



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

**EA/2017/0104**

**SIMON WILD**

**Appellant**

**-and-**

**THE INFORMATION COMMISSIONER**

**First Respondent**

**-and-**

**NATURAL ENGLAND**

**Second Respondent**

**Hearing**

Held on 3 October 2016 at Fleetbank House on the papers.  
Before Narendra Mukanji, Paul Taylor, and Judge Taylor.

**Decision**

The appeal is dismissed.

## Reasons

### Background

1. We set out below what we consider to be pertinent background to this appeal.
2. Natural England is responsible for granting licences for culling badgers. Its chairman is Andrew Sells. The Appellant is a long-standing environmental and animal rights campaigner. He explains that he runs two campaigns against snaring and traps, and helps run a wildlife rescue and badger group in West Sussex. He has met up with Natural England and DEFRA a number of times in relation to this work.
3. On 31 May 2016, he emailed an official ('X') at the badger control team. His message included the following:

*"... On another matter, I gather you were the expert witness for police relating to a dug sett at West Chiltington, W.Sussex last year. My wife and I as the local badger groups sett monitors conducted our own survey for police; and given the amount of latrines, the nature of parts and my covert camera footage, we concluded that without doubt this was an active sett... So I was astounded when you concluded it was not in the current use.*

***I know from my meetings with you where you showed hostility to my trespassing to uncover wildlife crime, and also appeared supportive of game-bird killing sports, that you are not very wildlife friendly; but I hope you do not allow this to impact on your professionalism?"***  
(Emphasis added).

4. On 17 June, X's reply included:

*"... There were perfectly proper and reasonable grounds for why I reached the conclusion that I did... My findings are accepted by the Police and I stand by these.*

*The final comment in your email with its insinuation that I would be anything other than professional and objective when I am acting as an expert witness is both insulting and inappropriate. I have been an expert witness on numerous occasions and my integrity has never been questioned..."*

5. On 18 June, the Appellant replied to X:

***"Seeking legal advice on AIHTS and trap legality more like. We do have freedom of speech in England; it is part of the Human Rights Act, and I trust your legal advisors informed you of that? I know you are not fond of Animals' Rights, but surely not all rights?"***

***I assume it is something to do with your protestant Northern Irish upbringing, and maybe you were brought up on blood sports and never grew out of it? I've been to Northern Ireland and there is some rather nasty snaring taking place there. Don't you think you would be more suited to assisting the landowners there, rather than assisting Natural England? Personally, I don't think the natural wildlife of England are benefitted by your efforts. I've been around too long not to be able to recognise a charlatan when I see one."*** (Emphasis added).

6. On 18 July, the Chief Legal Officer of Natural England informed the Appellant that the authority would not engage with him on any future correspondence related to wildlife crime. He was told that he could challenge the decision via a complaint process. Her letter included the following:

*“...[X] has been a valued wildlife advisor for more than 16 years... I have undertaken a review of the circumstances that led to your comments and assertions and there is no evidence whatsoever to support the allegations that you are making... The comments step beyond the professional and have become personal to the extent of being abusive. Natural England will not tolerate racist/sectarian abuse of its staff.*

*I would ask you please now to refrain from any further personal attacks on as [X]...”*

7. On 18 July, the Appellant responded that he would challenge the decision. He explained that his work - for preventing wildlife crime and cruelty to animals - may mean he has a need to have dealings with the organisation. He noted that he had been in communication as a stakeholder for several years and was involved in police prosecutions. He then stated:

*“[X] would adopt a fit of pique because he does not have the interests in protecting wildlife at heart. His reaction shows a complete lack of respect for any of my work including submissions relating to trapping and snaring I have made over many years. As some of those submissions had may have landed on his in tray, it is not surprising that they have always been disregarded. I do not think X has the slightest interest in seeking enforcement of AIHTS trapping reform, or any meaningful reform of snaring practice in the light of the report...”*

*To create a blanket ban on my communication... is both inappropriate and unmeasured. My correspondence with [X] was private, unpublished and an expression of my opinion. **In any potential police prosecutions I am involved with, I will suggest to police it is not appropriate to have [X] as expert witness in any cases I am involved with...** This does not mean I will hold a negative view of other members of Natural England...” (Emphasis added).*

8. The next document in the agreed bundle of papers before us is a request made by the Appellant on 23 July 2016 under the Freedom of Information Act 2000 ('FOIA'. He requested from the Second Respondent:

*“1) How many complaints have been made regarding the work carried out by [X] and the nature of those complaints and the outcome? □*

*2) What police prosecutions (or non-police or civil) has [X] given expert witness evidence on in the last five years? Please supply details and copies of reports. □*

*3) What outside bodies does [X] have any professional association with? □*

*4) Does [X] have any association with organisations involved in blood sports such as BASC, Countryside Alliance or any shooting or hunting interests? □*

*5) I would like copies of any communication by [named individual] to anybody representing “field sports interests” carried out while in the capacity of a*

Natural England official. □

6) *I would like copies of all correspondence [X] has had relating to myself, [named individual] when communicating to other Natural England or DEFRA officials, or police. □I particular I would like any correspondence between [named individual] and [X] (NI legal advisor) sent either by electronic means or paper.” □*

9. On 8 August 2016, Natural England responded. It refused to comply with the request on the basis that it is considered that sections 14(1) (*Vexatious or repeated requests*) and 40 (*Personal information*) FOIA applied. □ On the same day, the Appellant proceeded with a complaint to the Commissioner. He stated that he suspected that a number of people in the organisation were involved in blood sports and that there may be corrupt practices going on.
10. Despite the disengagement letter referring Mr Wild to the Chief Finance and Governance Officer, the Appellant wrote directly to the chairman. On 8 August, the chairman referred him to the Chief Finance and Governance Officer.<sup>1</sup> The same day, the Appellant sent a lengthy reply to Mr Sells, including:

***“I was rather surprised to get short shrift from you, as I thought I would be writing to a responsible person of integrity. I do not think I will write to Paul Lambert, as I fear I may be uncovering some sort of corrupt club of people indifferent to wildlife and who rather support exploitation of the natural environment. I have just read some shocking things about you (see below): please tell me it is not true that you donated £137,500 to the Tory party (who support fox hunting, badger culling and snaring) and that Owen Patterson (he of badger culling infamy) got you your job. I am also rather concerned that you come from a house building background given that this is the greatest exploiter of the environment both with infilling and urban extensions. Aren't venture capitalists known for their exploitation of natural resources, and hasn't Wyevale Garden Centres sold tons of slug pellets that kill a lot of birds and hedgehogs? Are you truly a compendium of exploitation of the natural environment? Do you use snares or traps or have the local fox hunt on your hobby farm? If it is all true, I feel sorry for the employees of Natural England, as some will be decent people wanting to protect wildlife and the environment. I don't think you are going to be able to reassure me are you?*”**

As seen on the internet:

**CORRUPTION AND FRAUD IN THE UK'S GOVERNMENT: PART 1: CONFIRMATION OF Mr ANDREW SELLS AS THE CHAIRMAN OF NATURAL ENGLAND BY ENVIRONMENT SECRETARY O.PATERSON!!!**  
May 3, 2014.. Tory party donor, a Tory party donor with a background in investment, Andrew Sells as the Chairman of Natural England, banking and housing developments, CORRUPTION AND FRAUD IN THE UK'S GOVERNMENT, Defra, Natural England, O.Paterson, The BRIBERY ACT 2010

*NATURAL ENGLAND is the UK'S government's advisor on the natural environment. They provide practical advice, grounded in science, on how best to SAFEGUARD England's natural wealth for the benefit of everyone.*

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<sup>1</sup> It is noted that neither of these correspondence are within the Bundle. However, the Appellant has not disputed the Respondents' accounts of this, and in any case it is not materially significant to our decision.

***1. Confirmation of Mr Andrew Sells as the Chairman of Natural England by Environment Secretary O.Paterson is absolutely in the category of a serious breach of The BRIBERY ACT 2010 , Sections 1 and 2. that it is an offense for a person either to (i) offer, promise, or give an advantage; or (ii) request, agree to receive, or accept an advantage with a view that the advantage will induce the receiver to act improperly.... In the report published by the Environment, Food and Rural Affairs Select Committee on 13 December, the Committee concluded: "We are satisfied that Andrew Sells has the PROFESSIONAL COMPETENCE and PERSONAL INDEPENDENCE required for the post of Chairman of Natural England and that he will be well placed to lead the organisation."***

***If living on a SMALL FARM, being a KEEN GARDENER and being interested in PLANTING TREES is a massive amount of EXPERIENCE WITH CONSERVATION enough to have been qualified for the post of Chair of Natural England, then Mr Andrew Sells is the greatest wildlife defender ever...***

4. Edward A Sells Donated in total: £137,500.00  
<http://searchthemoney.com/associate/3164> ...

3. Why Andrew Sells is the wrong choice for Natural England  
<http://www.theguardian.com/environment/georgemonbiot/2013/dec/06/andrew-sells-natural-england...>"

(Bold emphasis added).

11. Also on 8 August, he made a second request to Natural England as follows:

"1) Does Andrew Sells have any membership or association with groups or organisations lobbying for bloods sports/ field-sports interests?  i.e. BASC, Countryside Alliance, Game and Wildlife Conservation Trust, or any group or body promoting blood-sports/ field sports?

2) Does Andrew Sells have any membership or professional association, paid or otherwise which involves exploiting the environment, such as house building, or any other form of land development?

3) Does Andrew Sells receive any finance outside his role as Natural England chairman from any organisation exploiting the environment such as house building or farming or anybody promoting blood sports/fields ports?

4) I would like correspondence, electronically or hard copy, that Andrew Sells has had with organisations representing blood-sports/ field sports interests while chairman of Natural England i.e. BASC, Countryside Alliance, Game and Wildlife Conservation Trust, or any group or body promoting blood-sports/ field-sports.

5) I would like any correspondence electronically or paper between Julie Lunt (NE head of legal services) and Andrew Sells made in relation to myself [named individual]. And any correspondence from any Natural England officer and [named individual] made in relation to myself: [named individual]."

12. On 14 August 2016, the Appellant made a third request stating:

"There are real concerns that Natural England which is financed by taxpayer's money has been taken over by organisations promoting cruel sports and land exploitation, and they are determined to ensure all those employed promote their cruel sports agenda. The BASC promotes the killing of animals for

*amusement, including unfettered snaring, trapping, and the killing of Raptors for shooting interests. It also promotes the milking of taxpayer's money for grants for types of land use they would need anyway to allow their game shoot to operate. We know that NE's chairman is alleged to have bribed his way into getting the chairman's job by donating £170,000 to the Conservative party which encourages snaring, hunting and shooting interests. I want to know the following:*

*i) In April 2015 Natural England agreed a "partnership deal" with the lobby group "British Association for Shooting and Conservation" (BASC) which promotes the interests of those who enjoy killing animals for entertainment. Who in Natural England initiated this partnership?*

*ii) Provide copies of all communication with BASC from Natural England officials (including chairman and Chief executive) initiating this partnership.*

*iii) Did the Chairman or Chief Executive of Natural England seek formal permission from parliament before establishing this partnership?*

*iv) Is there any lawful partnership arrangement/ agreement signed with BASC and if so provide copy?*

*v) Has the Chairman or Chief Executive agreed this partnership, and if so I want the name of this person/persons?*

*vi) Natural England issued licences for 10 buzzards to be killed in August 2016. Provide copies of correspondence between Natural England and BASC (electronically and hard copy) in relation to this licence?*

*vii) How long is this "partnership deal" for? One year or indefinitely?*

*vii) Has Natural England or any official or employee received any financial or payment in kind from BASC? (include free membership, travel costs, or any free offer which has a value)<sup>2</sup>*

13. On 31 August 2016, Natural England responded to the second request refusing to comply with part of this request relying again on sections 14(1) and 40.

*"As you are aware we sent you a refusal notice regarding your request RFI 3515 as we deemed it to be both vexatious and relating to information that we considered to be personal. ... We sent this response at 12.53pm on 08 August 2016. On the same day at 12.37pm our Chairman emailed you advising that he was not willing to override our decision to disengage with you and reiterated that if you were not happy with that decision you should follow the complaints procedure previously offered to you. At 15.28 on that day (08 August 2016) you sent an email to Natural England's FOI mailbox requesting we respond to the questions detailed above under the Freedom of Information Act, all of which relate to our Chairman. Also on the 08 August 2106 at 20.17 you sent a long email to our Chairman. In this email you both declined to follow the complaints procedure that Natural England offered you in relation to our disengagement decision and also made, or at best repeated, unsubstantiated allegations of a defamatory nature that are without foundation.*

*We consider this chain of correspondence relevant. There is no reasonable*

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<sup>2</sup> On 14 September 2016, Natural England provided information requested in the third request. (See further below.) The Appellant maintains that the authority did not fully comply with the third request. However, this matter is outside the scope of this appeal as it was not considered by the Decision Notice.

*foundation to believe that the information sought would be of value to the public. We are also of the opinion that the only foundation for making this request is to pursue your acrimony against our Chairman, [X] and Natural England as a whole. The nature of the information you requested and the timing of the request fully supports this view...”*

14. The Appellant proceeded with a second complaint to the Commissioner. The Commissioner's Decision Notice of 16 May 2017 found that section 14(1) had been appropriately relied upon for both the first and second request. The Appellant now appeals this decision so far as it relates to the second request.

### **The Task of the Tribunal**

15. The Tribunal's remit is governed by s.58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether she should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner. The Tribunal is independent of the Commissioner, and considers afresh the Appellant's complaint.
16. The parties have elected or consented to this matter being considered on the papers. We are satisfied that we have sufficient evidence and submissions before us to make a decision on the papers. We have carefully considered all that we have received, even if not specifically referred to below.

### **The Issues**

17. The Commissioner's Decision Notice did not consider part 5 of the second request because she found it was a subject access request under section 7 of the Data Protection Act 1998 which needed to be addressed separately. The Appellant has not challenged this such that part 5 does not form part of this appeal. She also did not consider the application of section 40, and we have no submissions before us on this.
18. Accordingly, the sole issue for us to determine is whether Natural England was entitled to rely on section 14 in relation to parts 1 to 4 of the Appellant's second request.
19. It is noted that whilst the Appellant does not appeal the finding in relation to the first request, it still forms part of the context of the second request and accordingly we must consider it in this regards. *(See para. 23 below).*

### **The Law**

20. Under s.1(1) of FOIA, a person making an information request to a public authority is entitled to be informed in writing whether it holds the information and to have it communicated to him. By section 14, public authorities are relieved of the section 1(1) duty where a request for information is vexatious. Section 14 FOIA provides:

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

21. A 'vexatious request' is not defined by the Act. We have the benefit of higher court decisions to help apply this section. These inform us that:

- The term “vexatious” in section 14 carries its ordinary, natural meaning.
  - A request is vexatious if, having taken into account all the material circumstances of the case, it demonstrates a ‘manifestly unjustified, inappropriate or improper use’ of the FOIA procedure.
  - An important aspect of the balancing exercise may involve considering whether or not there is an adequate or proper justification for the request, and whether or not it lacks proportionality, having borne in mind the context of a statute designed to ensure greater public access to official information and to increase accountability and transparency.
  - A request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account.<sup>3</sup>
  - A finding of vexatiousness requires a detailed evidential foundation.
22. *Dransfield CA*<sup>4</sup> case makes clear that we are to take a rounded approach and consider evidence that is capable of throwing light on whether the request was vexatious. This includes prior dealings between the requester and public authority and earlier requests.
23. However, subsequent conduct (including further requests) can only be relevant to the extent it occurs up to the time of the internal review, and after that only insofar as it ‘*sheds light on the true purpose and circumstances concerning the request at the time it was made*’. (See para. 72 of *Soh v IC GIA/116/2014* (*‘Soh’*)). In the present case, where there was no internal review prior to a complaint being made to the Commissioner, it seems clear from the reasoning in *Soh* that the factual position as of 31 August 2016 would be of relevance to the extent that it sheds light on the context of the second request. (This includes, amongst other things, the first request.)
24. LJ Arden stated in *Dransfield CA*:

- a. *“In my judgment, the UT was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider 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 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*

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<sup>3</sup> See the Upper Tribunal decision in *Information Commissioner v Devon County Council and Dransfield* [2012] UKUT 440 (AAC) (*‘Dransfield UT’*), including at para.43, 24, 25. This approach was upheld by the Court of Appeal in *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 545 (*‘Dransfield CA’*).

*request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available.” (Dransfield CA, para. 68.)*

25. In the Upper Tribunal decision of *NI v IC and Buckinghamshire County Council* GIA/1325/2016 at para.s 20-21, Judge Turnbull stated:

- a. *“In CP In CP v IC [2016] UKUT 427 (AAC) at para. 45 Judge Knowles considered that Arden LJ was not intending to say that if there is significant value in the information being sought the request cannot be found to be vexatious. Arden LJ went on to say in para. 68 that “the decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious”. If, for example, complying with a request would impose a substantial burden, a request may therefore be vexatious even if the information has some value to the public. □*
- b. *In the Upper Tribunal in Dransfield Judge Wikeley (at paras. 17 and 27) referred with approval to the statement of the Upper Tribunal in Wise v IC (GIA/1871/2011) that: □ “Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it...”*

26. In *Dransfield UT*, Judge Wikeley identified four broad themes as potentially helpful in deciding whether a request is vexatious. He made clear that these considerations were not exhaustive or prescriptive and were not intended to create a formulaic check-list. These themes are:

- (1) The burden on the public authority and its staff;
- (2) The motive of the requester;
- (3) The value or serious purpose of the request and
- (4) Any harassment or distress of and to staff.

27. In relation to the burden, LJ Arden has explained:

- a. *“I note that the UT held that the purpose of section 14 was “to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA” (UT, Dransfield, Judgment, para. 10). For my own part, I would wish to qualify that aim as one only to be realised if the high standard set by vexatiousness is satisfied. This is one of the respects in which the public interest and the individual rights conferred by FOIA have, as Lord Sumption indicated in Kennedy (para. 2 above), been carefully calibrated.” (Dransfield CA, para. 72.)*

28. As regards the motive, Judge Wikeley explained:

- a. *“ the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request. What may seem 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. Thus vexatiousness may be found where an original and entirely reasonable request leads on to a series of further requests on allied topics, where such subsequent requests become increasingly distant from the requester's starting point.*" (Dransfield UT, para.34)

- b. *"In this context it is important to bear in mind that the right to information under FOIA is a significant but not an overriding right in a modern democratic society. As has already been noted, it is a right that is qualified or circumscribed in various ways. Those restrictions reflect other countervailing public interests, including the importance of an efficient system of public administration. As the F-tT observed in Independent Police Complaints Commission v Information Commissioner (EA/2011/0222) (at paragraph 19): "Abuse of the right to information under s.1 of FOIA is the most dangerous enemy of the continuing exercise of that right for legitimate purposes. It damages FOIA and the vital rights that it enacted in the public perception. In our view, the ICO and the Tribunal should have no hesitation in upholding public authorities which invoke s.14(1) in answer to grossly excessive or ill-intentioned requests and should not feel bound to do so only where a sufficient number of tests on a checklist are satisfied."*

29. As regards the 'value or serious purpose', Judge Wikeley explained

- a. While FOIA is axiomatically motive blind, *"the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request"*.
- b. *"..., given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident."* (Dransfield UT, para.s 34 and 38).

30. As regards causing harassment or distress to staff, Judge Wikeley noted that:

- a. *"vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive (eg the use of racist language). As noted previously, however, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within section 14."* (Dransfield UT, para. 39.)

### **Does section 14 apply to this appeal?**

31. We turn to this whether the public authority was entitled to rely on section 14 in relation to the parts of the second request that are within the scope of this appeal.

32. The Appellant made submissions including the following (which we have partially categorised for ease of reference):

- a. He had met X a few years earlier, and alarm bells rung when he appeared overtly supportive of shooting sports and hostile to his trespassing to enforce the general licence.

- b. **When X reported the sett was inactive, he concluded there was something sinister going on.**
- c. **The disengagement from Natural Earth confirmed that his views were held in contempt and there was more to this than met the eye.** He had been asking legal questions and making constructive submissions to them for many years.
- d. It was only after the organisation decided to no longer respond that he did his detective work. He found that they had formed a partnership deal with BASC which promotes the shooting of animals for entertainment and unfettered snaring and trapping causing enormous suffering to wild and domestic animals. He therefore asked questions to see how closely aligned X was with blood sport organisations.
- e. Had he known at the time that X was professionally involved in overseeing the killing of badgers in relation to DEFRA's TB control he would have advised the police that he was not an appropriate expert to give evidence in legal protection of badgers.
- f. His alarm bells rung when Mr Sells rebuffed his letter relating to disengagement. He then asked questions about Mr Sells as he found he had received his job having made substantial donations to the Conservatives, was professionally involved in house building which involves habitat destruction, and must also support the shooting of live animals or he would not chair an organisation aligned at promoting blood sports. Further research showed 68 Conservative MPs had construction businesses or financial interests in them. This explains why a policy statement in relation to protected species was ineffective and not encouraged by Natural England, and why there were no reforms of trapping legislation. It could also explain his belief in the pro-blood sports agenda of X and other staff.
- g. **He questions the professional competence of X and the term vexatious may well apply to him and that he would be embarrassed to reveal such pecuniary or professional association with blood sports organisations.** It is therefore not worth his bothering him such that he did not appeal this matter.
- h. Grudge: The Appellant denied having any grudge against the chairman and he explained that he had never met him.
- i. Persistence: He noted that he had only made three FOI requests in the 20 years he had been corresponding with the organisation.
- j. Value or Serious Purpose: There was a public interest in establishing how closely linked Natural England was with blood-sport organisations. **He suggested that anyone not supportive of shooting sports may not be employed at Natural England due to the partnership with BASC.** He considered that if the [chairman] was involved with land exploitation or membership with blood sports this would also be an interest. He asserted that the public interest in the request would be to establish the validity of accusations. He noted that he only had a suspicion of wrongdoing, hence his questions.

- k. By working for Natural England, all staff are party to the untold suffering of wildlife in traps and snares which he is a witness to more than anyone.
33. The factors that were raised by the Respondents as indicating vexatiousness included the following<sup>5</sup>:
- a. *Abusive Emails*: emails to X that led to the decision not to communicate with the Appellant were abusive and contained unfounded accusations. They went beyond what the authority would reasonably expect to receive.
  - b. *Personal Grudge*: the FOI requests were specifically about two members of staff. The Appellant's interaction with the first had led to the disengagement with the Appellant, the second refused to overturn that decision. Both the requests came shortly after the Appellant was informed of each decision and it is difficult not to believe they were motivated due to a personal grudge against both people involved.
  - c. The Commissioner maintained that the requests revealed a pattern of persecuting the two individuals for giving him a response he did not like.
  - d. Natural Earth stated that the Appellant failed to accept that his language and behaviour were unacceptable, and he is obsessed with proving his unsubstantiated allegations and would probably refuse to accept any response we provide. His language was entirely inappropriate and his allegations of misconduct and/or dishonesty are tantamount to harassment of Natural England and its staff.
  - e. The fact that the requests are entirely directed at obtaining mostly personal information about the two people he targeted indicates that they were sent directly to cause annoyance and distress to these people. X works in a highly sensitive badger team and this could also be very damaging both to him and his family.

*Persistence and Obsessive Nature*

- f. The Commissioner found that the Appellant had made obsessive, persistent and unfounded accusations directed at 'two employees'. She noted there had been three requests in two months, and there was a burden in terms of disruption, irritation and level of stress the requests would generate. The second request was unreasonably persistent within the context of the three requests, amounting to 19 different questions; and the earlier offensive communications. She described lengthy and aggressive correspondence and a pattern of escalation.

*Unfounded Accusations*

- g. The Commissioner described the Appellant's email of 8 August to Mr Sells as making "vague and insulting insinuations of lack and integrity and corruption, including a lengthy screed focusing on Mr Sells' career and connections that he appeared to have found on the internet."

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<sup>5</sup> (Whilst the submissions from Natural England were very short, we have taken into account earlier arguments put forward by them that were contained in the Bundle.)

- h. Natural England explained that the chairman of its Audit and Risk Committee reviewed the approach to the requests. He commented that:
  - i. *" Mr Wild refused to follow the process offered. When Mr Wild subsequently wrote to the Chairman to seek remedy, a reasonable offer of appeal via Paul Lambert was made. However, this was responded to by Mr Wild with personal attacks on the Chairman's integrity including accusations of deals with the British Association for Shooting and Conservation (BASC). I have reviewed the Memorandum of Understanding between NE and BASC and I consider it a genuine and reasonable attempt to find common cause between two organisations with different aims and objectives. Mr Wild's accusations in this regard seem to me to be totally without substance."*

Motive

- i. The Commissioner argues in its submission that the purpose of the requests was to improperly continue a collateral grievance. Natural England argued that due to the history of correspondence and the timing of these requests, the intention is not the search of information but to cause distress to the people involved and potentially identify personal information about them.

Value or Serious Purpose

- j. The Commissioner found that had the requests had a serious purpose or raised matters of significant public interest, it would have been more difficult to find the requests vexatious.
- k. The Second Respondent's submissions in relation to this included the following:
  - i. It had responded to the third request at least in part based on public interest, despite having found the previous two requests vexatious. It explained that despite the tone of the request and history of abuse to Natural England staff, it provided information for the third request because of a clear public interest in seeing how this Agreement was reached.
  - ii. It asserted that the Appellant had stated that he made the requests to uncover whether Natural England had been involved in dubious and dishonest deals with the BASC and implied he believed they would expose corruption within Natural England. The authority had provided all information that related to the partnership agreement. The first and second requests were made solely to pursue his personal vendetta against X and the Chairman.
  - iii. It noted that the email of 8 August sent to the Chairman was defamatory and without foundation.
  - iv. The Appellant was abusing his rights of access to information by using the legislation as a means to vent his anger at these decisions and to harass and annoy the individuals by requesting personal information about them.
  - v. They questioned whether there was wider public interest in the information, especially in light of the fact that an internal

investigation had taken place that showed the allegations made by the Appellant were untrue.

## Our Findings

34. We find that the public authority was entitled to rely on section 14 in relation to the second request. In reaching this decision, we note the following:

- a. We accept in particular the offensive nature of remarks made by the Appellant that are bold print above at paragraphs 3, 5, 7 and 10.
- b. Abusive Emails: We accept the Respondent's arguments made at paragraph 33a. Amongst other things, the Appellant perceives what he describes as "hostility" to trespassing necessarily means that X is not wildlife or animal-rights friendly, and accuses X of being a charlatan speculating that he was brought up on blood sports. We agree with the Commissioner that the papers indicate that the Appellant took the view that the only explanation for X or Natural Earth taking a different position from him was due to their bad faith, corruption, conflict of interest, or national and religious identity. He seems to have decided that not agreeing with X was grounds to question his professionalism and competence, to use language that is highly offensive and make very personal insults. We accept that the Appellant's tone in correspondence, (for instance on 8 August), is not professional or measured. It is aggressive and goes beyond what public authority officials should expect to receive.
- c. The Appellant failed to accept that his language and behaviour has been inappropriate, and instead looked to blame and pursue two individuals and the broader organisation.
- d. Personal Grudge: We accept that the Appellant has shown a personal grudge. He states that he discovered a connection between the organisation and BASC, yet thinks this justifies singling out X in a request to ask of blood sport connections. As stated by the Commissioner, it is somewhat persecutory and harassing. We accept that both requests were focussed on two individuals at a personal level and the timing of the requests after interactions with either individual indicates they were motivated by a personal grudge against both people, after having been 'disengaged' by the organisation.
- e. We accept that the request and broader context would have caused X to feel distressed and harassed. Certainly, the first request seems somewhat vengeful, personal, intimidatory or threatening. It seems that the Appellant is on a hunting expedition to find fault with X and expose it. An FOI request if disclosed can be revealed to the world at large, and he also states that he would inform the police not to use X as a witness. The papers suggest that X became concerned for his family. We have not found any explanation or reason for that level of concern.
- f. As regards the second request, the Appellant again seems to be looking to try to find means to expose or tarnish the chairman. The proximity to other events on 8 August must not be ignored. (See *Background above*). However, contrary to both Respondents' descriptions, the chairman is not a member of staff. He holds a very senior executive position and there are

expectations of leadership within that role. In that context, the request might be construed as less personal, and its consequences (and other correspondence) ought be minimally distressing for a chairman to have to deal with.

#### Persistence and Obsessive Nature

- g. It is clear that the Appellant sought to make FOI requests after the decision to stop engaging with the Appellant's communications and refusal by the Chairman to overturn this. The Appellant was displaying disruption and irritation. He misused the FOIA as a tool to do so, rather than take the opportunity provided to appeal against the disengagement to the appropriate person. However, the papers before us did not show ample or lengthy correspondence between the Appellant and authority and based on the contents and number of requests, the persistence is not a particularly weighty consideration. At the point of the second request (even taking into account the third request), it may be said to be veering towards persistence and obsession, but had not yet reached that point.

#### Burden

- h. As regards the argument that the request would be a burden on the authority, we received insufficient argument to substantiate this and discount this.

#### Unfounded Accusations

- i. The Appellant made a number of unfounded accusations which were serious and highly provocative. These included that he suspected that staff were corrupt, and he raised issues of fraud and bribery.
- j. From what the Appellant has explained above, it seems that 'alarm bells ring' for him when X or the chairman take a position that he does not agree with. He then deduces that this means something 'sinister' is going on. He reasoned that disengagement meant that there was more to than met the eye, and that the chairman must support the shooting of animals, and that X was vexatious.
- k. The Appellant has not provided any evidence in the bundle to justify the extreme language used by him for instance in allegations of lack of professionalism or blood sports. The Appellant seems to accept that allegations against Mr Sells are unsubstantiated. (*See page 22 of the Bundle.*)
- l. Some such allegations were made after the date of Natural England's response to the second request, including in the Appellant's submissions to this appeal. (*See in particular the submissions in bold print at paragraph 32 above.*) These shed light on the Appellant's general disposition and the underlying purpose in making the requests and circumstances concerning the request.

#### Motive

- m. We accept that the requests were motivated by acrimony towards Mr Sells, Natural England and X, and on balance were made to improperly

continue a collateral grievance. This is evidenced by the contents and tone of correspondence and timing of the requests. The Appellant demonstrates an approach that is accusatory and unsubstantiated, and not measured. (*See in particular the quoted text above in bold print*).

Value or Serious Purpose

- n. Whilst we accept that the motive of the requests was to pursue a personal vendetta, the Respondents did not fully address the value to the public in the second request. The Appellant argues that there was a public interest in establishing how closely linked Natural England was with blood-sport organisations, which he considers the BASC to be. Natural England noted that there was nothing untoward in it finding a common cause with an organisation with different aims and objectives. We have seen no compelling argument to dispute this. Any suggestion that such a union would make it hard for anyone not supportive of shooting sports to be employed at Natural England seems wholly unfounded and unsubstantiated. In any event, the first and second request are focused more on X and the chairman than the broader organisation.
- o. Notwithstanding this, we consider there to be some reasonable foundation for considering there would be some value to the public in parts 1 to 3 of the second request. The Appellant's request broadly concerns other memberships and professional associations the chairman may have including with blood sports. Within this context, the Appellant provides a link to an article in the Guardian entitled, '*Why Andrew Sells is the wrong choice for Natural England*'. The role of chairman of this public authority is clearly an important one, and there must be some public interest in knowing the background (such as professional affiliations and interests) of the chairman. We consider parts 1 to 3 sufficiently satisfy that value.
- p. There is negligible interest in part 4 of the request. As stated above, on the basis of the material before us, we find the Appellant's accusations unfounded. Accordingly, part 4 seems to amount to nothing more than a fishing expedition looking for wrongdoing to be able to expose him and the organisation. We accept that it is excessive and lacks proportionality. The Appellant stated in his submissions that the chairman had donated £200,000 before getting the role. He provided nothing to substantiate this, and Natural England did not specifically address this. He also stated that he ran a construction company involved in habitat destruction and was overseeing the partnership with BASC. Again, Natural England did not address this. In any event, we consider none of this would have justified the Appellant's extreme accusatory language set out above. Neither do we consider that it indicates an interest or value in the information in part 4 of the request based on the text of the request. (We have already considered there to be a generic interest in parts 1 to 3 for other reasons.)
- q. Natural England questioned the value in the request given it had conducted an internal investigation regarding the Appellant's allegations. We did not receive sufficient details about the investigation. However the Appellant had accepted that his allegations about the chairman were unsubstantiated. It does not affect our finding that there is some generic value in parts 1 to 3, but not in part 4.

## Conclusion

35. To conclude, we consider the most important factors in determining the issue of vexatiousness in this case are (a) the motive of the requester; (b) any harassment or distress of and to staff; and (c) the value to the public of the information sought and serious purpose of the request. (We have not found considerations as to heavy burden or persistence or to be pertinent.)
36. We find the motive for the request to be an attempt to improperly continue a collateral grievance based on unfounded and offensive accusations, and a personal grudge against X and the chairman for their perceived part in the Appellant's 'disengagement' from the organisation. We find the Appellant was abusive to both individuals and the broader organisation, and that his actions foreseeably caused unacceptable distress and harassment to X. This was foreseeable such that it was likely that this was the aim. Distress or harassment to the chairman was unlikely given his senior role.
37. We find that parts 1 to 3 of the second request had some generic value to the public, but not part 4. However, the request lacked serious purpose by the Appellant and his communications were offensive and language was disproportionate. The first request was patently vexatious and lacked any value. Case-law referred to above makes clear that where a request has interest or value for the public this does not mean it 'trumps' a finding of vexatiousness. We must consider the matter in the round. Having done this, we conclude that taking into account the broader context of earlier correspondence and the earlier request, we find the second request is vexatious.
38. We note that the authority found the third request not to be vexatious and explained that this was because it had value, where the first two had been aimed personally at individuals. We do not need to consider its reasoning with respect to the status of the third request as it is not the subject of this appeal. Notwithstanding that Natural England decided the third request was not vexatious, we have found that the second one was.
39. Our decision is unanimous.

Judge Taylor  
13 November 2017