



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

Appeal Reference: EA/2018/0086

**Heard at Sheffield MC
On 28 August 2018**

Promulgation date 2nd May 2019

Before:

**JUDGE HOLMES
ANNE CHAFER
MALCOLM CLARK**

Between:

LIAM HARRON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

DECISION

The Tribunal allows the appeal, and for the decision notice dated 28 March 2018 is substituted the following:

The public authority is required, within 20 working days of receipt of this substituted Notice, to provide to the Appellant the information requested in his FOIA request of 6 April 2017, ref. No. 21 – 17.

REASONS

1. In this appeal the Appellant, Liam Harron, appeals against a Decision Notice issued by the Information Commissioner on 28 March 2018, in which she determined that (save for delay in responding to the requests within the prescribed period) the public authority, Rotherham MBC

- ("RMBC"), had correctly applied s. 14(1) of the FOIA, on the grounds that the Appellant's request was vexatious.
2. The appellant appealed the Decision Notice by a Notice of Appeal dated 24 April 2018. In his Notice the appellant indicated that he was content with a paper decision.
 3. The Commissioner filed her response to the appeal on 7 June 2018. The Appellant filed a response to the Commissioner's response dated 21 June 2018. The Commissioner too agreed to a paper hearing.
 4. The Registrar issued case management directions on 11 May 2018 that this appeal, and that in EA/2018/0090, be considered together with two on -legal members. Whereas the Appellant had agreed to a paper hearing, on 21 June 2018 he withdrew that consent, and on 22 June 2018 the Registrar ordered that there be a hearing.
 5. The Commissioner did not attend the hearing, but submitted written submissions in each appeal. RMBC was not made a party, and made no representations. Its responses to the ICO's enquiries are contained in the bundles before the Tribunal.
 6. The Appellant attended the hearing, and addressed the Tribunal. There was a Hearing bundle. To differentiate between references to the bundle before the Tribunal in linked appeals, the Tribunal will use the format "[0086/XXX]" to refer to page numbers in the bundle in this appeal. The Tribunal reserved its Decision, which is now given, with apologies to the parties for the delay in its promulgation, occasioned by a mixture of pressure of judicial business, technological issues, and family medical circumstances experienced by the Judge.
 7. The Judge would, however, like respectfully to point out to the parties, particularly the party responsible for preparing the hearing bundles, which was presumably the ICO, that the Tribunal's task has been made rather more difficult and time consuming than it need have been by the fact that each linked appeal has a separate bundle presented to the Tribunal. They all contain much the same material, and could, in hindsight, been reduced to one core bundle for all four linked appeals. As will be apparent, the Tribunal has, on occasion, had to resort to referring to documents contained in a bundle for one of the other appeals to fill the gaps in the bundle prepared specifically for this one. Where this has occurred the appropriate bundle reference number will be given in the same format.
 8. It is further an unfortunate feature of the bundle in this appeal that the whole of section 9, the documents that the Appellant served with his response of 21 June 2018 is unpaginated. Where any of this material also

appears (though it may be in redacted form) in the paginated section of the bundle, it will be referred to, but otherwise the Tribunal will only be able to reference it by identifying it in as being in section 9.

9. It is similarly unfortunate that the Appellant's document entitled "FOIA Request made to Rotherham MBC on 16.9.15 – Summary of Chronology and Documents" authored by the Appellant on 25 May 2016, at pages [0086/18-19] has not been reproduced in the bundle for this appeal in its entirety, with attachments, as the Appellant has helpfully set out the history of his requests, using footnote annotations, which have not been included, and copy documents from 1 to 13b, and the responses of RMBC. That would have been a highly useful framework for the Tribunal to use, but it has not been replicated in full for its benefit.
10. Be that as it may, the Tribunal has, it considers been able to extract the necessary relevant facts and information from the documents supplied to it in the bundles.

The Decision Notice.

11. The Decision Notice that is the subject of this appeal is dated 28 March 2018 (No. FS50703869). It this relates to the Appellant's FOIA request of 6 April 2017, given the reference FOI 21 -17 by RMBC.
12. The Appellant approached the ICO about the request on 11 October 2017 [0086/60 - 64]. In his complaint he stated that he considered that the denial of the requested information was part of a wider context of an attempt to deny him other related information.

The Background.

13. The background to the FOIA request in question, and those which preceded it is as follows.
14. The Appellant is a retired headteacher. In the aftermath of serious Child Sexual Exploitation ("CSE") in Rotherham, which led to the publication in August 2014 of the Jay Report into CSE in Rotherham between 1997 to 2013, he and a colleague Chrissy Meleady, saw a need to give victims, survivors and their families a voice, to assist them in dealing with their experiences, and to help inform the establishment of systems and procedures that would gain support of those directly affected by CSE.
15. Consequently, the Appellant and Chrissy Meleady between November 2014 and February 2015 received and compiled contributions from victims, and others affected by CSE, and on 15 February 2015 published them in a 44-page A4 softback booklet, entitled "Voices of Despair

Voices of Hope” (hereinafter “Voices”). The Tribunal was provided with a copy of the publication, a copy of which is also enclosed in section 9 of the bundle. The Appellant and Ms Meleady worked in close consultation with RMBC and South Yorkshire Police in the production of this work. David McWilliams was appointed in January 2015 as Director of Commissioning and Performance for Children and Young People’s Services at RMBC. The Appellant consulted with him during production of the publication.

16. The Appellant funded the production of Voices himself. It was not intended to be a commercial product. The initial production run of the publication was 500 copies.
17. On 10 March 2015 RMBC ordered 1500 copies of Voices. This was unexpected, and the Appellant had to arrange increased production to meet this order. It was anticipated that RMBC would distribute the publication.
18. The 1500 copies were produced and delivered to RMBC in or around March 2015. The Appellant kindly provided the Tribunal with a hard copy of the publication at the hearing.
19. Around February 2015 RMBC the Secretary of State for Communities and Local Government exercised his powers to suspend the Council, and its functions were thereafter carried out by Commissioners, appointed by the Secretary of State. Accordingly, ultimate control of RMBC functions lay in the hands of these Commissioners, and it was to them that RMBC officers reported from February 2015.
20. On 24 July 2015 the Appellant, Chrissy Meleady and David McWilliams met. By then the latter had been appointed Assistant Director Early Help & Family Engagement, but he re-affirmed RMBC’s intention to distribute the publication through a planned workforce distribution programme, likely to commence that autumn.
21. On 5 September 2015 far right - wing activists came to hold a demonstration in Rotherham, seeking to exploit the fact that the perpetrators of the CSE that had been uncovered were from ethnic minority groups. This had led to clashes with the Police and anti-fascist groups who had demonstrated against the right - wing groups.
22. Against this background, and to promote racial harmony, the Appellant, still working with Chrissy Maleady, proposed a second edition of the publication, in which he hoped to defuse racial tensions, and to present a more conciliatory approach, to bring together communities. He was concerned that racism was now becoming as big a problem in

Rotherham as CSE had been, and the purpose of the next edition of Voices would be to listen to the voices of victims, survivors, and their family members and others adversely and directly affected by racism.

23. He therefore sent an e-mail [section 9 of the bundle] to David McWilliams and Ian Thomas, the Strategic Director of Children and Young People's Services at RMBC, on 11 September 2015 impressing upon them that the second edition of Voices was now a very high priority for himself and Chrissy Maleady. In that email he also asked for a breakdown of the distribution of the 1500 copies of the original publication that had been supplied to RMBC.

24. On 15 September 2015 David McWilliams replied in an email to the Appellant. He summarised the distribution of Voices up to that point, which was around a couple of boxes. In that email, however, he informed the Appellant of RMBC's decision not to distribute the first edition of Voices any further. He explained this decision in these terms in his email:

"However, before I took this any further we sought independent, expert guidance on the content and after consideration Commissioner Newsam and Ian [Thomas] agreed to keep any further distribution limited to those already mentioned and or any individuals that we felt should be sighted on the publication.

25. He went on:

"I thought you might find it helpful if I shared some of the feedback we received:"

26. David McWilliams then set out some seven paragraphs of issues that RMBC apparently had with the publication, which were the reasons that the decision had been taken not to distribute it any further. The full text of this email is in section 9 of the bundle, although extracts from it are quoted in several other documents. The first two paragraphs are in Arial font, but the text of seven paragraphs which followed the words ". the feedback we received:" are in italic, until the end of the email, where the sign - off "Best wishes. Dave" reverts back to Arial, non - italic, font.

27. The Appellant replied to him by email later the same day expressing his concern at the change in position. He asked whether there had been any positive feedback. Later the same day Chrissy Meleady wrote an extensive (four and a half pages in print) email in which she addressed the issues that he had raised, and effectively seeking to rebut the negative feedback, particularly by reference to distribution issues, where she argued that some of the concerns expressed could have addressed by selected distribution to professionals and other bodies,

with suitable accompanying material to address some of the issues raised.

28. The Appellant on 16 September 2015 raised his first FOIA request to RMBC in these terms:

"The email from David McWilliams yesterday about Voices of Despair, Voices of Hope is both baffling and distressing.

I think it is essential, for the public record, to get to the bottom of all the mistakes that have been made.

As a Freedom of Information (FOI) Request, I am asking for a copy of all communications relating to Voices of Despair, Voices of Hope from 2 December 2014 up to 16 September 2015."

29. The actual document making this request does not appear to be included in this bundle (though it might be), but the terms of the request are repeatedly quoted in many other documents [e.g. page 0086/54]. This was the beginning of the Appellant's attempts to obtain an explanation of why RMBC, having purchased 1500 copies, had changed its mind about distributing so many copies of Voices, with no warning that this was likely to happen. His reasons for seeking this explanation were, he told the Tribunal, which it accepts, that he felt in a difficult position in relation to those who had contributed to Voices, who had been led to believe that RMBC would be widely distributing it, and who could perceive this decision as a yet further instance of not being listened to by the establishment, one of the central issues in the CSE affair that the publication of Voices was intended to address.

30. This request was given the internal reference no. by RMC of FOI 600. This, of course, would be of 2015. The request of 16 September 2015 was also given the reference FOI 714, but this was clearly at a later stage. Confusion as to allocation of numbers to requests has been apparent throughout these appeals.

31. RMBC responded to that request on 23 October 2015 (outside the time limit, but nothing turns on that). The Appellant was provided with some copy documents, but did not consider that his request had been adequately responded to, so he sought, on 26 October 2015, and again on 7 December 2015, a review of the information provided to him under this Request. In this particular request of 26 October 2015 [0086/107 – 108] the Appellant had requested, at part 3:

"Information sent out with the Voices of Despair Voices of Hope publication to those taking part in any appraisal or evaluation."

He also asked, at part 4, for:

"... the information generated when processing this FOI request (the metadata) which includes the internal notes, emails etc..."

In this document he set out 5, non – exhaustive, categories of documents which he considered should be disclosed.

It appears to be at this stage that this was treated as a new request and given the reference FOI 714 see [0086/107].

32. RMBC did not treat this as a review, but as a request for clarification. It responded by letter of 19 November 2015 informing the Appellant that it was being so treated, and that he would receive a further response by 23 November 2015. In fact, he received a further response on 7 December 2015, when he was supplied with further information. Try as it might, the Tribunal has been unable to find the actual response sent to the Appellant in the bundle, although a draft of it appears at [0086/121 – 124] It is, however, clear that the Appellant did receive this on 7 December 2015 further information, because that day he made a request for a review of the response he had received.
33. Further, he responded to it in a document entitled "Comments on the information received on Monday 7 December 2015" dated 15 December 2015. It is, however, unclear precisely what the Appellant received, other than a request for further clarification of three areas of six that he had previously referred to. From subsequent documents it appears that he was given the information that two copies of the Voices publication were sent to the "expert", with an explanation about why an independent review was being sought.
34. The further information that the Appellant received appears to have been that which had been provided in draft to Commissioner Manzie for comment, and was sent then to Jean Imray for further comment before being released to the Appellant.
35. The Appellant also on 7 December 2015 had sought a review of his request, in the sense of his original request, which he considered had not yet been dealt with. It is clear, however, that in that email he used the reference number 714, the one assigned by RMBC in response to what had been his review request of 26 October 2015.
36. Linton Steele, a solicitor with RMBC, was appointed by RMBC to undertake an internal review on or about 11 December 2015. He conducted that review, and sent the results to the Appellant on or about 15 January 2016. His review document is at not in this bundle

37. It is, however, contained in the bundle for another appeal, at [0090/148 - 155]. It is erroneously dated 15 January 2015 on the last page. This is entitled FOI - 714 - Internal Review Decision, but Mr Steele acknowledges that there has been some confusion over assigned FOI request numbers, and refers to FOI 600 as well. He reviewed the information that had been provided to the Appellant on 23 October 2015, and the Appellant's response to it of 26 October 2015, which was treated as further clarification of his original request, though also assigned number 714 by RMBC.
38. He confirmed his provisional view, expressed to the Appellant on 17 December 2015, that RMBC had indeed failed to comply with the Appellant's request, within the statutory deadline, and substantively, in that RMBC had not provided the Appellant with, at the very least, a copy of the "expert appraisal" as it was termed that the Appellant had asked for.
39. He went on, however, [0090/150 - 151] to set out the results of his enquiries with Jean Imray, the Interim Deputy Strategic Director of CYPS. He relayed her account of how she had received the expert opinion by telephoning a sexual violence practitioner, and had asked for his or her comments on the Voices publication. This person agreed to provide comment, but on the strict basis that he or she would not be identified.
40. Jean Imray had explained to Linton Steele how these comments had been received by her on her personal iPad device, and how she then forwarded the same to herself at her RMBC email address. This was on 2 August 2015, and Linton Steele included in his Internal Review document the email of 2 August 2015 that Jean Imray had sent to herself [0090/151 - 153].
41. Linton Steele went on to consider whether non - disclosure of the identity of the expert who had provided these comments would be justified under the statutory exemptions under s.40(2) and 41 of FOIA. He concluded that disclosure would not be just and lawful, and that the absolute exemption under s.40(2) was engaged. Nothing in this appeal challenges that view.
42. The Appellant thus received, by way of this Review, more information, and became aware, he says for the first time, of Jean Imray's involvement, what information she received, and how she had received it.

43. The Appellant emailed Jean Imray directly on 15 January 2016 to ask her some further questions. She, by email of 15 January 2016 [0086/133] told Linton Steele, and others in RMBC that she had no intention of replying to the Appellant.

44. On 18 January 2016 the Appellant made his next FOIA request. In was in these terms:

"Please can I have a copy of all communications about Voices of Hope following the meeting with David McWilliams on 5 March 2015 up to Fiona Radford's email of 10 March and any subsequent communication relating to Voices of Despair Voices of Hope up to and including 26 March 2015"

45. This was allocated number 989 by RMBC.

46. On 29 January 2016 Kelly Harrison of RMBC sent an email to a number of RMBC colleagues, including Jean Imray and David McWilliams, referred to the Appellant's FIO request no. 714, and asking for all information generated (the metadata) generated when processing the first FOI request. After some initial querying as to whether this had not already been done, it was confirmed as being outstanding, but Jean Imray said on 31 January 2016 that she was pretty sure this had been done and she had nothing to add [0047/86-87].

47. On 14 March 2016 the Appellant received a response to this request. It revealed that a meeting of the Directorate Leadership Team ("DLT") had been held on 9 March 2015, at which the decision to purchase Voices was made, attended by David McWilliams and Ian Thomas. The Appellant considers that this was information that should have been included in the response to his first FOIA request of 15 September 2015.

48. On 16 May 2016 the Appellant received further information from RMBC. Amongst this were copies of email exchanges on 14 September 2015, including one of that date from David McWilliams. That was very similar to the one he sent to the Appellant on 15 September 2015, but it contained additional wording, in that between the words "*However, before I took this any further and independent, expert guidance on the content and after consideration Commissioner Newsam and I...*" there appeared the words:

".. I shared this with DLT and it was agreed we should seek some....."

49. This was therefore slightly different wording from that used in the email sent to the Appellant on 15 September 2015, and suggested that the matter had been discussed at the DLT.

50. On 15 August 2016 the Appellant received redacted minutes of that meeting.

51. Ultimately, after further activity in 2016, the Appellant made a further request, dated 30 September 2016, which was in four parts. It is to be found at [0009/46-47]. In part 3 the Appellant recited the first paragraph of David McWilliams' email to him of 15 September 2015, and the reference to the feedback on the Voices publication that then ensued. He went on to refer to a document sent to the ICO on 25 May 2016. He then made this request:

"Please can I have a copy of any email exchanges led to David McWilliams receiving the so - called independent expert guidance.

If there are no email exchanges, please can an explanation be provided as to how David McWilliams received the so-called expert guidance."

52. This request (i.e all of it) was given the reference number 740-16 by RMBC. RMBC's response, dated, if only by a handwritten note, 1 November 2016, is (for the first time) contained in the 0009 bundles at pages [0009/49 - 50].

53. In their response RMBC responded to part 1 of the request by referring to an email provided to the Appellant on 3 October 2016, to part 2 by referring to the Appellant's three previous FOIA requests, referenced as 600, 714 and 989, and the email exchanges disclosed pursuant to those requests, and, in response to part 4 by reference to a response from RMBC sent to the Appellant on 16 May 2016, and to a meeting held between the Appellant and RMBC on 18 July 2016.

54. In response to part 3, RMBC again referred to the disclosure made in response to the three previous FOIA requests referred to, and went on to say:

"No further information is held."

55. By letter of 23 December 2016 [0009/51 - 52] the Appellant sought an internal review. In relation to part 2 of his request, he said:

"There is already overwhelming evidence of how the response to the first ever FOIA Request I submitted to RMBC on 16.9.15 (600) was totally inadequate.

To date there is strong evidence that no one in RMBC has shown any serious intent to get to the complete truth. Yesterday I received: SAR 242 - Liam Harron - Information from Rotherham MBC. This has provided further evidence of evasion, procrastination and dishonesty by officers of RMBC

On page 63, under Q3, there is reference to *an email from Jean Imray*:

..... subsequently forwarded from her RMBC account to Ian Thomas on 4/8/15

This email should have been provided as part of my first FOIA request on 16.9.15 and directly relates to part 2 in my FOIA Request on 30.9.16. It clearly shows that information has been withheld. The nature of that information indicates that it has been deliberately withheld.

56. That, however, it should be noted, relates to part 2 of his request, not part 3. In relation to part 3, the Appellant said this:

"The same applies to part 3 in my request on 30.9.16, namely:

[the request is repeated]

and he added:

"I believe there is overwhelming evidence of dishonesty here."

57. At the Appellant's request, RMBC provided carried out an internal review of the response to request 740-16. It provided the Appellant with its response, which is unhelpfully undated, but appears to have been prepared on 2 February 2017 [0086/105 - 106]. In relation to part Question 2, in which the Appellant had complained that email exchanges he had been provided with should have been provided as part of the response to his first FOIA request on 16 September 2015, the outcome provided was:

"The information was part of a 3-page email thread and was a forwarding on email header, the information it contained was the sender's and the recipient's name together with the date and heading. The content of the emails before and after this header have been disclosed to you in previous responses.

This information was not withheld intentionally and Rotherham had no reason to exempt this from disclosure.

The reason for the non - disclosure was human error."

58. The same day as he received this Review of his request 740-16, 2 February 2017, the Appellant made a further request, which was given reference number 1124-16 by RMBC.

59. RMBC apparently (for the Tribunal cannot find a copy in the bundle for this appeal) on 16 February 2017, as required by s.17(5) of FOIA a notice

to the Appellant that it was relying upon s.14 FOIA to exempt it from the requirement to provide the information requested.

60. The Appellant then referred the matter to the ICO by letter of 5 April 2017 (0086/125-126). In that letter he set out the history of his FOIA requests to RMBC from 16 September 2015 onwards. Whilst he made reference to all the requests he had made, he made it clear that the purpose of his letter was to ask the IC to ask RMBC:

“... for an explanation as to how officer David McWilliams received what on 15.9.15 he referred to as “feedback” from a so-called (but still unnamed) “independent expert”.

In an email on 15.9.15 David McWilliams included what appeared to be a long extract from information he had received, either directly or from a colleague at RMBC. However, RMBC state that David McWilliams did not receive this information by email. In my strong view there is very strong evidence that David McWilliams received this information by email and there is evidence that David McWilliams does not want to reveal the contents of this email.”

61. He went on to provide the ICO with some documents, setting out his previous requests, and the responses, and internal reviews, of RMBC to them.

62. In conclusion, he said this:

“In summary, there remains a further critical piece of information that I believe has been withheld by RMBC – that of how David McWilliams received what he referred to in his email of 15.9.15 as “feedback” from the so-called (but still unnamed) independent expert.”

He reiterated his request for the ICO to ask RMBC for an explanation.

63. On 6 April 2017 the Appellant made a further request of RMBC, in these terms. Firstly, he recited the email from David McWilliams of 14 September 2015, referred to at para. 47 above. The terms of his request, which is at [0086/50] were, after he recited the contents of the email of 14 September 2015:

“This FOI Request is for a copy of any information relating to the highlighted comment ‘I shared this with DLT and it was agreed that we should seek some independent, expert guidance on the content.’

DLT stands for Departmental Leadership Team.”

64. It is this request which is the subject of this appeal. It was given reference number 21 - 17, and was considered by the ICO to be the sixth FOIA request made by the Appellant.
65. Marie Buxton, head of Information Management of RMBC responded further to this request on 8 June 2017, [0086/51 - 52]. This was in fact a document with two purposes, for it responded to the Appellant's request for a review of the Refusal Notice dated 16 February 2017, but, more pertinently for this appeal, it responded to the Appellant's FOI Request of 6 April 2017, referred to as 21-17. In fact, the previous Refusal Notice of 16 February 2017 was withdrawn, as it was not in response to a request under FOIA. The Appellant's request of 6 April 2017, however, was, and that was thereby refused under s.14 of FOIA.
66. The response was that the request had been deemed vexatious under section 14(1) of FOIA. Marie Buxton went on say that RMBC had evidence that the appellant's past behaviour suggested that a response would only serve to encourage follow up requests. She cited the ICO guidance on Dealing with Vexatious Requests, and under the heading "Frequent or overlapping requests", she went on to refer to the six FOI requests that the appellant had made since September 2015, and the internal reviews that had been carried out when requested. RMBC had evidence of frequent and overlapping requests. The Appellant was informed of his right to seek a review of this refusal.
67. The Appellant duly did seek an internal review by letter of 14 August 2017 [0086/54]. In it he said (his emphasis):
- "I believe it is self - evident that I should have been provided the information I requested on 6.4.17 as a response to my FOI request on 16.9.15".*
68. He went on to suggest that the response that his request was vexatious provided evidence of "significant incompetency by the decision maker."
69. The response to the Internal Review by RMBC was (apparently, for it is only hand dated, and is not attributed to any author) provided on 13 September 2017 [0086/55-58]. The findings on the review were that there had been frequent and overlapping requests made by the Appellant, and the refusal was upheld.
70. The Appellant referred the matter to the ICO by letter of 11 October 2017 [0086/60]. He enclosed various documents, and ended his letter by stating that he believed the denial of the requested information was part of a wider context to deny him other related information, which he asked the ICO to take into account.

71. The ICO assigned case reference no. FS50703869 to the complaint, and contacted RMBC on 27 October 2017.

72. There was then some delay in the complaint being investigated, but on 1 February 2018 Deborah Clark notified the Appellant and RMBC that she was the case officer. She asked Marie Buxton on behalf of RMBC to supply further information as to why the Appellant's request had been deemed to be vexatious [0086/70-73], asking her in particular to address:

- Details of the detrimental impact of complying with the request;
- Why this impact would be unjustified or disproportionate in relation to the request itself and its inherent purpose or value;
- And, if relevant, details of any wider context and history to the request if the council believes that this background supports application of section 14(1). Please provide any relevant documentary evidence/background evidence to support such a claim.
- Please ensure the above includes details of the 6 previous FOI request relating to the subject of this request, including whether such requests were responded to in full in a timely manner.

73. She also asked Marie Buxton to provide comments on the Appellant's assertions that:

- There are significant gaps in the information that has been provided in response to the first request dated 16.09.15 and each of his requests since then have been a follow up to the 'inadequate' response to his first request.
- He believes that information was, and still is being, deliberately withheld.
- His request on 26.10.15 for "Information sent out with the Voices of Despair Voices of Hope publication to those taking part in any appraisal or evaluation" received the response "Two copies of the document were sent with an explanation about why an independent view was being sought" but this was proved to be an untrue statement when the council stated that "no explanation about why an independent view was being sought".
- The council has refused to reveal the identity of the "independent expert" and no original information has been provided to show that this person even exists.

74. On 1 March 2018 Marie Buxton provided the ICO with her responses to the ICO's letter of 1 February 2018 [0086/89 - 93]. In this document Marie Buxton replied to each bullet - pointed query, giving it a number.

Under 1, “Details of the detrimental impact of complying with the request” she referred to the response to the Appellant’s request within FOI 600 given on 23 October 2015, and then the “follow up response on 16 May 2016.”

75. Under 1.2, where details of the detrimental impact of complying with frequent and overlapping requests were sought, Marie Buxton referred to the disproportionate amount of RMBC officer time spent in attempting to satisfy the Appellant, his persistence that additional information was held, and how officer need to spend their time dealing with the large number of legitimate requests. She went on to refer to the Appellant’s accusations of dishonesty by Council Staff.
76. Under 2, why the impact of the request would be unjustified or disproportionate, she said that pursuing this line of enquiry would serve no further purpose or value to the public.
77. In answer to point 3, which asked for details of any wider context and history to the request if the council believes that this background supports application of section 14(1), Marie Buxton referred to the previous 6 requests relation to the same subject that RMBC had responded to. She went on to explain how RMBC had sought clarification of some requests, and the Appellant’s contact after receiving what he considered were inadequate responses. She went on to suggest that in hindsight RMBC should have logged these as further FOIA requests, as not within the original request. She conceded that due to the “complex nature and breadth” of some requests, RMBC did struggle to meet the statutory timescales. She also suggested that RMBC, again in hindsight ought to have applied the cost limit exemption in some instances.
78. She also made reference to the BAU arrangements, and the Appellant’s requests thereunder. She attached [0086/85 – 88] a copy of the document in which questions posed by the appellant were set out as part of this process, and the responses. She pointed out that these were repeat questions.
79. Under section 4, where RMBC is asked to comment upon the Appellant’s assertions, the response was firstly that it is not accepted that the responses to FOI were inadequate. Comment is then made about the BAU approach, and the contention was made to the overlapping/repeat nature of some of the requests, and the referral by RMBC to previous responses to previous requests.
80. Reference was then made to the availability of internal review. This section then contains this comment [0086/92]:

“The Council appreciates that on some Internal Reviews further information may have been identified, however this could have been avoided if the Council sought clarification of the complex information requests.”

81. Marie Buxton then went on to refute any suggestion that information was, and was still, being deliberately withheld, and referred to the additional attempt at a BAU approach.
82. The remaining comments relate to the identification of the “independent expert”.
83. Thereafter, Marie Buxton submitted more material to the ICO. This appears to have been by email of 6 March 2018 [0086/97], to which a Briefing document, dated on its face 1 March 2017, but upon which a handwritten annotation “6 March 2018” has been added was attached [0086/98 - 102].
84. This document does two things. It sets out a chronological background of the requests, the responses and the internal reviews, and also sets out, under various headings, RMBC’s further submissions in support of its contention that this request is vexatious. Those headings are:

- Aggressive Tone
- Burden on the authority
- Personal grudges
- Unfounded accusations
- Scattergun approach
- No obvious intent to obtain information

85. Reference is then made [0086/101] to an online Petition submitted by the Appellant on 14 July 2017, in which the Appellant, and any signatories, called upon Sharon Kemp, the Chief Executive of RMBC to write to all employees of RMBC to impress upon them the importance of truthfulness in their communications with representatives and advocates of victims and survivors of CSE in Rotherham. Reference is made in this Petition to an email from the Rotherham Truth Campaign of 30 June 2017 in which there was an allegation of dishonesty involving RMBC officers and commissioners.
86. The Appellant wrote further to the ICO on 21 March 2018 [0086/127] making reference to his previous complaint relating to the internal review of request 740-16, which he had referred to the ICO. He submitted more material on 22 March 2018 [0086/132], namely emails from RMBC received on 22 November 2016.

87. The IC issued her Decision Notice on 28 March 2018, in short, accepting largely RMBC's grounds for holding that the request fell within the exemption of vexatious requests in s.14(1) of FOIA. Reference is made to the previous requests, how they have been dealt with and subsequently considered by the ICO, the burden on the authority, and the limited value in consuming yet further public resources in responding to this request.
88. The Appellant appealed on 4 January 2018.

The Law.

89. Section 14(1) of FOIA provides:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

In terms of the caselaw, the ICO's submissions set out extensive extracts from the caselaw, particularly *The Information Commissioner v Devon CC & Dransfield [2012] UKUT 440*, and the Court of Appeal judgment in the same proceedings, and *Colin Parker v. Information Commissioner [2016] UKUT 0427*, which it is not intended to repeat here. The Tribunal accepts that these passages accurately reflect the law on how section 14(1) is to be applied, the Tribunal would highlight the following principles are established in determining whether a request falls to be considered vexatious within the meaning of s.14(1):

- A holistic and broad, or rounded, approach must be taken to the issue;
 - Whilst motive on the part of the requester was not directly relevant, the history of past requests, and a previous course of dealings between the request and the authority were relevant considerations;
 - The starting point is to consider whether the request has no reasonable foundation, that there was no reasonable foundation for thinking that the information sought would be of value;
 - That is not, however, determinative, as, even if the information was important and potentially in the public interest, if the request for it was made by a vengeful requester, it could still be vexatious to request it;
 - The hurdle of satisfying the test of vexatiousness is a high one.
90. Applying those tests to the facts before us, a number of factors are apparent. Firstly, there is clearly nothing abusive or vengeful in the particular request that the Appellant made. It was in simple, temperate terms, and, as with all his dealings with the authority, he has used polite and civil modes of communication. Secondly, whilst he had, it is

true suggested previously that information had been deliberately withheld, and that there had been dishonesty, he does not repeat that allegation in this request. Further, other than to make that suggestion, he has not imputed any other form of particular improper motive or misconduct on the part of the authority, he has simply continued to press for information which he believed, and probably still believes, exists and should be disclosed.

91. This Tribunal accepts, as is manifestly correct, that previous requests are highly relevant. There is, of course, no magic number whereby a requester runs the risk of a finding of vexatiousness because his requests exceed that number, but it is of some concern to this Tribunal that the authority has on a number of occasions referred to the Appellant as having made six previous requests. This is not strictly accurate. By the time of the request under appeal on 6 April 2017 he had, in fact, made five. RMBC had not, however, treated these consistently, and there are issues with the reference numbers that were assigned to them, but they accepted and dealt with five, not six. The IC appears to have understood this, as she refers to five previous requests.
92. It is also to be noted that in its response to the ICO, RMBC suggests that in hindsight it ought to have treated the Appellant as having made more requests than it had done, as it considered that some of his further requests fell outside the scope of his previous requests. The converse of this, however, the Appellant argues, is that information was not provided that should have been, or at the time that it should have been, but was released piecemeal. An example of this is the 14 September 2015 email from David McWilliams, which was not provided pursuant to his first request of 16 September 2015, and only emerged on 16 May 2016. The Appellant's point is that this should not have required a further request, but was what should have been provided from the outset.
93. Thus, whilst the Tribunal accepts fully that the Appellant's previous requests are highly relevant, so too must be the responses to them. A further relevant consideration, therefore, the Tribunal considers, is the concession, made in the Internal Review of Request 740-16 of 2 February 2017 [0086/105] that some information was not provided when it should have been "due to human error". It is also of relevance, the Tribunal considers, that this Review document also enclosed further emails, which, it seems implicit, should also have been provided in response to the Appellant's previous request or requests.
94. RMBC's contentions to the ICO were that the Appellant's requests under FOIA were related to his "dissatisfaction" with the authority's decision not to purchase significant numbers of Voices. RMBC also

contended that the request (i.e this one) has been made “in order to express anger at the Council’s decision”. Further, the ICO’s approach to this case seems to us to imply that the Appellant was aggrieved at the decision of RMBC not to purchase the number of copies of “Voices” that it had said it would, as if he were some type of commercial supplier. Para. 36 of the ICO’s Decision Notice refers to it being reasonable for her to conclude that there was no “known requirement for the Council to publish the Book, and that any business decision to do so rests with the Council”.

95. With respect to the ICO, she misses the point. The Appellant’s concerns are not “business” concerns, nor was he dissatisfied with the decision from a business point of view. RMBC did in fact purchase 1500 copies of Voices, what it changed its mind about was whether to distribute them. What the Appellant has sought has been an explanation from RMBC as to why it changed its mind. He has done so not from personal “dissatisfaction”, but from his sense of obligation to those who contributed to the publication in good faith, and with raised expectations that their “voices” would indeed be heard, whose expectations were then dashed, leading some of them to feel that they had yet again not been listened to. That, this Tribunal finds, has always been the Appellant’s motivation, and purpose of all his requests.
96. His contention that there has, or may have been, dishonesty on the part of RMBC officers, or others, is not a wild allegation, made from the beginning, but one that has been his reaction to the piecemeal, and as he sees it, less than satisfactory manner in which information has been released in response to his requests. He does not assert any improper motives such as personal gain or greed, merely that there has been less than open and frank disclosure.
97. That, of course, does not mean that this is not a vexatious request, but it is important, if a holistic and rounded approach is to be taken, to put this request in context.
98. This request is said to be significantly similar to previous requests, and the Tribunal agrees that it is, but it is highly specific, and relates solely to the information, which the Appellant did not receive until 2016, pertaining to the DLT when David McWilliams apparently discussed the issue of Voices with them. This is thus not a wide-ranging request, but is highly specific, and arises out of information that the Appellant only received long after his initial FOI request. Further, whilst it is true that the Appellant made requests that there were overlapping requests, the Tribunal considers that this was only necessary because of the failure of RMBC to provide in full the information sought in previous requests, a point made forcibly by the Appellant.

99. Further, the Tribunal considers that RMBC's response document of 1 March 2018 [0086/89-93] is somewhat mealy - mouthed. In section 4.1, for instance, the concession is made that on some Internal Reviews further information "may have been identified", but then this is excused or explained by the need for clarification of the "complex information requests"

100. Firstly, there is no "may have" about it. It is clear that further information was provided on Internal Review. In one instance, the review of request 740-16, on 2 February 2017, resulted, 4 months or more after the request was made, in the release of emails passing between the Interim Deputy Strategic Director following amendments made by Commissioner Manzie, and an email header not provided in response to the requests made in September and October 2015, because of "human error". Additionally, in Linton Steele's Internal Review of January 2016 further information was disclosed. The Tribunal notes that despite the Appellant's references to it, and inclusion in various documents he has submitted, a copy of this particular review does not appear in the bundle for this appeal at all.

101. Further, the Tribunal would like to address the oft - repeated assertion by RMBC that the Appellant's requests were "complex". They were not. They were often no more than a paragraph. Their subject matter encompasses a relatively short timescale, from March 2015 to October 2015, and a single issue, what was the reason that RMBC decided not to distribute the 1500 copies of Voices that it had purchased? The information that the Appellant has been seeking is simply who took that decision and why? Any complexity that has arisen, it seems to the Tribunal has arisen because of the piecemeal and unsatisfactory manner in which information has been elicited from RMBC. This has inevitably led to a train of further enquiry. RMBC can hardly complain when the Appellant raises a further request because a piece of information that it has disclosed suggests that there may be more information that has not been disclosed.

102. The Tribunal has considered the ICO's reasoning at para. 41 of the Decision Notice, wherein she makes reference to her determination of a similar request, to the effect that no such information was held. She argues that this lessens the public value in the request being complied with. That may be so, but the Tribunal's concern is that the Commissioner is thereby seeking to determine vexatiousness of the request in the light of subsequent events. To that end, the Tribunal considers that the online Petition of 14 July 2017 is of little relevance. It is, of course, after RMBC informed the Appellant that it would not respond to any further FOI requests as they would be considered

vexatious. That may have increased the Appellant's animosity towards RMBC and its officers, but it can hardly be evidence that he was so motivated at the time of this request when made in February 2017.

103. The caselaw, as far as the Tribunal is aware, is silent as to when the test is to be applied, but the Tribunal's view is that the test whether a request is or is not vexatious is to be applied at the time it was made, and not in the light of subsequent events. That is the natural meaning of the wording of the section, and is consistent with the duty under the FOIA upon an authority to respond within a specified period of time. Thus, whilst a factor, this Tribunal does not consider that any evidence of subsequent conduct is of any real relevance to the issue of vexatiousness at the time of the request.
104. Further, the similarity of the Appellant's requests was because of the incomplete and unsatisfactory responses of RMBC – admitted on at least two occasions – to previous requests, and as may also be observed, for this has been a consistent finding, repeated failures to deal with previous requests within the specified time limits.
105. With respect, the Tribunal cannot agree with the submission made at para. 49 of the IC's response to the appeal [0086/38] to the effect that the delay in obtaining the information relating to the previous FOI request dated 16 September 2015 is not a relevant consideration as to whether this request is vexatious. RMBC have rather made it so, because RMBC have referred to and relied upon the repeated and overlapping nature of the Appellant's previous requests in support of the contention that this request is vexatious. If a holistic approach is to be taken, the adequacy of previous responses, as well as the number, frequency and content of previous requests must be equally relevant considerations.
106. In terms of the burden upon the authority, it has to be observed that this request is of a very specific nature, and is unlikely to burden RMBC unduly. It relates to information as to how David McWilliams shared information relating to Voices with the Departmental Leadership Team sometime between March and September 2015. This is unlikely to result in extensive paperwork, or copious email traffic, given what has been disclosed thus far, the Tribunal would have thought. As the involvement of the DLT was something which only emerged sometime after the original response to the first request, the Tribunal considers that there is indeed a public interest in this issue being explored further, and that it is proportionate to do so by seeking the limited information requested in this request.

107. The remaining headings referred to in RMBC's Briefing document referred to in para.84 above have not been relied upon by the IC, and the Tribunal does not consider them germane. To the extent that any personal grudge is alleged, the Tribunal does not agree, and discounts this. For the reasons given above, the after the event online Petition is similarly of no weight.

108. Thus, for all these reasons, this Tribunal finds that the high hurdle of establishing that this was a vexatious request has not been satisfied, the appeal is allowed.

109. The Tribunal will accordingly issue a substituted Decision Notice. That may, however, be of academic benefit, as the authority may well still respond to the request in terms as to whether such information is held, with the same results as previously. We consider, however, that the appellant is entitled to a finding that the request in question was not vexatious, and so rule.

Signed:

Judge of the First-tier Tribunal
Dated: 1 May 2019.