



**Appeal number: EA/2018/0159**

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

**GARY DONAL FARR**

**Appellant**

**- and -**

**THE INFORMATION COMMISSIONER**

**Respondent**

**TRIBUNAL:**

**JUDGE ALISON MCKENNA  
Mr ANDREW WHETNALL  
Mr PAUL TAYLOR**

**Determined on the papers, the Tribunal sitting in Chambers on 14 March 2019**

## DECISION

1. **This appeal is dismissed for the reasons given below.**
2. **AND IT IS DIRECTED under rule 14 of the Tribunal's Rules<sup>1</sup> that the Appellant be prohibited from disclosing to any person or publishing the Tribunal's hearing bundle (other than the Decision Notice) without obtaining the advance permission of the Tribunal. Reasons for making this Direction are given in the Closed Annexe and gisted at paragraph 36 below.**
3. **AND IT IS DIRECTED that the above Direction remains in place until further order.**
4. **AND THE APPELLANT IS PUT ON NOTICE that any breach of the above Direction may be punishable as a Contempt of Court.**

## REASONS

### *A: Background to Appeal*

5. The Appellant believes that a particular person ("X") is alive, notwithstanding the conviction of another person for murdering X. His repeated attempts to persuade others of his theory have caused understandable distress to X's family and brought him before the courts on more than one occasion.
6. The Appellant made a request to Surrey Police on 16 May 2018 (set out in full in the Decision Notice) in the following terms:

*"It was reported on the BBC News Website that...How was that possible? What proof is there that [X] is dead? ..."*
7. Surrey Police responded on 17 May 2018, referring the Appellant to its earlier letter of 14 June 2017 (shown at page 50 of our bundle). That letter had concerned a similarly-themed request and contained a refusal notice issued in accordance with s. 17 (5) of the Freedom of Information Act 2000 ("FOIA"). During the course of the Information Commissioner's investigation, Surrey Police confirmed its application of s. 14(1) FOIA to the request which the Appellant had made on 16 May 2018.
8. The Information Commissioner issued Decision Notice FS50748934 on 6 August 2018, upholding Surrey Police's reliance on sections 14(1) and 17(6) of FOIA in relation to the 16 May 2018 request and requiring no steps to be taken. The Decision Notice did not name the murder victim and we have taken a similar approach in this Decision.

---

<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779790/tri-bunal-procedure-rules-general-regulatory-chamber.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779790/tri-bunal-procedure-rules-general-regulatory-chamber.pdf)

## **B: The Law**

9. “*Information*” for the purposes of FOIA (as defined by s. 84 FOIA) means “*information recorded in any form*”. It follows that requests which are made in terms of “who, what, why or where?” are unlikely to constitute a technically valid *request for information* under FOIA.

10. Section 1 of the Freedom of Information Act 2000 provides a general right of access to information (as defined above) held by public authorities. However, that right may be dis-applied by sections 14 and 17 FOIA, where the request is deemed “*vexatious*”, as set out below.

11. Section 14 FOIA provides as follows:

### *14 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.*

12. Section 17 FOIA provides (where relevant) as follows:

### *17 Refusal of request.*

...

*(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.*

*(6) Subsection (5) does not apply where—*

*(a) the public authority is relying on a claim that section 14 applies,*

*(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*

*(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.*

*(7) A notice under subsection (1), (3) or (5) must—*

*(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*

*(b) contain particulars of the right conferred by section 50.*

13. FOIA does not itself define the term “*vexatious*” but the meaning of that term has been considered by the Upper Tribunal (and approved by the Court of Appeal) in the

*Dransfield* case<sup>2</sup>, where it was held to bear its ordinary meaning of “*causing...annoyance, irritation, dissatisfaction or disappointment*”. The legal authorities are clear that in deciding whether any particular request is vexatious, all the circumstances must be considered in the round, but that it will be most helpful to consider: (i) the burden on the public authority and its staff; (ii) the motive of the requester; (iii) whether there is a value or serious purpose to the request; (iv) any harassment of or distress to the public authority’s staff. It is made clear by both the Upper Tribunal and the Court of Appeal that these factors are not intended to be exhaustive and that other matters may be relevant in taking a “holistic” approach to the request. The Upper Tribunal describes the ultimate question as being whether the request is a manifestly unjustified, inappropriate or improper use of FOIA.

14. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:

*“If on an appeal under section 57 the Tribunal considers -*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

*the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.*

*On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

15. We note that the burden of proof in satisfying the Tribunal that the Commissioner’s decision was wrong in law or involved an inappropriate exercise of discretion rests with the Appellant. Where any facts are disputed, we have applied the civil standard of the balance of probabilities.

#### *Appeal to the Tribunal*

16. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered an agreed open bundle of evidence comprising some 100 pages, including submissions made by both parties, for which we were grateful. There is no closed bundle in this case.

17. The Appellant’s Notice of Appeal dated 7 August 2018 relied on grounds that (i) the request was not to be regarded as vexatious because it would impose no particular burden on Surrey Police’s staff to answer it; (ii) that he had been lied to by Surrey Police staff

---

<sup>2</sup> [2012] UKUT 440 (AAC) <https://www.bailii.org/uk/cases/UKUT/AAC/2013/440.html>

And [2015] EWCA Civ 454 <https://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

when they said that he was seeking an opinion because he was seeking a scientific explanation; and (iii) that he disagrees with Surrey Police's opinion that X is dead, although he accepts this is not relevant to his appeal.

18. The Respondent's Response dated 7 September 2018 maintained the analysis as set out in the Decision Notice. With reference to *Dransfield*, the Respondent relied on the Appellant's motive (said to be that of proving his theory about X and claiming reward money); the lack of any serious purpose or value in the request; and the harassment of Surrey Police's staff evidenced in the material provided to the Information Commissioner during her inquiries.

19. The Appellant's Reply (undated) emphasised that he regarded (named) Surrey Police staff as having lied to him and contained an admission about his conduct towards Surrey Police staff ("*The only threat I made was that I would get...dismissed*"). He described his motive as wanting to see the murder case re-opened as he thought there had been a miscarriage of justice.

20. In his final submissions dated 26 October 2018, the Appellant accepts that all correspondence with his name on it came from him but denies a report of him using a fake accent when phoning Surrey Police (referred to further below). He submits that he has been told lies by Surrey Police and the Information Commissioner so that he was "*justified in getting angry*". He refers to inaccuracies in the press reports about his conduct and concludes "*It does not make sense to claim that I was looking for the reward money for catching [X]'s killer when I believed that [X] was still alive!*".

### ***C: Evidence***

21. No witness statements were filed in this appeal and the evidence before us is to be found in the Appellant's own writings and the documents supplied by Surrey Police to the Information Commissioner during her investigation. We have considered these carefully.

22. The evidence as to the burden on the public authority and its staff of dealing with the particular request with which we are concerned is to be found in the high volume of phone calls and e mails sent by the Appellant over an extended period in connection with his theory about [X]. We note that Surrey Police staff found it necessary to hold a meeting about how to handle contact from the Appellant (page 79). The information request with which we are concerned forms part of a long chain of correspondence on the same topic, in which different aspects of the case come to the fore at different times. For example, in April 2017 he asked for his correspondence to be forwarded to "*the young woman who gave new information*" (page 74) and later that month he asked questions about the circumstances of the confession made by the person convicted of [X]'s murder (pages 73, 77,78).

23. The evidence about the motive of the requester in making this request is as follows. Surrey Police's notes of telephone contact with the Appellant reference his interest in claiming reward money. The Appellant himself wrote in January 2018 that "*The reason I want to know is because of the reward offered ...for information leading to establishing [X]'s whereabouts*" (page 85). In April 2017 he wrote "*my reason for involving myself in the case was primarily the £100,000 offered ...for information leading to [X]'s whereabouts*". The Appellant has more recently referred to his motive as seeking to uncover a miscarriage of justice. Our bundle contained a press report that the killer's

application for permission to appeal against the conviction had been rejected by the Court of Appeal.

24. The evidence from which we may consider whether there is value or a serious purpose to the request is to be found in the details contained in our bundle of his theory that X is alive. We have quoted from the Appellant's writings in the Closed Annexe.

25. The evidence as to the harassment of or distress to the public authority's staff is to be found in the terms of the numerous logged emails and phone calls with the Appellant contained in our bundle. He is recorded as having an "*angry manner*" (page 79) and stating that "*he will have the last laugh*" (page 78). We note that the Appellant has made complaints to the Professional Standards Department about the staff with whom he has dealt. In June 2017 there was a staff meeting about how to handle the Appellant's calls and a decision to require him to send an e mail about any queries. It is recorded that the "*team are apprehensive about speaking to him due to his threatening manner, particularly difficult with female team members*" (page 79). In the note of a subsequent telephone conversation the Appellant is described as having initially tried to disguise his identity by using an accent but then ending the call in his normal voice by saying "*see you in court*". The member of staff concerned noted "*I did feel quite shaky after the call as I was not comfortable having to tell GF that I could not continue the conversation*" (page 84). While it post-dates the request with which we are concerned, we also note the phone call to Surrey Police in June 2018 in which the Appellant is recorded to have shouted "*someone is going to get hurt*".

26. It is made clear in *Dransfield* that the above factors are not intended to be exhaustive. In adopting the "holistic" approach taken by the legal authorities, we note the evidence that the context of the request made in May 2018 was the Appellant's preoccupation with [X]'s murder over many years. Our bundle included at page 71 a press report from 2006 in which the Appellant is described as having "*launched a bizarre campaign of obscene correspondence containing references to teenage pornographic websites...*" and that he had targeted X's parents, friends, and other people connected (and mistakenly thought by him to be connected) with the case. He had sent them letters addressed directly to X. He is reported as having pleaded guilty to a course of conduct causing harassment and to have been detained under the Mental Health Act. It is reported that he had been bound over to keep the peace for similar conduct in 2003. The Appellant himself writes that he was discharged from his section by a Mental Health Tribunal in 2012 (page 39).

27. We also note that, in response to enquiries made of Surrey Police by the Appellant's Member of Parliament in January 2018, the reply sent on behalf of the Chief Constable states that the Appellant "*has previously undertaken a course of harassment against the family of [X]*" and refers to the Appellant as presenting a continuing risk to [X]'s family (page 45).

#### ***D: Submissions***

28. The Appellant's final submissions are described at paragraph 20 above. The Respondent made no additional submissions but relied on her formal Response to the appeal.

## ***E: Conclusion***

29. We asked ourselves first whether the Appellant's request was a valid request for *information* as that term is defined in FOIA. The Appellant has accused Surrey Police staff of lying when telling him that he had asked for an opinion, but we regard their initial approach as legally sound. We take the view that any request which asks "*How?*" and "*What?*" is unlikely itself to be FOIA-compliant, because it does not refer to recorded information. It might of course be refined to do so. We note that this appears to have been the stance originally taken by Surrey Police, which dealt with the request as "business as usual" rather than under FOIA. Later, it considered (legitimately in our view) the engagement of sections 40 (2), 38 (1) (a) and 30 (1) (a) FOIA. However, the approach finally adopted (and endorsed by the Information Commissioner) was to rely on s. 14 and s. 17 FOIA. That is the matter now before us.

30. In considering the indicia of vexatiousness set out in the legal authorities, we conclude that, looking at the course of dealings between the Appellant and Surrey Police from April 2017 to June 2018, the motive for the request was a continuation of the Appellant's long-running and well-documented campaign to prove his theory that X is still alive. We find that the particular information request with which we are concerned was motivated in part by a desire to claim reward money, and in part by a desire to uncover a miscarriage of justice, but overall by the Appellant's desire to prove his own theory correct.

31. In assessing whether there is a value or serious purpose behind the request, we find that there is no objective public interest in the information sought because it is framed in terms which merely seek to prove the Appellant's own theory.

32. We are satisfied that the Appellant's request, taken in the context of the course of his dealings with Surrey Police, did represent a burden on that public authority's resources. The volume of correspondence over a year was considerable, both leading up to the request and disputing the formal response.

33. We are satisfied that the Appellant's overall conduct, including the request, resulted in harassment of and distress to staff at Surrey Police. In reaching this conclusion we take into account the evidence of a course of obsessive conduct by the Appellant, and we accept the log of evidence of his unpleasant manner, his use of threats to staff about legal proceedings, his complaints of professional misconduct against them, together with his own admission to threatening to have a member of staff dismissed. We accept the evidence of distress that he is recorded to have caused to female staff in particular.

34. As noted above, the *Dransfield* indicia are not exhaustive and we consider that a holistic approach to the facts of this case may give rise to an additional indicator of vexatiousness, which is the criminal harassment of and distress caused thereby to third parties by the Appellant's campaign to prove his theory, of which his use of FOIA is but the latest chapter. This harassment has included direct contact with X's family, who must be considered vulnerable. The precise terms of the request (see paragraph 8 of the Decision Notice) use language which is likely to cause them distress. The use of FOIA to distress a third party may take us into the territory of additional indicia of vexatiousness, or it may simply take us back to the ultimate question posed by the Upper Tribunal at paragraph 43 of its Decision – does this request represent an unjustified, inappropriate or improper use of FOIA? We are satisfied that it does.

35. For these reasons we conclude that the request of 16 May 2018 was vexatious so that Surrey Police was entitled to rely on s. 14 (1) FOIA in respect of it. In view of the previous response containing a s. 17 (5) warning, we are satisfied that Surrey Police was entitled to rely on s. 17 (6) of FOIA so that it was not obliged to issue a refusal notice. In all the circumstances, we have no hesitation in confirming the correctness of the Decision Notice and dismissing this appeal.

36. We are also satisfied that it is fair and just to make the rule 14 Direction set out above, so that the Appellant is prohibited from re-using the material contained in our bundle to pursue his campaign of harassment against X's family. We give further reasons for our rule 14 Direction in the closed annexe.

**(Signed)**

**ALISON MCKENNA**

**DATE: 26 March 2019**

**PROMULGATION DATE: 28 March 2019**

**CHAMBER PRESIDENT**