



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2015/0274

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50582996
Dated: 26 October 2015**

Appellant: ALAN DRANSFIELD
Respondent: INFORMATION COMMISSIONER
Hearing at: EXETER MAGISTRATES' COURT
Date: 23 MARCH 2016
Date of decision: 27 APRIL 2016
Date of Promulgation: 28 APRIL 2016

Before

ROBIN CALLENDER SMITH
Judge

and

SUZANNE COSGRAVE and DAVE SIVERS
Tribunal Members

Oral and Written submissions:

For the Appellant: Mr A Dransfield

For the Respondent: Mr P Lockley, Counsel instructed by the Information
Commissioner

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter: FOIA 2000

- s.14 Vexatiousness

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 26 October 2015 and dismisses the appeal.

REASONS FOR DECISION

Background

1. Mr Alan Dransfield (the Appellant) made a series of seven requests to the Information Commissioner's Office between 20 March 2015 and 17 April 2015.
2. The issues in this appeal are significant because the Appellant has also been the subject of a leading case on the meaning of vexatiousness in terms of section 14 of FOIA.
3. In essence, the Tribunal has had to consider whether these further requests by the Appellant fall within the categorisation of vexatiousness applied to earlier requests – some on the same topics some on other topics – made by him.
4. Put simply, has the Appellant continued to make requests that are correctly categorised as vexatious within the legislation?
5. The requests in this appeal related to information about metadata, the use of debit and credit cards by officials at the Information Commissioner's Office, legal costs, travel and accommodation costs and information about

legal arguments and the Information Commissioner's guidance on vexatious requests.

6. The Information Commissioner refused to provide any of the information requested because he considered the requests to be vexatious under section 14 (1) FOIA.

The requests for information

7. The relevant series of the Appellant's information requests in this appeal are set out below:

IRQ 0575625: 20 March 2015

....a PDF copy of the Metadata and in particular a copy of all internal and external emails containing my name between 2005 and Feb 2015.

This should not be confused with a DPA 98 request as I am not seeking data about myself.

IRQ 0575780: 23 March 2015

1. How many ICO officials have Debit/Credit Cards?
2. Who authorises the use of issuance of Debit/Credit Cards?
3. Please provide me with copies of Bank Statement for the last two years on every ICO cardholder.
4. Who scrutinises and approves Debit/Credit Card use at the ICO?

Owing to the recent breaking news ref Fraud and Theft of Public Funds by the unlawful use of Debit/Credit Cards by PA's Nationwide, this request IS in the Public Interest.

This is a brand new request.

IRQ 0576624: 27 March 2015

1. The full legal costs incurred by the ICO defending the Prince Charles Case which concluded yesterday in the Supreme Court.
2. All costs including Legal Fees for QC, Travel, Accommodation, Food etc.
3. Copies of Meta Data on this case, including emails and personal notes from Case officers.

IRQ 0577045: 31 March 2015

1. Full cost to the ICO for representing this attached case.
2. Full Cost of KBW QC lawyers for case representation.

IRQ 0577046: 31 March 2015

...an electronic copy of the ICO skeleton argument for the recent *Google v Vidal-Hall* case.

IRQ 0577797: 8 April 2015

...the full cost of the attached guidelines.

Please also advise me why this document was not produced before the Court of Appeal on 27th Jan 2015 ref C 3/2013/1855 Dransfield.

Please also advise me why these latest guidelines do NOT make one single reference to the Dransfield Vexatious decision ref GIA/3037/2011.

IRQ 0578937: 17 April 2015

FOI REQUEST FOR TOTAL COST BREAKDOWN TO THE ICO REF PRINCE CHARLE'S (sic) BLACK SPIDER LETTERS

...a breakdown of the entire costs of the subject total.

Costs to include ALL matters pertaining to this case including, caseworks, FTT/UT/Court of Appeal/Supreme Court, Legal Fees, travel and accommodation, ETC, ETC.

I would hazard a guess this particular case has cost the public purse several million pounds??!!

This is not a data request, it is a benign strait (sic) forward request under the FOIA 2000. It would be difficult for any fair-minded person to consider my request as VEXATIOUS??!!

....

PS I am not the sharpest knife in the draw (sic), hence, I would be grateful for clarification on this particular case. The ICO are on record recently that they are "pleased with the recent outcome". That being the case, why did the ICO appeal in the first place?!

NB Ben Bradshaw

During these austere times, don't you think we could make MAJOR savings if we sacked the ICO?!

8. On 21 April 2015 the Information Commissioner's Office informed the Appellant of its response to his requests.

9. It concluded that all the requests were vexatious and were being refused under section 14 (1). The refusal was summarised on the basis that, although these were new requests, they were consistent with the pattern observed in previous requests. It was reasonable to conclude that the position taken previously by the Information Commissioner's Office remained justified and should be maintained. In particular:

We are strongly of the view that we should protect public resources, namely in this case, our resources, and make sure they are put to legitimate and proportionate use. We must also seek to protect the FOIA from disproportionate and unjustified misuse.

We would also like to remind you that, under the provisions of section 17 (6) of FOIA, if a public authority has previously refused a request under section 14 of FOIA, and it would be unreasonable in all the circumstances to expect it to serve a further notice to that effect, then it is not required to serve further notice of refusal under section 14. For this reason, we may decide not to respond to future requests if we consider that the request is vexatious, and that it would be unreasonable in the circumstances to expect the ICO to issue a formal refusal notice.

10. The Appellant's response to this, in an email dated 22 April 2015, requested a review of that conclusion on the grounds that he was dissatisfied with the response.

11. He stated:

It is consistently obvious from your response that the ICO have considered Dransfield the requester as vexatious NOT my requests.

I am at a loss to understand how the ICO are maintaining the (sic) ANY INDEPENDENCE.

It is also consistently obvious that the ICO are knowingly and wilfully breaching section 77 of the FOIA 2000 with these section 14 (1) vexatious decisions.

The appeal to the Tribunal

12. That paragraph, above, summarises and encapsulates the burden of the Appellant's complaint in this Appeal both in terms of his Grounds of Appeal and his oral submissions to the Tribunal.

13. He says that, simply because he is the Mr Alan Dransfield who has been the subject of a leading case on the meaning of “vexatiousness” in terms of section 14 (1) of FOIA (the *GIA/3037/2011* decision), the Information Commissioner has improperly and incorrectly characterised *bona fide* requests that he is making about issues - which have a real public interest - as vexatious.
14. At the appeal hearing he described himself as “tenacious” rather than “intransigent”.

Conclusion and remedy

15. As the Appellant accepted – and took no point on in terms of disqualification to hear this particular appeal – two members of the currently-constituted Tribunal (Mrs Cosgrave and Judge Callender Smith) had heard similar arguments from him at Exeter Magistrates’ Court on 23 October 2014 in *Dransfield v Information Commissioner* EA/2014/0149. Mr Sivers has also been involved in at least one other appeal in respect of the Appellant.
16. That case related to 15 requests made between 30 December 2013 and 21 January 2014 to the Information Commissioner’s Office. There he had been seeking information about guidance, training, invoices, staff, correspondence relating to the Information Commissioner’s guidance on the issue of vexatious requests, minutes, Tribunal decisions, presentations, fraud procedures, and attendance sign-in sheet for a Tribunal hearing and reports relating to the monitoring of Devon County Council.
17. The Appellant’s appeal in that matter failed because the Tribunal concluded that the series of requests were vexatious because of the number and frequency of them, their overlapping nature, the tone of them and the lack of an obvious benefit that might be derived from responding to any or all of them.
18. This Tribunal has been at pains to look at the issues in the appeal before it - in this matter - as something completely new and separate.
19. There is an important issue of law and principle here because, simply because someone is characterised as vexatious as a result previous requests, it should

still be possible for that individual to make a request or requests that are not automatically characterised as vexatious simply because of his or her identity.

20. In other words, it is the nature and timing of the series of individual requests that this Tribunal has considered in this appeal and not the identity of the requestor.

21. The Appellant states resolutely that he has a good motive for making this particular series of requests. Rather than the requests being characterised as vexatious he believes in these requests he is raising issues of real public interest which deserve considered individual responses.

22. That “good motive” is, however, diluted and destroyed by the nature, frequency and tone of the requests in this appeal.

23. Any one of the information requests, on its own, might have been considered to be unexceptionable and valid.

24. This Appellant cannot see – it seems – that to make seven separate requests involving in some cases multiple questions over this relatively short time period of less than one month between 20 March 2015 and 17 April 2015 moves him into the area where such requests are likely to receive the kind of scrutiny in terms of the operation of section 14 (1) FOIA that might well lead to a decision to characterise them all as vexatious.

25. The reasons for this, in the Tribunal’s opinion, are straightforward:

- There is a frequency and overlapping nature of these requests that is manifest and means that the Information Commissioner’s Office did not get the opportunity fully to consider its response to one request before another was received. This created a burden which was disproportionate and unreasonable.
- The Appellant had previously been informed that some of the themes involved in these particular requests were ones that had already featured in earlier refusals. This was particularly evident in terms of the questions about the ways in which the Information Commissioner’s Office and its

staff spent money either themselves or on the maintenance of their statutory duties, suggesting fraudulent or unlawful behaviour by members of staff.

- The Information Commissioner is entitled to ensure that there is a proper and legitimate use of FOIA. This Tribunal was not provide any arguments in support of this as a legitimate use and in deliberation finds it hard to see any public interest in requests that relate to metadata. This is an area where the requests do not justify the resources that it would take to respond.

26. The Tribunal reminds itself that, since the Upper Tribunal decision in *Information Commissioner v Devon CC and Dransfield* [2012] UTT 440 (ACC), it is clear that “vexatious” means more than simply irritating, annoying or disappointing.

27. There needs to be “a manifestly unjustified, inappropriate or improper use of FOIA”.

28. This Tribunal finds that the Appellant’s requests in this appeal can be characterised as such.

29. In the Upper Tribunal case [at Paragraph 29] there was also the observation:

The present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor.

30. Again, that observation is particularly apposite with respect to the current appeal.

31. The frequency of the Appellant’s requests, again, is a factor which means that the public authority (in this case the Information Commissioner’s Office) was not given time to respond before being faced with numerous follow-up enquiries. That creates a disproportionate burden on the public authority.

32. A good example of that in this appeal is the request made in respect of the appeal involving Prince Charles' letters to government departments when there was a query from the Appellant dated 27 March 2015 followed almost immediately by further query from him on 31 March on the same topic.

33. For all these reasons the Tribunal is satisfied that the Information Commissioner correctly used the provisions of section 14 (1) and section 17 FOIA to refuse to respond to the Appellant's seven information requests examined in this appeal.

34. Our decision is unanimous.

35. There is no order as to costs.

Robin Callender Smith

Judge

27 April 2016