



Neutral citation number: [2024] UKFTT 360 (GRC)

Case Reference: EA/2023/0408

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

**Heard on the papers on 19 April 2024.
Decision given on: 03 May 2024**

Before: Brian Kennedy KC & Specialist panel members Susan Wolf & Dr Aimee Gasston.

Between:

MOHAMMED OSMAN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: The Appellant as a Litigant in person in his written Grounds of Appeal dated 18 September 2023.

For the Respondent: Joseph Lynch-Watson by way of written Response dated 13 December 2023.

Decision: The appeal is allowed.

Result: A Substituted Decision:

The Tribunal hereby orders that within 35 days of the date of the promulgation of this Judgment, the Woodroyd Medical Practice, which is a part of the Kensington Partnership, the P.A. herein, and referred to above, should issue a fresh response to the Appellants Request dated 13 June 2022, which does not rely on section 14(1) FOIA.

REASONS

Introduction:

1. The Appellant appeals under section 57 of the Freedom of Information Act 2000 ("FOIA"), against the Decision Notice with reference IC-220411-W5P9 dated 23 August 2023 (the DN) issued by the Information Commissioner (the Commissioner). In the DN the Commissioner concluded that the Woodroyd Medical Practice, which is a part of the Kensington Partnership, the Public Authority ("P.A.") herein, was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA) [vexatious request] and was therefore not required to respond to the Appellant's request for information (DN §§3 & 4).
2. As required by rule 23(3) of the 2009 Rules, the Commissioner states that he opposes the Appellant's appeal and invites the Tribunal to dismiss it.

Factual Background to this Appeal and Decision Notice:

3. On 13 June 2022 the Appellant made the following information request to the P.A. :

"The total number of patients on the woodroyd surgery's roll for the periods 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022

Number of patients removed from the roll for each said period and the reason for removal.

Ethnicity of those removed together with any reasons for removal together with internal identification of the staff member who removed patient.

Number of initial warning letters sent out for each period.

Number of final warning letters sent out for each period.

Interval period between initial warning letter and final letter for each patient for all the above periods."

4. The P.A. responded on 23 June 2022. It provided a copy of its zero-tolerance policy and advised that it did not hold the requested information.

5. The Appellant contacted the Commissioner on 15 August 2022 to complain that the Partnership has not provide him the information. The Commissioner advised the complaint to first request the P.A. to carry out an internal review.
6. The Appellant requested an internal review on 13 September 2022 and then followed this up on the 9 October 2022 as no response had been received. He then contacted the Commissioner again to advise no internal review had been provided.
7. The Commissioner contacted the P.A. on 26 October 2022. He asked it to carry out an internal review within 10 working days.
8. The Appellant contacted the Commissioner further as no internal review was received.
9. The P.A. provided the Commissioner with a copy of its internal review on 19 May 2023. It said that the information is not held, and it is refusing the request as it considers it to be vexatious.
10. Due to the time, it took for the P.A. to undertake an internal review, the Commissioner forwarded a copy of it to the Appellant, rather than requesting the P.A. do it.
11. The Commissioner considered the submissions on this case. He accepts the P. A's position that the language used against its staff would have caused them unjustified distress.
12. Whilst the Commissioner recognises that there may be a wider public value to the requested information being disclosed, he accepts the P. A's position that having to respond to the request would cause further unnecessary stress on its staff and create an unjustified burden on its time and resources in this instance.
13. The Commissioner therefore finds that section 14(1) of the FOIA is engaged, and that the P.A. was correct to apply the exemption in this case.

Legal Framework:

14. Section 14 FOIA: (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.

15. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal. The Commissioner submits that in all the circumstances of this case the request was vexatious further to the binding case law set out by the Court of Appeal in *Dransfield v Information Commissioner & Devon County Council* [2015] EWCA Civ 454 (which did not depart from the Upper Tribunal findings). The Dransfield definition in the UT establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. Dransfield also considered four broad issues at § [45]:

“(1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.”

Grounds of Appeal:

16. The Appellant argues that the requested information was not provided. Further, that the P.A. failed to deal with the request appropriately. The Appellant refutes being vexatious and contends that there is no evidence to substantiate this assertion.

17. The Appellant argues that the Commissioner erred in his judgment. In addition, the Commissioner avers that there are complaints about the P. A’s practice.

Commissioner’s Response:

18. The Commissioner has reviewed the case papers and the Appellant’s appeal documentation. Having done so, the Commissioner opposes this appeal and stands by his DN.

19. The Commissioner submits that in all the circumstances of this case the request was vexatious further to the binding case law set out by the Court of Appeal in *Dransfield v Information Commissioner & Devon County Council* [2015] EWCA Civ 454 (and which did not depart from the Upper Tribunal findings in *Information Commissioner v Dransfield* [2012] UKUT 440 (AAC)).

20. The Commissioner provides, alongside his Response form, a bundle of documentation and a copy of his own non-statutory guidance about section 14 FOIA, to assist the Tribunal in its determination of this matter. The Commissioner does not propose to make any further representations or submit further documentation.
21. Should the Tribunal have any questions or matters which are not answered by the papers before it, the Commissioner indicates that the Tribunal may choose to exercise its powers under rule 5(3)(d) of the Tribunal Rules to permit or require a party or another person to provide documents, information or submissions to the Tribunal.
22. If, contrary to the Commissioner's position, the Tribunal concludes that the request is not vexatious under s. 14(1) FOIA, the Commissioner invites the Tribunal to order steps obliging the public authority to issue a fresh response to the request not relying upon s. 14(1) FOIA.

Discussion:

23. On Burden - the Tribunal is not assisted by any evidence related to burden; on the contrary this appears to be the only request that has been made by the Appellant. There is no evidence of a history of previous requests although the Internal Review response [OB Page C32] refers to "*vexatious and repeated requests from the claimant including other third parties (solicitors and local MP)*" - No further details are provided and the Tribunal notes that requests from other third parties are not relevant to the assessment of burden in relation to this request.
24. In the DN the Commissioner makes no reference to the burden of dealing with this request.
25. The Tribunal notes that the P.A. twice failed to respond to the Appellant's requests for an internal review and finally conducted an internal review following the intervention of the Commissioner. This was over 9 months after the first internal review request.
26. On Motive, the DN does not address the issue of motive. The Appellant was deregistered from his GP practice and has sought this information to enable him to further understand this. The GP practice relies on the fact that it has disclosed a copy of its zero-tolerance policy, but this does not provide the information requested concerning the number of patients who have been de registered since 2016 or the ethnic breakdown of these patients. The Tribunal considers that the request was

motivated by a desire to understand how many other patients may have been de-registered from this practice and their ethnic backgrounds.

27. On the issue of Value or serious purpose the Tribunal is reminded that the starting point for determining whether a request for information was “vexatious” within [section 14\(1\)](#) is whether, objectively, there was no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section thereof; that the decision-maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request was vexatious. (Court of Appeal- Dransfield).
28. The Commissioner considered that there may be a wider public value to the requested information being disclosed. The Tribunal consider that the issue of deregistration (removing a patient from a GP’s practice) is a serious issue which affects an individual’s access to healthcare and therefore the request does have a serious value and purpose and the information would be of value to the requestor as well as holding a wider public value.
29. The Commissioner considered that having to respond to the request would create an unjustified burden, but in the absence of any material evidence of burden the Tribunal does not accept this conclusion.
30. On the issue of Harassment and Distress, the Commissioner bases his conclusions about vexatiousness primarily on the basis of the distress and harassment caused by the Appellant’s previous behaviours that led to him being deregistered. This does not appear to be disputed by the Appellant. However, the Tribunal considers that there is no evidence of distress or harassment resulting from the request. The Appellant made the request in polite terms. In the Tribunal’s view the Commissioner has conflated the harassment /distress caused by the Appellant’s earlier behaviours with the handling of this request.
31. The Tribunal is reminded that Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one (Court of Appeal- Dransfield).

Conclusion:

32. The DN relies on the fact that the language used against the P. A’s staff in the past would have caused them unjustified distress. This may be the case, but there is no evidence before us of any material or significant distress or harassment associated with the handling of this request. The FOIA is a statutory regime which confers a right of access to information on any person and should not readily be denied

because a person has caused distress in other fields of activity. This would have the effect of creating a blanket ban – here, limiting a person’s access to a GP practice having the corollary effect of limiting their access to information – which is not appropriate nor envisaged by the legislation.

33. Accordingly, on the evidence before us, and for the reasons outlined above we allow the Appeal and make a substituted Decision as follows:

Substituted Decision:

34. The Tribunal orders that within 35 days of the date of the promulgation of this Judgment, the Woodroyd Medical Practice, which is a part of the Kensington Partnership, the P.A. herein, and referred to above, should issue a fresh response to the Appellants Request dated 13 June 2022, which does not rely on section 14(1) FOIA.

Brian Kennedy KC

30 April 2024.