the public authority and a particular requester, has been identified by Judge Jacobs as being a lack of proportionality (in his refusal of permission to appeal in *Wise v Information Commissioner* GIA/1871/2011; This Tribunal acknowledges the relevance of the background in this appeal bearing in mind the Appellants several references to her previous disputes with and victories in two appeals against this particular Public Authority.

Deliberations:

- [51] **Burden:** The request of 25 June 2020 was a large request that had multiple parts and covered a considerable period of time. The Tribunal is satisfied that this was a "big piece of work". To respond to the request in full (without consideration of any applicable exemptions) would require the AFA to undertake searches of historic information held off site. The information within scope of many parts of the Request is retained only at a hard-copy document archive that is shared with Bristol City Council. The Tribunal heard evidence that it would not be possible to identify a document's location with any precision from the archive index and that the search required to locate everything within the scope of the Request would be extremely time-consuming. The Tribunal considers that the AFA has not adequately demonstrated their time (and therefore cost) estimates. However, given the content and breadth of the information requested the Tribunal is satisfied that complying with the request in full would exceed the S.12 cost limit. That alone does not make the request vexatious.

[52] In considering the burden the Tribunal has taken into consideration that the Appellant has also made earlier FOI requests through the “*Whatdotheyknow*” Web site; has exercised her rights under the Accounts and Audits Regulations 2015 to inspect the accounts; has made a Public Access Statement in September 2018; has engaged with Deloitte’s and SWAP in relation to the independent investigations arising from the Public Authority. We find no evidence of fault or flaws in these two independent investigations. The Tribunal is satisfied that over a number of years the Appellant has engaged with various officers and councillors of the AFA on financial matters. The Appellants communications have frequently been voluminous and sometimes unfocussed. This also contributes to an assessment of the burdens placed on the AFA’s limited resources which, in all the circumstances outlined above, we find considerable and disproportionate.

Motive:

[53] The Tribunal does not accept that it has been established that the Appellant is pursuing a grudge in relation to her former employment.

[54] The Appellant considers that there are serious accounting errors that in her view remain uncorrected. The Tribunal is also satisfied that the Appellant is motivated by her desire to ‘*uncover*’ any historic errors. However, the Tribunal is satisfied by the independent oversight of the two investigations carried out by both SWAP and Deloitte, even though the Appellant remains unsatisfied with the independence and thoroughness of these investigations.

[55] The AFA submits that it is clear that the Appellant’s dissatisfaction with the outcome of the independent auditors’ investigations is the immediate motivation behind the Request. The Appellant has set out her dissatisfaction in a Public Access Statement (“**PAS**”) of 22 May 2020 to AGEC. The Request was then made following AGEC’s acceptance of the investigation outcomes on 22 May 2020. The Tribunal accepts this assertion.

Value or Serious Purpose:

- [56] The AFA considers that any serious purpose that originally motivated the Appellant's requests has diminished to the point where it has very largely disappeared. The Tribunal accepts that the value and purpose has diminished in that the two independent audits have identified some accounting errors which have been addressed. The Appellant has not been able to demonstrate to us what the audits shortcomings she alleges are proven. The Tribunal accepts the Appellant is probing for information on topics that have been comprehensively addressed by the independent auditors and we are of the view that this is disproportionate in all the circumstances outlined above.
- [57] This Tribunal finds that by making the request the Appellant is seeking to keep alive issues where she has previously identified genuine mistakes and where she believes there are still accountancy errors. The Appellant argues that she is not alleging fraud, however on the evidence provided by the Appellant in her final submissions it is clear she still considers that "*AFA finance staff were deliberately mis-recording expenditure on new stations*". Despite the Appellant's submissions that she is not alleging fraud the evidence strongly suggests that she considers that the independent investigators were either not qualified to investigate fraud or failed to identify it because it was not within the terms of reference. The Tribunal has concluded that the Appellant is not satisfied with the two investigations because they did not identify fraud. As indicated, on the evidence before us, the Tribunal accepts the findings of the two independent auditors.
- [58] In conclusion the Tribunal considers the serious value or purpose has substantially diminished. Any outstanding issues that may remain unaddressed do not warrant the burden that the request would place on the AFA.
- [59] The Tribunal further agrees that the pattern of the Appellant's previous requests indicates that she will use any response to the Request as a platform for further information requests under the FOI and the Accounts regulations. This, in all the circumstances pertaining, in our view is disproportionate and amounts to an abuse of the FOIA process.

Harassment and Distress

- [60] The Tribunal received evidence about the alleged harassment and distress caused by the Appellant's request and about her behaviour at public meetings. It also received hearsay evidence about a confrontation between the Appellant and the Assistant Chief Fire Officer which was reported to the police. The AFA also alleged violent behaviour on the part of the appellant.
- [61] The Tribunal has not seen any substantive evidence of "*a consistent level of abuse, intimidation and violence*". The allegations of intimidating behaviour at public meetings were overstated and was not evidenced. However, the Tribunal accepts that the Appellant may have '*overstepped the mark*' when she publicly accused people of not telling the truth. We also received evidence that when the Appellant approached the assistant chief fire officer whilst off duty, she swore at him and this led him to file a report to the police and an incident report to his employer, the AFA. The Tribunal considers this amount to harassment of staff and again disproportionate in all the circumstances.
- [62] It is apparent to us that the Appellant's persistent contact with the AFA has the effect of causing harassment and distress. Councillor Davies gave evidence that he was aware that some members of staff had taken time off work because of the stress caused by the Appellant's persistent contact.
- [63] The Tribunal's conclusion is that the request does contribute to the feeling of harassment and distress. Accusations of deliberately mis-recording of information and suggestions of fraud are likely to cause distress to the finance team in the AFA.
- [64] Accordingly in the circumstances and for the reasons outlined above we must dismiss this appeal.

Brian Kennedy KC

30 November 2022.

Promulageted: 9 December 2022