



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

Appeal Reference: EA/2019/0001

**Decided without a hearing
On 30 July 2019**

Before

**JUDGE HAZEL OLIVER
MRS SUZANNE COSGRAVE
MR PAUL TAYLOR**

Between

MR MAX HOLLOWAY

Appellant

and

INFORMATION COMMISSIONER

Respondent

DECISION

The appeal is dismissed.

REASONS

Background to Appeal

1. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 12 December 2018 (FS50752444, the “Decision Notice”). It concerns information sought from Royal Museums Greenwich (the “Museum”) about individuals who have been banned from the Museum’s membership scheme, grounds and premises.
2. The parties opted for paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. On 2 February 2018 the appellant made the following request for information (the "Request"):

*"My request for information relates to **internal and external printed documents, computer files, letters, drafts, notes and emails**. Please may I ask you to provide search results **from July 2012 to the present date 2018**, in respect of the following:*

- *Reference to the number of **individuals excluded from your Membership Scheme**, together with associated reasons **for exclusion** of those individuals and the **dates/duration of exclusion** as determined by the institution.*
- *Reference to the number of **individuals banned from your grounds & premises**, together with associated **reasons for those bans** and the **dates/duration of restriction** as determined by the institution.*

This information is of genuine interest to me and I am happy to receive a response by email in electronic document format."

4. The Request explained that the appellant was making the request as part of ongoing research into the probable future adoption of the Draft Public Services Ombudsman Bill 2016, in order to gain greater insight regarding criteria and rationale employed by institutions.

5. The Museum responded to the Requests on 15 February 2018. They refused to provide the information, on the grounds that the appellant's approach remained vexatious, as detailed in a letter of 20 December 2016. The response stated, "*As you will recall the Museum would be prepared to reconsider its position providing that you give an undertaking to behave reasonably towards our staff and volunteers.*"

6. The appellant asked the Museum to reconsider this decision on 19 April 2018. The Museum replied on 17 May 2018 giving the same reply as its initial response. The appellant complained to the Commissioner on 5 June 2018.

7. The Commissioner issued her Decision Notice on 12 December 2018. The Commissioner decided that section 14(1) (vexatious requests) was engaged in relation to the Request. The Commissioner formed the view that the appellant's pattern of behaviour during 2013 to 2016 placed a considerable burden on the Museum, and the indicators of vexatiousness were present during this time. The Request was not unduly burdensome in itself, but was linked very clearly to the appellant's private dispute which had reached stalemate, and in any event there is little public interest in the information requested. The Commissioner also stated there was evidence that responding to the appellant's requests has only led to further, wider requests being made, and that his approach had previously caused harassment and distress to Museum staff.

The Appeal

8. The appellant appealed against the Commissioner's decision on 4 January 2019. The appeal is put on the following grounds:

- a. The Commissioner did not apply balanced consideration. His email of 27 September 2018 regarding the possible inclusion of other issues was parried, and the Commissioner deemed admissible additional material from the Museum.
- b. The Commissioner's decision 35-61 is profoundly impaired by insufficient knowledge. The adjudication of "vexation" was based on half-evidence, and on presumption of the Museum's version of events.
- c. Points 57/58 (in the Decision Notice) indicate the Commissioner may have been misled. His request in relation to CCTV evidence was actually for the Museum to review/retain this information.
- d. The Museum's arguments 16-31 (in the Decision Notice) are lean in content, biased and peppered with rogue insinuation.
- e. The scope of the original request, together with genuine qualitative motive to access data, was unconsidered and effectively lost amid diversionary quantitative Museum arguments. The value of the request was queried without confirmation that the Commissioner had knowledge of the Draft 2016 Public Service Ombudsman Bill, and a 2016 enquiry to 10 national institutions provided a full response.

The appellant asks the Tribunal to permit his detailed response to points 16-31 or completely disregard all points related to the previous dispute, and share a list of documents submitted by the Museum.

9. The Commissioner's response maintains that the request is vexatious. In relation to the appeal grounds the response states that the conduct of the investigation and the conduct of the Museum is outside the scope of the Tribunal, but the Commissioner believes the Museum has cooperated fully with the investigation and there is no reason to believe they would mislead or provide false information. In relation to the motive for the request, there is little wider public interest in the information requested, it related strongly to the dispute regarding the appellant's ban from the Museum, and the Bill referred to had not yet been introduced to Parliament.

10. The appellant sent a reply on 19 February 2019 stating that unproven allegations should not have a bearing on the Request, this sets a dangerous precedent when nine other museums willingly and swiftly released their data, his conduct should also be outside the scope of the Tribunal, the impending legislation is important as it will introduce a facility for public challenge, and the decision is stunting his plan to publish an article by denying a data set from all museums.

Applicable law

11. The relevant provisions of FOIA are as follows.

- 1 **General right of access to information held by public authorities.**
- (1) *Any person making a request for information to a public authority is entitled—*
 - (a) *to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) *if that is the case, to have that information communicated to him.*

.....

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.

.....

58 Determination of appeals.

- (1) 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.
- (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

12. There is no further guidance on the meaning of “vexatious” in the legislation. The leading guidance is contained in the Upper Tribunal (“UT”) decision in **Information Commissioner v Dransfield** [2012] UKUT 440 (AAC), as upheld and clarified in the Court of Appeal (“CA”) in **Dransfield v Information Commissioner and another & Craven v Information Commissioner and another** [2015] EWCA Civ 454 (CA).

13. As noted by Arden LJ in her judgment in the CA in **Dransfield**, the hurdle of showing a request is vexatious is a high one: “...the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.” (para 68).

14. Judge Wikeley’s decision in the UT **Dransfield** sets out more detailed guidance that was not challenged in the CA. The ultimate question is, “*is the request vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA?*” (para 43). It is important to adopt a “holistic and broad” approach, emphasising “manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.” (para 45). Arden LJ in the CA also emphasised that a “rounded approach” is required (para 69), and all evidence which may shed light on whether a request is vexatious should be considered.

15. The UT set out four non-exhaustive broad issues which can be helpful in assessing whether a request is vexatious:

- a. **The burden imposed on the public authority by the request.** This may be inextricably linked with the previous course of dealings between the parties. “...the context and history of the previous 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.” (para 29).

- b. **The motive of the requester.** Although FOIA is motive-blind, “*what may seem like an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority.*” (para 34).
- c. **The value or serious purpose.** Lack of objective value cannot provide a basis for refusal on its own, but is part of the balancing exercise – “*does the request have a value or serious purpose in terms of the objective public interest in the information sought?*” (para 38).
- d. **Any harassment of, or distress caused to, the public authority’s staff.** This is not necessary in order for a request to be vexatious, but “*vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes side-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive.*” (para 39).

16. Overall, the purpose of section 14 is to “*protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA.*” (UT para 10), subject always to the high standard of vexatiousness being met.

Evidence

17. We had an agreed bundle of open documents, including background documentation on the dealings between the appellant and the Museum, all of which we have read. The following factual findings are relevant to our decision. Our findings are made based on the documents that were provided to us as evidence, and we have determined the facts and relevant dates from those documents. We did have extensive documentation and so do not address every item of correspondence in our findings.

18. The appellant worked as a volunteer at the Museum from May 2011. He was also a member of the Museum from November 2011. In July 2012 he had a meeting with the Volunteer Manager and the Head of Development to discuss various issues he had raised with the Museum. The notes of this meeting record the appellant making many criticisms of the Museum’s decision making, and record that he had an aggressive attitude.

19. In August 2012 the Museum asked the appellant to leave the role of volunteer due to comments he had made on social media about use of the Museum during the London Olympics. In March 2013 the Museum refused to renew the appellant’s membership, following an incident in the membership office during which the Museum says the appellant behaved inappropriately towards a member of staff. The appellant disputed this. Correspondence from the Museum was dealt with by Mr Bodle (Director of Operations & Human Resources). On 3 October 2013 the Museum said that they would reconsider the appellant’s membership if he was willing and able to meet requirements relating to mutual respect, courtesy and effective use of time in dealing with queries.

20. There were further exchanges of correspondence. The appellant did not accept the proposed solution, disputed the restrictions this placed on his freedom of speech, and asked

for a meeting. The Museum repeated its requirements a number of times, including on 14 October as follows: *"...we need full support from our Members, volunteers, staff and visitors alike if we are to develop our services in a constructive way. This is against a background of escalating pressure on our funding streams and increasing pressure commensurately in remaining sustainable. We are most supportive of everyone's right to freedom of speech of course, but we reserve the right also to deal with inaccuracies and negative comments. We also reserve the right absolutely to protect the health and wellbeing of all our visitors, volunteers and staff and this includes maintaining mutual respect and courtesy at all times and effective use of our time in dealing with queries no matter how well meant."*

21. The Museum wrote to the appellant again on 5 December 2013 saying renewal depended on him undertaking not to unreasonably discredit the Museum or abuse staff or volunteers. After further correspondence the Museum sent a letter to the appellant on 5 March 2014 stating they were willing to reconsider renewing membership, *"provided that you undertake to deal with our staff, volunteers and members in an acceptable manner and that your comments on social media remain reasonable and within the bounds of freedom of speech, as far as possible, accurate"*.

22. The appellant wrote to the Chairman of the Trustees of the Museum on 15 August 2014 about his removal as a volunteer. This was responded to on 10 September confirming the matter would not be revisited but the Museum was shortly reviewing its social media guidelines. The appellant replied with a two-page letter on 7 January 2015 which again set out his dissatisfaction with his exclusion as a volunteer and ban from membership. The Museum responded on 16 January confirming that the Chairman was content with the Museum's decision not to revisit the matter.

23. The appellant also wrote to the Director of the Museum (Dr Fewster) on 8 September 2014 asking about the exact terms for potential renewal of his membership. The Museum responded on 14 October providing a copy of their 5 December 2013 email. The appellant requested a copy of the "written text requiring my signature", and on 27 October Dr Fewster provided a list of three areas in which the appellant's assurance was sought: *"(1) You will adopt the reasonable standards of behaviour that our staff, volunteers and other users should expect; (2) You will undertake not to pose as an official spokesperson for the organisation or risk any misinterpretation of such; (3) As a Member of Royal Museums Greenwich you will endeavour to be constructive and supportive in your attitude towards the Museum, its activities and our staff."*

24. We have not seen any reply from the appellant to this letter. Over the next few months he asks various questions about the building and collections, which are answered by the Museum. He was re-admitted to membership by automatic application in December 2015. He wrote to Dr Fewster on 20 January 2016 asking for an explanation as to why he was not able to challenge his exclusion, and asking for a meeting *"to help achieve a greater measure of closure regarding this whole regrettable altercation"*. Dr Fewster replied with a reminder of the three expectations of members set out in his email of 27 October 2014. The appellant replied on 22 January asking if these points are made known to all public members, and again on 5 February acknowledging receipt and giving the following alternative assurances: *"(1)...I give considerable respect, when and where it is due; (2)...I never have, or ever will knowingly mislead or deceive; (3)...I endeavour to be constructive and supportive of good practice, yet candid regarding manifestly poor modus operandi"*. The appellant also reapplied to be a volunteer and this was refused.

25. On 17 May 2016 there was an incident when the appellant attended the Museum and was taking videos and photos. The Museum wrote to him on 19 May saying there was evidence he was abusive in his approach towards at least one member of staff, he had the opportunity to respond, and in the meantime he was asked to desist from visiting the Museum. The letter also unreservedly apologised for inconvenience caused from being unable to video in the Museum, as this was not in breach of their policy. Also in May 2016, the appellant submitted a FOIA request asking for a copy of the Museum's social media guidelines. These were sent to the appellant, and he then questioned whether a full current copy had been provided (which it had).

26. The appellant then posted a tweet in June 2016 showing a member of Museum staff at London Pride which made disparaging remarks, as a result of which the appellant was then excluded from all Museum sites (including the grounds), his membership was cancelled, and he was reported to the police. We have seen a CCTV Image Circulation Form for staff confirming his exclusion, saying security should be contacted if he attends the Museum site, and that the police should be called if he refuses to leave.

27. We understand that the appellant had some difficult personal circumstances during this time. The appellant submitted his own full account of the incident of 17 May on 24 August. On 15 September the Museum sent an email saying a senior colleague was reviewing the situation, but all the appellant was required to do was provide an assurance as to his reasonable behaviour in the future. The Museum dealt with correspondence about the incident from the appellant's MP. The appellant made various critical posts about the situation on social media.

28. The appellant made a data subject access request on 25 October 2016 asking for all documents referencing his name and specific images, which was responded to on 24 November. The appellant sent an email on 25 November saying that he wanted documents related to his period of volunteering, and CCTV footage requested appears to have been overlooked. The Museum replied on 5 December explaining that volunteering documents had been destroyed after 3 years under the Data Protection Act ("DPA"), and CCTV footage was not kept for more than 30 days which was an industry standard and under DPA requirements. The appellant replied on 6 December asking for online documents relating to the 3 year rule and industry standards.

29. On 24 November 2016 the Museum sent a letter to the appellant saying that they were minded to consider his appeal against exclusion from the Museum's premises and grounds favourably, but they now considered his approach to be vexatious due to him taking the case to the local MP and continuing a campaign on social media. The appellant replied to this letter on 3 December making various points about the documentation provided to him and asking for specifics about his ban being based on "vexation". We have seen a briefing paper for a meeting at the Museum to discuss the appellant's correspondence with the Museum, which records agreement that the vexatiousness test under FOIA is met.

30. On 20 December the Museum sent a letter to the appellant stating that they would not enter into further correspondence with him at any level. This was on the grounds that they had concluded his approach to be vexatious and without any prospect of resolution. The letter notes that the appellant was still unwilling to give the undertaking required towards staff and volunteers, and had entered into further correspondence without addressing this core issue.

31. The appellant made a further subject access request on 11 February 2017 for all documents referencing his name since 5 October 2016, which the Museum responded to on

16 February. The Museum dealt with questions from a journalist about the appellant's situation in June 2017. An article was published on this topic arguing for reform of the ombudsman process.

32. We have not seen any further correspondence between the appellant and the Museum until the Request, except for a letter to the Caird Library and a reply in February 2018 about accessing certain documents.

33. Throughout this time the appellant sent numerous requests for information to the Museum about its buildings, collection and work which were responded to. Much of his correspondence tends to focus on criticisms of the Museum and its activities, although some requests for factual information have a more positive tone. He published tweets under his twitter handles, many of which are critical of the Museum.

Discussion and Conclusions

34. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision as to whether or not the Museum was entitled to refuse to reply to the Request. We may or may not agree with the Commissioner's conclusions on the evidence. This is why we have set out the facts above in some detail. The appellant's appeal asked for the list of documents submitted by the Museum to be shared, and we understand this was done when the bundle for this appeal was put together.

35. The issue we are to decide is whether the Request is vexatious. We are not deciding whether the appellant's general behaviour towards the Museum was vexatious or otherwise inappropriate. Neither are we deciding whether the Museum's conduct towards the appellant was inappropriate or unfair. However, in accordance with the guidance in *Dransfield*, we are to consider whether the request is vexatious in the context of the surrounding circumstances and the dealings between the parties.

36. We have considered whether the Request was vexatious in accordance with the broad headings set out by the UT in *Dransfield*.

37. **The burden imposed on the public authority by the Request.** This must be considered in the context of the previous course of dealings between the parties. A simple request may nevertheless be vexatious when considered in the round. The Request is clearly very closely connected with a long-running personal dispute between the appellant and the Museum. It asks directly about exclusion from membership and bans from the Museum's grounds and premises. It may be relatively easy for the Museum to reply to this individual request, but one request can form part of a pattern of something that has already become burdensome.

38. We note that the appellant has not previously submitted formal FOIA requests on this topic. He has submitted two data subject access requests, which the Museum responded to. Previous correspondence on this topic has involved considerable amounts of effort for Museum staff. The appellant has written to various different people about the issue of his exclusions from volunteering, membership and the Museum's premises, including the Director Dr Fewster and the Chairman of the Museum. He has also involved his MP and the Department for Culture,

Media and Sport. Most correspondence has been dealt with by Mr Bodle. Correspondence from the Museum which offers solutions to the situation has resulted in further correspondence from the appellant. We feel that the Museum has made it clear what they require from the appellant in order to re-admit him to membership, but the appellant has not been willing to provide the undertakings sought by the Museum. Matters had reached a stalemate. The appellant had continued to post critical comments on social media, including the disparaging tweet about a member of staff which resulted in his ban from the Museum's grounds and premises.

39. We find that the previous correspondence and subject access requests on this topic did impose a considerable burden on the Museum. This is in large part because the appellant had been unreasonably persistent, with each reply from the Museum generating further correspondence from him which did not address the Museum's concerns about his behaviour. We are mindful that there was a considerable gap in time between the Request and previous correspondence on this issue. The Request was submitted in February 2018. The last correspondence we had seen from the appellant on this specific topic was in December 2016 – although the Museum did also handle questions from a journalist on the topic in June 2017. This gap in time could mean that the Request is separate from the burden caused by the previous dealings between the parties. However, we feel the evidence shows clearly that whenever the Museum provided answers to the appellant he would respond with further questions and criticisms. If the Museum replies to the Request, this is very likely to generate further correspondence from the appellant, and so restart the pattern of correspondence to various parties which was previously causing a burden to the Museum.

40. **The motive of the requester.** The appellant says that his motives in submitting the Request are to obtain research data for the purposes of the Draft 2016 Public Service Ombudsman Bill. Again, this must be looked at in the wider context of the course of dealings between the parties. We note that this draft Bill does exist. The appellant also says that he has sought the same information from other museums. However, the detail of the Request is very closely connected with his personal dispute with the Museum. What the appellant has asked for does not obviously serve his stated purpose – as explained further below in relation to the value or serious purpose of the request. Asking for information connected to a personal dispute is not an impermissible motive, but the evidence does not show that his motive is primarily one of public interest.

41. **The value or serious purpose of the Request.** Again, the appellant says that his purpose in submitting the Request is to obtain research data for the purposes of the Draft 2016 Public Service Ombudsman Bill. As already noted, the detail of the Request is very closely connected with his personal dispute with the Museum, and what the appellant has asked for does not obviously serve his stated purpose.

42. The Request itself asks for "*internal and external printed documents, computer files, letters, drafts, notes and emails*", with search parameters from July 2012 to the date of the Request. This is not a simple request for numbers of exclusions/bans and the reasons for those decisions. He is asking to see all documents referencing these matters. We do not see how this level of detail about the content of documents would be relevant to genuine research, and this indicates that the Request is really about seeing information relevant to his personal dispute with the Museum. The appellant says that he has requested the same information from nine other museums and received a response (in his Reply to the Commissioner's response, page 121 in the bundle). However, we have not seen any evidence from the appellant about this – such as

whether the same information was requested and what the replies were, how he intends to analyse this data, and how it is relevant to the progress of the Public Service Ombudsman Bill.

43. The appeal refers to a 2016 enquiry to 10 national institutions. The documents include information about a request made in 2016 to 10 museums concerning their social media guidelines, and the exchanges in the bundle suggest this was answered by all 10 including the Museum. It appears that the reference in the appeal to a 2016 enquiry is a reference to this FOIA request about social media guidelines which the Museum replied to (shown at pages 271 to 275 in the bundle). It is not a reference to the current Request.

44. We do accept that there is some public interest in the progress of the Bill to create a Public Service Ombudsman. We also accept that there is some public interest in understanding when and why individuals may be excluded from membership of national museums. However, the Request is framed in a way to obtain information relevant to the appellant's personal dispute with the Museum, and the objective public interest in the information sought is very limited.

45. **Any harassment of, or distress caused to, the public authority's staff.** We do not find that the appellant has necessarily deliberately harassed Museum staff, either through the Request or his previous course of dealings with the Museum. However, we do find that the appellant's conduct has had the effect of causing some harassment and distress to staff. For example: his aggressive attitude at the meeting in July 2012 (pages 380-381); raising issues based on looking at individual staff LinkedIn accounts (page 349); critical responses to personal tweets by staff which made them feel uncomfortable (page 317); the upset reported by staff during the videoing incident in May 2016; the Pride tweet which resulted in his ban from the premises; and the resulting guidance to staff to notify security and the police if the appellant refused to leave the premises.

46. Although the appellant may well deny that he had behaved inappropriately and/or may not recognise the effects of his behaviour, there is evidence that various different members of Museum staff have been made to feel very uncomfortable. In particular, there is evidence of obsessive conduct, as identified in **Dransfield**. The Request must be seen in this context. Although there had been a gap in time since the last set of correspondence from the appellant, the difficulties that Museum staff had experienced with his behaviour would still be fresh in their minds. Any response to the Request is likely to result in a further flurry of critical correspondence from the appellant, which would be reopening an issue that Museum staff had found very difficult to deal with.

47. In accordance with **Dransfield** we have considered the purpose of section 14 as being to protect the resources of the public authority from being squandered on disproportionate use of FOIA. In summary, we find that the primary purpose of the Request is to reopen a private dispute with the Museum which had reached a stalemate. Looked at in the round, there was a lack of proportionality in the appellant's approach to this dispute. The appellant's previous conduct indicates intransigence in that a reply to the Request would generate further correspondence to various people at the Museum, and to third parties which the Museum would then have to address. Staff had been caused harassment and distress by the appellant's previous conduct. Considering all of the above matters, we find that the Request does reach the high standard of vexatiousness, and the Museum is not obliged to provide the information asked for in the Request.

48. Finally, we note that the appellant has raised issues in his appeal about the Commissioner's investigation and the Museum's conduct. The appellant complains about the Commissioner failing to allow inclusion of other issues. This appears to be referring to the issue of his email being blocked by the Museum, which is not something the Commissioner could address in a FOIA complaint. He also refers to CCTV footage, which was part of his data subject access request and so again not something the Commissioner could address in a FOIA complaint. In any event, as noted in the Commissioner's response, our role is limited to considering whether the Decision Notice is wrong in law. We have done this by conducting a thorough review of the available evidence and reaching our own decision on the basis of this evidence.

49. We uphold the decision of the Information Commissioner and dismiss the appeal.

Signed: Hazel Oliver
Judge of the First-tier Tribunal

Date: 3 August 2019
Amended Under Slip Rule on 9 August 2019