



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FS50652852**

**Appeal Reference: EA/2017/0107**

**Heard at Wakefield  
On 1 August 2019**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**JEAN NELSON & NIGEL WATSON**

**Between**

**NEIL WILBY**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

**THE POLICE, FIRE AND CRIME COMMISSIONER FOR NORTH YORKSHIRE**

Second Respondent

**Appearances:-**

**Appellant: In person**

**First Respondent: did not appear**

**Second Respondent: Alex Ustych**

**Cases**

**Dransfield v ICO & Devon County Council; Craven v ICO & Department for  
Energy and Climate Change [2015] EWCA Civ 454**

**Kennedy v Charity Commission [2014] UKSC 20**

**ECHR Application no. 64367/14 TIMES NEWSPAPERS LIMITED and Dominic KENNEDY against the United Kingdom**

**DECISION**

1. The Appellant, who describes himself as a journalist and court reporter, has an interest in the affairs of a number of police forces. He has written extensively about the North Yorkshire Police (NYP) and in particular two operations, Rome, a lengthy investigation; and Hyson. In its response to the IC the Second Respondent (then titled the Police and Crime Commissioner for North Yorkshire, the OPCC) (bundle 1 page 172) explained that this was a civil claim for injunctions against 3 individuals described as "citizen journalists" on the basis that the Applicants had suffered harassment from them. The harassment arose out of issues around operation Rome.
2. In Hyson all nine claimants (some serving police officers, ex police officers and others) obtained an injunction against one respondent a consent order with respect to a second respondent and one claimant a consent order with respect to the third respondent. The litigation came to a conclusion in the summer of 2016.
3. On 29 September 2015 the OPCC issued a decision approving funding for that litigation which had already been brought (bundle page 137-142). In so doing she was acting with the advice of a QC, following scrutiny by the Second Respondent's Finance Officer, the Chief Constable of North Yorkshire's Finance Officer and confirmation by the District Auditor that she had the power to do so.
4. On 5 September 2016 the Appellant made an information request to the OPCC using the *whatdotheyknow.com* website:-

*"In pursuit of detail to incorporate into an article challenging the validity of the Decision Notice 011/2015 dated 29th September 2015 please provide the following information:*

1. *How many victims of crime in North Yorkshire have been provided with police funds to pursue civil claims in the financial years 2013-14, 2014-15, 2015-16, 2016 to date. Please also provide the sums involved and the nature of the civil claim.*
  2. *Minutes of meetings, briefing notes and emails (internal and external) concerning Hyson. Emails where the sender or recipient holds the rank of superintendent or above should have their name visible".*
5. Ashley Malone, a lawyer in the civil disclosure unit (CDU which supports both the OPCC and the North Yorkshire Police) in replying on 30 September refused the request relying on s14(1) of FOIA which provides:-

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

She stated:-

*“Reasons for Decision*

*I have not provided detail in relation to the reasons for this decision, as to do so would release personal information on to a public forum. If you do require these details, please provide a personal email or correspondence address and I will be happy to send you a fuller response.”*

6. In seeking an internal review, the Appellant challenged the protection of personal information (stating he was in separate discussions with CDU staff Robert Bates and Liz Fryar on the issue) and the claim the request was vexatious. In her reply reporting the outcome of the internal review Liz Fryar noted that the personal data points had been responded to in an internal review response to another FOIA request, noted that on 6 September a section 14 warning had been sent to the Appellant, and upheld the refusal.
7. The Appellant complained to the First Respondent (the IC). In his correspondence he complained that he had not received a reasoned refusal, that the review had been carried out by *“an officer lacking the necessary independence; with ill-intent..”* and that that officer was a subordinate to Ms Malone. He argued that the request did not meet the *Dransfield* standard for being vexatious, the request had a serious purpose, did not cause a significant burden on CDU, the request was short and could not be seen as harassment. The Appellant argued the public interest in the expenditure of large sums of public money in litigation *“against another journalist exposing wrongdoing”*.
8. In her investigation the IC considered the Appellant’s views and the response of the OPCC (DN paragraphs 30-38). She took into account the decision in *Dransfield* :-

*“There is...no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”.*

9. She considered that the context and previous history between the parties, pointed towards the request being vexatious, however she noted that in isolation the request (DN 47-51):-

*“...may not seem to impose an unreasonable burden, and it is arguably not without a serious purpose.*

*The Commissioner recognised that the complainant had his reasons for pursuing information from the OPCC, the complainant is clearly not satisfied with the operation of the OPCC and how it conducts itself.*

*She noted that the complainant submitted this request against a background of other requests, correspondence and commentary via social media. She recognised that the complainant had made therein what could be considered personal and critical comments about NYP and OPCC staff.*

*On the basis of the evidence provided, and taking into account the findings of the Upper Tribunal in Dransfield that a holistic and broad approach should be taken in respect of s14(1), the Commissioner was satisfied that the request was manifestly unjustified and improper use of the FOIA such as to be vexatious for the purpose of s14(1)."*

10. An appeal to the tribunal against a decision of the IC is dealt with under s58 of FOIA. This provides:-

*58. – (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.*

11. In his lengthy grounds of appeal the Appellant raises a number of issues outside the scope of this appeal including criticism of the IC's conduct of the investigation. Since a hearing before the tribunal is a full merits reviews that is not germane to this case. In addressing whether the request was vexatious the Appellant advanced a number of points. He argued that:-

- The request had a serious purpose
- He did not have a grievance against NYP and OPCC and asserted that the statement that he had a history of posting derogatory remarks about individual members of staff was defamatory and without evidence; that no complaint had been made to him or his professional body
- That the number of his requests put a strain on CDU in answering other requests, stating that he had only made 9 requests from OPCC and these had been mishandled, he had only made two requests about Operation Hyson
- That he did not have links with others asking about Operation Hyson
- That he had not had a s14 warning issued to him
- That the decision was in breach of his rights under article 8 ECHR

12. In resisting the appeal the IC emphasised, relying on *Dransfield* that the decision on vexation had to be considered in the round and taking into account the context. She maintained the view that in isolation the request was not without serious purpose. However, in the context of history of the Appellant's requests on a range of topics to the OPCC and NYP concerned with identifying wrongdoing or unprofessional conduct and running a website on the topic, and her conclusion that an unreasonable burden was caused by a long-running grievance pursued by this means by the Appellant and some associated with him (in the light of evidence provided by the OPCC) she was satisfied that the request was vexatious. She did not consider the issuing of a s14 warning was determinative of the question of vexation. With respect to article 8 ECHR she did not consider that the Appellants right to freedom of expression under article 10 amounted to a breach.
13. In resisting the appeal the OPCC denied the large number of comments and criticisms and claims of professional misconduct made by the Appellant, denied any concealment of information.
14. The Appellant submitted a witness statement from Mr Hicks who was one of the respondents in the civil claim Operation Hyson. This confirmed that he was an auditor and a citizen journalist. He submitted online articles to the North Yorks Enquirer and had previously written for another online publication *Real Whitby*. He had met the Appellant once in February 2015, then had regular skype and email contact until May 2016 and had resumed infrequent email contact in June 2017. He had made a FOI request of OPCC on 19 February 2017 independently of the Appellant.
15. Ms Malone gave written and oral evidence on behalf of the OPCC. She exhibited approximately 280 pages grouped in 13 exhibits of requests, complaints, website articles and other material from the Appellant or responses to him. In her statement she indicated that the CDU which she managed at the relevant time had four members of staff dealing with FOIA and subject access requests on behalf of NYP and OPCC. She had dealt with the initial request and a member of her staff Liz Fryar had dealt with the internal review, there was no person more senior to Ms Malone who routinely dealt with FOIA requests. Ms Malone referred to the articles and stated, "*The inflammatory language used and personal attacks contained in the pleadings drafted by the Appellant in these proceedings are demonstrative of the Appellant's vexatious motives.*" In the event that the names of staff had been disclosed in response to the request "*it is very likely any staff named would be criticised in articles and on social media. This would undoubtedly cause distress to staff.*" The Appellant's tweets linked to whatdotheyknow identifying officers in CDU would cause distress.

16. The burden of obtaining considering the mass of minutes, briefing notes and internal and external emails relating to Hyson and applying relevant exemptions would be a considerable burden.
17. The OPCC received 14 and NYP 17 FOIA requests from the Appellant from April 2015 – September 2016. These were handled by the CDU which served both bodies. The requests were often complex and extended to over 20 pages (exhibit AM3). There were also substantial requests for internal review.
18. The Appellant made two subject access requests in April 2016 one to the OPCC and one to NYP the requests were wide-ranging and burdensome, to comply the CDU had to collect the material assess for personal information and prepare a schedule for the appellant to consider. He then issued proceedings for the late compliance with the Data Protection Act against both bodies in June 2016, also claiming in those court proceedings for breach of FOIA and misfeasance in public office. The latter claims were not considered and the Appellant was awarded damages of £10 against the OPCC for missing the deadline by 16 days.
19. The Appellant, between 2014 and 2017 complained on 14 occasions against staff of NYP and OPCC to NYP Professional Standards Department. A number were considered as “vexatious, oppressive or otherwise an abuse of the complaints process” (exhibit AM4). A number of complaints were directed at Ashley Malone and Jane Wintermeyer (the senior solicitor).
20. Exhibit AM6 consists of 28 pages of extracts from social media by the Appellant tagged to NYP or OPCC. Among the comments are to the Chief Constable “have you granted exemption from Code of Ethics to your senior civilian officers (bundle 2 page 78); to OPCC “presumption here is, if you are ex-NYP, and/or a Conservative Politician, you can act with impunity towards abuse victims (bundle page 79), “.
21. Exhibit AM7 is 130 pages of internet articles by the Appellant concerning NYP and in particular Operation Hyson. An article (bundle pages 151-155 2016/03/09/code-of-ethics-confidence-trick) states:-  
  
*“ During my own probe into the workings of Rome and Hyson it has already been necessary to make three Code of Ethics Complaints... against the Force solicitor, Jane Wintermeyer... it alleges amongst other failings that she was discourteous, disrespectful and derelict in her duties...against Jane Palmer ... Chief Financial Officer...allegations are similar to those made against Ms Wintermeyer...a third code of Ethics complaint has now been lodged against the Chief Constable himself. It also enjoins the Deputy Chief Constable...”*
22. In another article (bundle 2 pages 112-115) the Appellant wrote in respect of Hyson *it is understood that undertakings have been given by Tim Hicks to all the claimants ... to the effect that there would be no future contact with the claimants for*

at least two years and some of the 150+ articles published by [the named respondent] would be requested to be taken down from the two internet news websites to which he has contributed namely Real Whitby (19 articles) and the North Yorks Enquirer (twenty-six articles). The article confirmed that eight of the claimants had discontinued proceedings against Nigel Ward and that an assertion that the Appellant had breached the terms of a consent order between the claimants and these two respondents had been rejected by the judge. In an article of 6 August 2016 (bundle 2, pages 103-11) he referred to his friendship with Nigel Ward. In another article (bundle 2 page 190) he wrote: *"Over the past two years it has been my considerable misfortune to have the job of holding North Yorkshire Police up to some sort of scrutiny. I have been hanging on to the baton, largely, for my North Yorks Enquirer colleague Nigel Ward"*.

23. Exhibit AM8 exhibits correspondence in November 2016 between [name redacted] and Robert Bates of CDU where Mr Bates sought confirmation of identity before proceeding with a FOIA request concerning compliance with the 20 day response time under FOIA. The Appellant commented 22 November 2016 (bundle page 240):-

*"North Yorkshire Police has refused me a similar request on the grounds that it is vexatious..."*

*It may be noted that the name "Robert Bates" appears in both threads. There is no evidence that I have seen that such an individual exists. The working hypothesis is that NYP use pseudonyms to respond to #FOI requests for a period, then "burn" them. That would explain the high "turnover" of staff"*

24. Exhibit AM9 is a letter of 4 January 2016 from the Appellant to the NYP solicitor Jane Wintermeyer copied to OPFCC this indicated that he was no longer proceeding with the judicial review *"and it leaves only the conduct complaint matters against you to deal with"* it stated *"my genuinely held belief is that you deliberately set out to deceive me.."*

25. Exhibit AM10 is a letter of 6 September 2016 from CDU to the Appellant responding to a nine-part FOI request to NYP giving information about Operation Hyson. The response noted that some of the information provided had already been provided in response to previous requests, and in the light of the number of requests of a similar nature *"any further requests about the same issue will be reviewed against Section 14 of the Act"*.

26. Exhibit AM11 dated 30 July 2016 is a letter from the Appellant to OPFCC asking 15 questions about Operation Hyson.

27. Exhibit AM12 provides some material from the whatdotheyknow website indicating links between the Appellant and others seeking information on Operation Hyson and Rome. In a comment to one of these individuals the Appellant wrote (bundle 2, page 283):-

*"The correct position is that NYP Civil Disclosure Unit...has failed to comply with both statute and ACPO Authorised Professional Practice. That places the NYP practitioner in breach of the College of Policing Code of Ethics which is usually dealt with by the victim of the misconduct lodging a complaint with the police force's Professional Standards Department.*

28. In March 2017 the Appellant made a further subject access request (exhibit AM13). Robert Bates of the CDU sought clarification of the scope of the request to reduce it to a manageable scale (bundle 2 page 289):-

*"part of your request refers to the disclosure of both internal and external emails in which you can be fairly considered to be the subject.*

*To accurately capture all relevant emails I have conducted an email search upon the free text term "Wilby", this search criteria would cover "Mr Wilby" and Neil Wilby etc. This search has returned over 8000 results and for North Yorkshire Police to manually assess each individual email for its relevancy for disclosure would constitute disproportionate effort.*

*I write to give you the opportunity to offer us specified search terms in order to reduce the number of results to within a proportionate amount"*

29. In his replies the Appellant repeatedly asserted:-

*"I will not correspond with "Robert Bates" unless and until, he provides proof of his identity. It has been put to NYP, in open space (the WhatDoTheyKnow website) that "Robert Bates" is a pseudonym used by NYP. That has yet to be either rebutted, or receive any form of response. "*

On 4 April 2017 the Appellant wrote an email headed "URGENT: LEGAL NOTICE:-

*"I have requested, politely, on a number of occasions (including twice last week), that "Robert Bates" does not contact me.*

*I find it harassing for him (or maybe her for all I know) to persist both in those specific circumstances, and the wider attrition that almost every contact with your department brings to all my dealings with it....*

*If there is any further attempt to contact me by "Robert Bates", or any other conduct from any of your officers that I find harassing, then I will take out urgent civil proceedings to restrain both the Chief Constable and the [OPCC]... from permitting such contact.*

*This latest course of conduct by both... is, on any reasonable, independent view, a calculated continuation of the course of conduct to vex, annoy and harass me that has been going on for many months – and about which I have complained in writing many times."*

30. In her oral evidence Ms Malone confirmed that she had not acted with ill will towards the Appellant. She was not able to quantify in more precise terms the



time burden which the Appellant's requests placed on the CDU. She confirmed that the burden of the requests was substantial and also caused distress to staff. In his cross-examination the Appellant discussed her role in giving evidence in previous proceedings and attempted to examine her about those proceedings. He discussed his previous subject access requests, asserting that if he had wanted to be vexatious he would not have been content with a schedule. Ms Malone confirmed that they had been wide requests and the work involved had been a substantial burden on the department. He rejected that there had been a burden and asserted that the "CDU disintegrated under your management". In respect of other proceedings, he asserted that there was "an air of desperation about the PCC and IC" Ms Malone dissented from this. The Appellant put to her that as he was a journalist and that the OPCC and IC "*make a mess, you don't consider it vexatious towards the applicant... all I can say is nothing I did was with ill will towards yourself*".

31. With respect to the request which was the subject of this appeal she confirmed that on its face the request had value and that people would be interested in the public expenditure but viewed holistically in the light of "*information coming into the department there were personal motives for your request to disrupt the CDU*". The Appellant explored Ms Malone's training in dealing with FOIA and stated that from an examination of the whatdotheyknow website this request was the first of 20 information requests which she dealt with. The Appellant challenged Ms Malone over the failure to provide a rationale for the refusal of the request. Ms Malone drew attention to the refusal letter (bundle 1 page 144) which stated "*I have not provided detail in relation to the reasons for this decision as to do so would release personal information on to a public forum. If you do require this detail, please provide a personal email or correspondence address and I will be happy to send you a fuller response.*" Ms Malone confirmed that legal advice privilege attached to the decision making with respect to this request. The Appellant claimed that the OPCC had breached the law by failing to publish her decision to fund the Hyson litigation within 28 days and that the notice had only been published because he had written six articles on the subject.
32. The Appellant stated that six individuals had asked for information about Rome and Hyson and only one had been deemed vexatious, himself. Ms Malone stated that she was unable to go beyond the written statement which provided the rationale for deeming the request vexatious.
33. In his submissions the Appellant after the hearing set the context of his request against his background as a court reporter. He contrasted this with his view that a large number of public officials associated with NYP and OPCC (whom he named) "lied". He was critical of Ms Malone asserting that she obfuscated, had "convenient memory lapses" and described her performance as a witness as "a farce". He emphasised the importance in his eyes of the internal review of the refusal of the information request which mentioned a s14 warning

which was given to the Appellant after the request was submitted. He submitted that the decision to rely on s14 and take a holistic approach was “grounded in a lengthy series of falsehoods”. He asserted that Ms Malone had been unable to refer to evidence to support the view that he had “a grudge” and “She had no answer when it was put to her that journalists do not bear grudges and grievances.”

34. In its submissions OPCC placed weight on the number of requests made to both NYP and OPCC and argued that both should be taken into account, Ms Malone’s evidence that during the time she led the CDU the Appellant’s requests were having a significant impact on CDU NYP and OPCC in terms of time and distress to staff. While the Appellant disputed links with other requesters the evidence supported such links and he was a friend of one of the Respondents in Operation Hyson. The motivation for the requests was suggested to be, from the highly personalised comments, to cause distress and annoyance. The targeting of these public bodies went beyond what would normally be expected of a journalist and was more consistent with a personal grievance. While there was public interest in the expenditure of public funds this did not prevent the request being vexatious.

#### Consideration

35. In considering whether the IC’s decision is correct in law the tribunal has the benefit of an oral hearing, a substantial bundle of documents and witness statements from the parties as well as submissions. The IC concluded that the request fell within s14(1) and was vexatious, the role of the tribunal is to weigh the information before it in the light of the approach laid down in *Dransfield*.
36. The Appellant laid considerable stress on his status as a journalist and argued that the failure to provide him with the information was in breach of his right to freedom of expression in Article 10(1) ECHR:- “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information”. However, the provisions of Article 10(2) place constraints on the scope of Article 10(1) and the decision of the Supreme Court in *Kennedy* was that there is no right of access to information under article 10. An individual can seek information and a public authority can disclose information outwith the framework of FOIA, however this tribunal is restricted to a consideration of the handling of the request in the statutory framework of FOIA. The approach of the Supreme Court was upheld by the European Court of Human Rights when it rejected the subsequent application by Mr Kennedy’s employer, the Times.
37. In considering the matter in the round it is apparent that the simple burden of dealing with the Appellant’s requests under FOIA has been substantial. There have been numerous, detailed and will have required consideration of a range of exemptions for a large amount of material. It is also apparent that it is not

appropriate to disentangle the burden imposed by requests to NYP from that imposed by requests to OPCC. The issues were the same, the staff dealing with them were the same and one body is responsible for oversight of the other. The existence or otherwise of a formal s14 warning is of minimal relevance to the question of whether or not a request, in its context, is vexatious. In his own publications the Appellant has stated that one of the Respondents in Operation Hyson was a friend and he had been making requests of the public bodies because his friend was “shackled” by those court proceedings. He made derogatory comments concerning these bodies in commenting on requests for information from them by other individuals on whatdotheyknow. There are therefore some links with others. It is notable that he repeatedly asserts that individuals in NYP and OPCC are acting from improper motives and has made numerous formal complaints against all the most senior staff, and against Ms Malone. His repeated claims that Mr Bates and others are harassing him are wholly unsustainable and are harassment of the staff concerned. He appears unable to accept that anyone in NYP/OPCC with whom he is in contact can be acting otherwise than improperly in relation to him. The argument by OPCC that his motivation is significantly personal grievance is amply justified by the evidence of his own writing in many media. While there is an interest in how public money is spent that consideration is insufficient. The overwhelming weight of evidence demonstrates an unjustified burden on the public authority and the extent of his hostility towards and harassment of its officers and in particular his hostility Ms Malone. The tribunal is satisfied that the IC’s decision is correct in law.

38. The appeal is dismissed.

Signed Hughes  
(Judge of the First-tier Tribunal)

Date: 18 September 2019  
Promulgated : 20 September 2019