



**IN THE FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
[INFORMATION RIGHTS]**

EA/2015/0181

ON APPEAL FROM:

**Information Commissioner's Decision Notice: FS50574342
Dated: 5 August 2015**

Appellant: NEIL SMITH

Respondent: THE INFORMATION COMMISSIONER

Second Respondent: CHIEF CONSTABLE OF AVON AND SOMERSET

Date of hearing: 23 February 2016

Date of Decision: 8 March 2016

**Before
Gareth Jones
Jean Nelson
Annabel Pilling (Judge)**

Subject matter:

FOIA – Absolute exemption – Vexatious request – section 14(1)

Representation:

For the Appellant: Neil Smith

For the Respondent: Adam Sowerbutts

For the Second Respondent: Alison Hewitt

Decision

For the reasons given below, the Tribunal refuses the appeal and upholds the Decision Notice.

Reasons for Decision

Introduction

1. This is an appeal against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 5 August 2015.
2. The Decision Notice relates to requests made by the Appellant under the Freedom of Information Act 2000 (the 'FOIA') to the Chief Constable of Avon and Somerset Constabulary ('the Constabulary'). The 79 requests which are the subject of this Appeal were made between 30 January 2015 and 23 February 2015 and cover a wide range of topics. The Constabulary issued a single refusal notice on 25 February 2015 in relation to all the requests on the basis that, taken together, they were vexatious. It upheld that decision on internal review.
3. The Commissioner investigated the way in which the requests had been dealt by the Constabulary.
4. The Commissioner concluded that the Constabulary had correctly applied section 14(1) and that the requests, viewed as a whole, were vexatious within the meaning of that provision.

The appeal to the Tribunal

5. All parties agreed that this was a matter that could be dealt with by way of a paper hearing.
6. This appeal was listed alongside two other appeals involving the Constabulary. The Tribunal considered that this case was distinct from those due to the volume of requests made by this Appellant and the

wide range of information sought. We therefore considered his appeal separately.

7. The Tribunal was provided in advance of the hearing with an agreed bundle of material, and written submissions from the parties. We cannot refer to every document and submission but have had regard to all the material when considering the issues before us.

The Issues for the Tribunal

8. Under section 1(1) of FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the Act, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him.
9. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. Although the Commissioner submits that the Appellant has not addressed the substance of the Decision Notice under appeal, namely that the 79 request for information made over the four week period and containing over 300 individual questions were, taken as a whole, vexatious, it seems to us that by making this appeal the Appellant is challenging that decision.
11. The term “vexatious” is not further defined in the legislation. The Upper Tribunal¹ has considered the approach which should be taken when reaching what is ultimately a value judgment as to whether the request in issue is vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.
12. It cautioned against a too rigid approach to deciding whether a request is “vexatious”; it is important to remember that Parliament expressly

¹ Information Commissioner v Devon County Council and Alan Dransfield [2012] UKUT 440 (AAC) (‘Dransfield’)

declined to define the term. It did not purport to lay down a formulaic checklist or identify all the relevant issues, but suggested four broad issues or themes as relevant to the determination of whether a request is “vexatious” or “manifestly unreasonable” (under the similar provision for dealing with requests for environmental information under the Environmental Information Regulations 2004) - i) the burden on the public authority and its staff, ii) the motive of the requestor, iii) the value or serious purpose of the request and iv) any harassment or distress of or to staff. These are not exhaustive nor create a formulaic check list; it is an inherently flexible concept which can take many different forms.

13. The Court of Appeal upheld the decision of the Upper Tribunal and, although the guidance formulated was not the subject of the appeal, Lady Justice Arden considered, in the context of FOIA, that *“the emphasis should be on an objective standard and that 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 requestor, 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 this is consistent with the constitutional nature of the right”*.

14. The Appellant maintains that his requests for information had serious purpose.

15. He drew our attention to the fact that he has made previous requests for information to the Constabulary which have resulted in discovery that Chief Constable had not been open about the cost of items given away by the Constabulary at Glastonbury festival, and that a speed camera had been set up at a location where no accidents had been recorded contrary to policy in existence at the time. He submits, in effect, that this is evidence of his requests for information being successful in demonstrating wrong doing by the Constabulary.

16. On more than one occasion within his ground of appeal, the Appellant suggests that the Constabulary had wilfully misled the Panel over various matters. The Appellant, as a litigant in person, may not be familiar with the make up of this Tribunal and its procedures. The Tribunal has not seen any material other than that provided in the agreed bundle which was sent to each member a week or so before the hearing date. It may be that the "Panel" to which the Appellant refers is the Constabulary's FOI department or the Commissioner's office rather than the Tribunal Panel.
17. We have read his submissions and comments with care, which set out in some detail his concerns about the evidence that was placed before the Constabulary's FOI officer(s) and upon which the decision to refuse his requests on the basis of section 14(1) was based.
18. In Dransfield, the Upper Tribunal emphasised the importance of viewing a request in its context which in this case we consider requires us to consider the volume of the requests, the information sought, the burden of complying with such a volume of requests, and the short period of time within which these requests were made.
19. It is disproportionate to record in full in this judgement the date of and detail of each request for information. These 79 requests, containing over 300 separate questions, were all made in the period between 30 January and 23 February 2015. The full list can be viewed in an 11 page Annex to the Commissioner's Decision Notice.
20. Four of the requests related, broadly, to a review of Injury on Duty (IOD) awards that the Constabulary commenced in late 2014. The two appeals with which this appeal was originally listed are concerned with that issue. For the reasons we have given, we took the view that this Appellant's case was different from those and should be considered separately.
21. The remainder of the Appellant's requests concerned a wide range of topics; for example:

- in respect of financial and personal issues relating to the Police and Crime Commissioner;
- how much was spent over the last 5 years on toilet paper;
- what were the annual stationery costs of the Occupational Health Unit and whether that was broken down in respect of pens, pencils and paper;
- questions about whether meat used in the canteen was prepared in accordance with religious beliefs;
- the cost of uniform epaulettes;
- the minimum amount imposed for a criminal damage offence in the last 5 years;
- questions about FOIA and DPA, such as *“how many FOI request over each of the last 5 years have been wrongly titled FIO (sic) requests?”*

22. This is merely a selection which we consider gives a flavour of the range of topics and the apparent lack of value or serious purpose of some of the requests for information.

23. Some of this information is unlikely to be held by the Constabulary, answering some requests might take the Constabulary over the relevant cost limit, some may fall within certain exemptions which would require a consideration of the public interest balancing test, some may be personal data of other people and subject to the protections afforded as a result.

24. Before the statutory time limit within which to deal with the first request, submitted on 30 January 2015, had expired, the Constabulary had received a further 78 requests from the Appellant.
25. Although a requestor does not have to provide justification or explanation for a request for information, this does become relevant when assessing whether a request, or a series of request as here, is vexatious.
26. We agree with the Commissioner that in some circumstances the importance of the information that has been requested will outweigh the factors relevant to assessing vexatiousness. However, in this case the Appellant has provided nothing other than the very vaguest reasons for these 79 requests nor does he offer any explanation for the volume of requests over such a short time frame. An analysis of the 11 pages of requests reveals no obvious connection to the Appellant's professed concerns and we agree with the Commissioner that it is hard to see how any of his concerns would be progressed by the provision of information about, for example, money spent on toilet paper or the details of all the electrical items which have been PAT tested over the last 3 years.
27. The Appellant himself conceded to the Commissioner that the sheer volume of his requests was likely to be problematic for the Constabulary. He attempted to explain this spate of requests as a result of his being "*an intense person*".
28. We agree with Appellant that the tone of the requests was, by and large, civil. However, a large number of the requests are for information concerning the Police and Crime Commissioner in her personal capacity. We consider that these requests could have been regarded as intimidation.
29. We also consider that the Appellant's communications with the FOI officer contain thinly veiled threats in respect of action that might be taken against her personally.

30. It is, in our view, hard to imagine a case which could be more obviously categorised as vexatious, in both the normal everyday meaning of the word, and within the particular statutory context of FOIA. We agree with the Commissioner that the requests speak for themselves as to the burden imposed on the Constabulary. Dealing with this volume of indiscriminate requests for information would have constituted a significant administrative burden and represented an unnecessary waste of public resources. This is a clear example of a manifestly unjustified and improper use of FOIA.
31. Parliament provided public authorities with limited ability to refuse to engage with those making requests for information under FOIA. The Upper Tribunal described section 14(1) *“as a sort of legislative “get out of jail free card” for public authorities. Its effect is to relieve the public authority of dealing with the request in issue, except to the limited extent of issuing a refusal notice as required by section 17. In short, it allows the public authority to say in terms that “Enough is enough....”*
32. Using a different analogy, drawn from the world of football, parliament has provided public authorities with yellow cards and red cards. A yellow card allows the public authority to give a warning to a requestor that they need to alter their request in some way, for example, where the cost of complying might exceed the appropriate limit, the public authority may choose to engage with the requestor (fulfilling its duty to provide advice and assistance under section 16) but is not required to provide the information. Section 14(1) however operates as a red card; to use the words of the Upper Tribunal it allows the public authority to say *“enough is enough; we do not even need to engage with you.”*
33. The Constabulary attempted to engage with the Appellant to refine his requests to a manageable level; at the time of the initial refusal on 25 February 2015, at the time of the internal review and in other correspondence with him. We have seen an email in which it is stressed that the FOI officer was *“keen to engage with you to ensure we can provide you with some information. To do this of course your*

requests need to be at a manageable level.” She suggested that he submitted a request for information, asking a few questions on one topic at a time. He was also told that there may be other approaches better suited to addressing some of the topics which concerned him.

34. The Appellant has declined these offers of help or invitations to reduce the volume of his requests in any way. He maintains that he has a serious purpose behind each of the requests and that each should be answered.

35. In our view, if the Appellant held any genuine motive he would have attempted to engage with the Constabulary to obtain that information which he sought. This supports our view that these requests had no genuine purpose but were merely a randomly thought out list of items, requested in a scattergun approach to create a burden on this public authority.

36. The Commissioner was correct to conclude that when considered in the light of the volume, diversity of topics, lack of any genuine or serious purpose, and the short period of time within which these requests were made, the Appellant was making sustained abuse of the FOIA procedure.

37. We should note that we did not consider whether this Appellant was part of any orchestrated attempt, acting alone or in concert, with the Appellants in the two appeals referred to above or others, to upset the IOD award review. Our decision in this case is that this Appellant was making a determined effort to abuse the FOIA procedure and overburden this police force, detracting its staff from other important public responsibilities.

38. We therefore dismiss this appeal.

39. Our decision is unanimous