



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

Appeal Reference: EA/2019/0304

Before
Judge Stephen Cragg Q.C.

Tribunal Members

Dr Malcolm Clarke
Ms Marion Saunders

**Determined, by consent, on written evidence and submissions.
Considered on the papers on 17 March 2020**

Between

Peter Shaw

Appellant

-and-

**(1) The Information Commissioner
(2) Arts Council England**

Respondents

DECISION AND REASONS

DECISION

1. The appeal is dismissed.

MODE OF HEARING

2. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.
3. The Tribunal considered an agreed open bundle of evidence comprising pages 1 to 365.

INTRODUCTION

4. The Appellant has concerns about the authorship painting of Charles Edward Stuart ('Bonnie Prince Charlie') which has been accepted into Public Ownership 'in lieu' of inheritance tax. The Appellant has pursued this matter with various bodies for some time. For the immediate purposes of this case, the Appellant made two requests for information from Arts Council England (ACE) about a draft letter and Acceptance in Lieu Panel (AILP) recommendations and correspondence.
5. In relation to 'Request 1' the Appellant continued previous correspondence with ACE that had begun in February 2017, and on 6 May 2018 requested information in the following terms:

[Part 1]. "Could you kindly inform me whether all the Panel members agreed the letter prior to its issue. They are likely to have done so at a minuted meeting or in an email circulated among the Panel. I do not seek the specific details at present, only the information.

[Part 2] May I infer from your answer that the AILP or Arts Council have no knowledge of an AILP recommendation ever having been rejected by the Secretary of State or a minister of the devolved nations? (I did ask whether you were aware of such a recommendation ever having been rejected)."

6. To explain the context, this request relates to an earlier, and similar, request made by the Appellant on 23 March 2018. In its response to that request, ACE had released the names of the members of the AILP, advised that no AILP recommendations had been rejected in the previous five years and advised when the last AILP rejection had been.
7. In relation to Request 2, on 8 June 2018 the Appellant made the following request for information: "...all the information, to which I am entitled, that the AILP has generated as a result of my emails related to the subject of the AILP decision to recommend the acquisition of the oil painting by Allan Ramsay of Bonnie Prince Charlie".
8. Initially, ACE declined to process the Appellant's Request 1 under FOIA. However, following investigation by the Commissioner, ACE provided a response to Request 1 on 25 April 2019. The Commissioner explained in the decision notice dated 15 August 2019 that: -

It released information it holds that falls within the scope of part [1]. With regard to part [2] ACE confirmed that in 2014 and in 2018 there was a rejection of two AILP recommendations for the acceptance of two cultural gifts; and that in the early 1990s the AILP process was subject to long term delays. ACE confirmed that it holds files going back to January 1993 but that it would take over 18 hours to go through these files to provide an answer to part [2]. ACE suggested how the complainant might refine his request to bring complying with it within the time and cost limit.

9. In relation to Request 2 ACE provided a response on 14 June 2018, refusing the request, saying that it was carrying out a review of the Appellant's previous requests on the topic of the AILP decision with regard to the painting and that the current request did not appear to ask for anything that had not been covered previously.
10. However, during the Commissioner's investigation, on 2 May 2019 ACE then relied on section 14(1) FOIA (vexatious request) to refuse to comply with Request 2.

11. In relation to the scope of the case investigated by the Commissioner, she explained that: -

18. The Commissioner's investigation has focussed on whether [ACE] has complied with section 1 of the FOIA with regard to part [1] of request 1; whether it can rely on section 12(1) to refuse to fully comply with part [2] of request 1 and whether it can rely on section 14(1) to refuse to comply with request 2.

19. The Commissioner has finally considered whether ACE complied with its duty under section 16(1) with regard to part [2] of request 1 and its duties under section 10(1) and 17(5) with regard to both requests.

12. In relation to Part 1 of Request 1, the Commissioner explains the background as follows-

23. the Acceptance in Lieu scheme enables taxpayers to transfer important works of art and heritage objects into public ownership while paying Inheritance Tax (or one of its earlier forms). The AILP advises Ministers on all items offered under the scheme and on the allocation of objects. The Commissioner understands that the painting of Charles Edward Stuart ('Bonnie Prince Charlie') in question was acquired by the Scottish National Portrait Gallery through the Acceptance in Lieu scheme. The complainant has concerns about the authorship and valuation of the above painting and a possible associated fraud that he had identified.

24. ACE has explained that on 12 July 2017 the complainant had sent an email to the AILP inbox with a letter addressed to the AILP chairman reporting his latest research into the commissioning letter for the Ramsay Portrait. His letter also requested an "independent review, commissioned confidentially by the panel". ACE says a response to this letter was drafted and circulated to the AILP members for its information. The letter (i.e. the letter to which the complainant refers in his request) was then sent to the complainant by email from the AILP mailbox on 2 August 2017.

25. In an initial submission to the Commissioner on 15 March 2019, ACE referred to an email it had sent to the complainant on 23 April 2018 (i.e. prior to request 1 being submitted on 6 May 2018). In that email, a copy of which ACE provided to the Commissioner, ACE had released a list of the names of the individual Panel members who saw and agreed the letter in question. ACE told the

Commissioner that the list included the names of all of the 2017 AILP members, as shown on ACE's website.

13. Thus, Part 1 of Request 1 was for confirmation that all AILP members agreed to the letter sent on 2 August 2017, before that letter was issued and, in his request, the Appellant said that he was seeking only the information, not the "specific details". The Commissioner said that ACE had provided the following material: -

- An extract from the 22 June 2017 meeting minutes in which it is confirmed that the Chairman would draft the letter.
- A 'Matters arising' item from the 20 July 2017 AILP meeting relating to the AILP meeting of June 2017 which refers to the Chairman's draft response to the complainant's letter being attached (i.e. circulated).
- An email from the AILP secretariat to the AILP members dated 26 July 2017 circulating the Chairman's draft letter and asking for comment.
- Emails from some Panel members commenting on the draft letter.
- The covering email from the 'AIL Panel' to the complainant, dated 2 August 2017, attaching the final letter.

14. The conclusion of the Commissioner in relation to Part 1 of Request 1 was that it was 'a reasonable interpretation of the recorded information ACE has released' that the content of the AILP Chairman's letter sent to the Appellant on 2 August 2017 had been agreed by the whole Panel, and that therefore ACE had complied with the requirement to make requested information available.

15. Part 2 of Request 1 is for confirmation that neither the AILP nor ACE had any knowledge of an AILP recommendation "ever" having been rejected by the Secretary of State or a Minister of the devolved nations.

16. In its final response to the complainant of 25 April 2019, ACE confirmed that in 2014 and in 2018 there was a rejection of two AILP recommendations for the acceptance of two cultural gifts; and that in the early 1990s the AILP process was subject to long term delays. ACE had confirmed that it holds relevant files going back to January 1993 but explained the difficulties it would face retrieving the information. The Commissioner explains as follows: -

35. In a submission to the Commissioner on 2 August 2019, ACE advised that it has compiled a list of all relevant 'Acceptance in Lieu' boxes held at its offsite storage facility.... The list comprises 192 boxes, which each hold numbers of case files..... ACE says that in order to provide a response to part [2] it would need to review the contents of all the AILP papers.

36. ACE has explained that not all of its records record how many case files there are per box, but that usually there are 5-10 case files per box (so 7 on average). 192 boxes at 7 files per box equates to 1,344 individual case files, which would all need to be reviewed manually. Each file will contain on average about 100 pages including the 'offer' papers. ACE advises that some case files have significantly more pages, especially where the offer relates to a collection or an archive.

37. ACE notes that there are 1,080 minutes in 18 hours. That being the case, ACE says it would mean that it could only spend 1.08 minute on each file, if it is to get through all the case files in 18 hours. This work would include recalling the files and returning them to the storage facility; unpacking them etc. ACE says that the time it would take to recall the files alone is more than 1.08 minute. It would need at least 10 minutes per file (10 x 1000 = 10,000 minutes/166 hours) - by which the Commissioner understands that ACE means 10 minutes to review each file - and five minutes to recall each box (192 x 5 = 960 minutes/16 hours). ACE has confirmed that the amount of time it would take to comply with part [2] would therefore be in excess of the 18 hours provided under section 12(1). ACE has also noted that there are also costs associated with box retrieval from its storage facility, which would likely be above the cost threshold of the £450 provided under section 12(1).

17. The Commissioner concluded that she found ACE's explanation for why it would exceed the time limit to comply with this part to be reasonable

and credible, and decided that ACE could rely on section 12(1) FOIA to refuse to comply with Part 2 of Request 1.

18. The Commissioner found that ACE had complied with the requirement to provide advice and assistance to help the Appellant refine the request so that it can be dealt with under the appropriate limit, by suggesting to the Appellant that he limit his request to the previous 10 years rather than 'ever', but he declined to do this.

19. Request 2 was for: "...all the information, to which I am entitled, that the AILP has generated as a result of my emails related to the subject of the AILP decision to recommend the acquisition of the oil painting by Allan Ramsay of Bonnie Prince Charlie.". The Commissioner explains the Appellant's position as follows: -

48. The complainant clarified for the Commissioner that in response to this request he was expecting that he would receive copies of emails and/or reports, redacted where appropriate, that had resulted from his correspondence with the AILP and ACE.

49. The complainant says he was particularly keen to receive information relating to the involvement of the Audit Committee and Internal Audit regarding his submissions. He says that the Department for Culture, Media and Sport (DCMS) had also informed him that ACE staff had looked into the possible fraud issues he had raised and the complainant says he was keen to establish who, or which department, examined the matter; when it was examined and whether a report was produced and, if so, who received it.

50. By way of a final example, the complainant says he also wished to know who received a copy of his 'January 2018 report' as it appeared to him that there was some confusion about whether members of the AILP received the information or whether the Chair, Chief Executive or the Audit Committee did so.

20. Having considered ACE's submissions on why Request 2 should be considered vexatious for the purposes of section 14(1) FOIA, including

that it would take 30 hours to compile the information requested, the Commissioner reached a conclusion that is worth setting out at length: -

61. The Commissioner notes that at the point of the request, the complainant had been corresponding with ACE about a particular AILP decision for approximately 15 months. ACE had therefore already devoted significant time and resources to addressing the complainant's queries and requests but it had borne that burden. As a result, the complainant has been provided with a considerable amount of information concerning the subject that is of interest to him - an AILP decision about a particular painting. The complainant has told the Commissioner that he also received "a considerable volume" of associated information from the National Audit Office and DCMS to whom he had also submitted FOI requests.

62. The Commissioner considers that the 30 hours plus that ACE has estimated it would take to comply with the request is a reasonable estimate given the number of pages involved and because any potentially exempt information would be spread throughout this material and would not be straightforward to locate. The complainant's submissions to the Commissioner explain, to a degree, why he is seeking the particular information requested in request 2 i.e. why it is of interest to him. He has not, however, made a case for the information being of any wider public interest. If the requested information had a wider public interest, this might justify the impact on ACE that complying with the request would cause.

63. The complainant says he is seeking information on the involvement of ACE's audit committee, internal audit and DCMS - with regard to the latter who, or which, department examined concerns about the fraud the complainant says he identified; when these concerns were examined, whether a report was produced and, if so, who received it.

64. In the Commissioner's view, these questions are incidental to the central issue, which was whether a fraud had been committed. ACE has confirmed to the Commissioner that it understands that the complainant does not believe that the painting in question is of Bonnie Prince Charlie, nor that it was painted by Allan Ramsay; by implication he considers that the painting was not worth the amount that was paid for it. However, ACE says that its audit team, DCMS and the National Audit Office have all considered the complainant's concerns and have advised the complainant that

they were satisfied with the way the offer for the painting had been assessed, and that the complainant's concerns regarding fraud were unfounded.

65. From the information provided to the Commissioner it appears that the complainant's concerns have been independently considered by three bodies and that that particular matter is concluded, albeit not to the complainant's satisfaction. ACE's audit team and DCMS have advised the complainant that they do not consider a fraud to have taken place.

66. ...For these reasons the Commissioner is satisfied that ACE can categorise request 2 as vexatious under section 14(1) as complying with it would cause a burden to ACE that is disproportionate to the request's value.

THE APPEAL

21. The Appellant filed an appeal dated 29 August 2019. His appeal is a lengthy and discursive document and ranges over many matters concerning the way the Commissioner and ACE have dealt with his request and correspondence.
22. Many of the issues discussed are out with the jurisdiction of this Tribunal. The appeal grounds have been amended and expanded in response to the responses from the Commissioner and ACE.
23. In relation to Part 1 of Request 1, the Appellant disputes the Commissioner's finding that ACE has satisfied her that all members of the AILP agreed the relevant letter referred to in Part 1. The Appellant does not appear to challenge the information provided by ACE upon which that conclusion is based (as set out in paragraph 9 above), or that there is more information to be disclosed but does dispute the conclusion itself.
24. In relation to Part 2 of Request 1, the Appellant queries the amount of time ACE have stated it will take to retrieve the information. He thinks that the rejection of an AILP recommendation would be so unusual that a record

of it would be easily found. He also now argues that what he wants is an answer to his question based on the current knowledge available, and not the actual information as to whether there has, in fact, ever been a rejection.

25. In relation to Request 2, the Appellant disagrees with the 'burden' that ACE states would be placed on it responding to the request such that the request could be considered vexatious and emphasises what he sees as the public interest in the information he has sought being disclosed. He says the Commissioner was wrong to say that the concerns about fraud had been considered by three different bodies. In the latest version of his submissions the Appellant states that he would be satisfied with valuation and authorship reports in relation to the painting he is interested in, redacted as appropriate.

26. Referring to Part 1 of Request 1, the Commissioner responds that she accepts that it cannot be gleaned from the documents disclosed by ACE that all the members of the AIPL agreed the letter prior to its release, but that ACE had also responded to say that 'we can confirm' that all AILP members agreed the letter, and that this confirmation together with the disclosed documents were sufficient to satisfy the ACE disclosure duty under s1 of FOIA.

27. For Part 2 of Request 1, the Commissioner reiterates her acceptance that ACE would have needed to review records back to 1993, and that viewed objectively the request was for the information that might be gleaned from available records, and not the present knowledge as to what might or might not have happened since 1993.

28. In respect of Request 2, the Commissioner comments that there is no dispute that the Appellant's concerns have been relayed to various public bodies, but that none have identified any concerns as to fraud in relation

to the painting. As a result, the Commissioner identifies little public interest in relation to Request 2. The Commissioner accepts that the burden claimed by ACE in those circumstances is such as to make the request vexatious.

29. ACE has also submitted a response which concentrates on the vexatiousness issue. We note that ACE gives more detail about the burden on the organisation of responding to Request 2, which would amount to preparing 600 pages for disclosure, including consideration of possible exemptions which might apply to some of the information. ACE also provides details of the cumulative burden of responding to the Appellant on the same issue (the authenticity of the painting) for a period from February 2017 to the date of the present request, including five previous FOIA requests, and submission of draft reports from the Appellant, as well as other correspondence. ACE submissions state that 'As every response generated a new request or a new avenue of correspondence, the task of dealing with the Appellant became increasingly frustrating'.

30. ACE accept that the Appellant was 'originally motivated by genuine desire to access information, and that the underlying subject matter is of considerable public interest'. However, ACE argue that Request 2 (for all information generated by his own emails) represents 'vexatiousness by drift' as described in the UT case of *Dransfield* at paragraph 38 (see below), as it is one step removed from his original concerns,

31. ACE point out that the Appellant can continue to pursue his theories about the painting, to publish his articles and 'have these weighed in the academic market-place of ideas'. He can present any evidence of fraud to the appropriate authorities.

DISCUSSION AND DECISION

Part 1 of Request 1

32. In our view ACE has disclosed the information it has to show that the decision that was made in relation to the relevant letter was agreed by the members of the AILP. The Appellant has the confirmation that all AIPL members agreed the letter and he also has the information as to what occurred before the letter was sent (see above paragraph 9). In our view there is nothing else for ACE to disclose to satisfy their duties to disclose information in relation to this request. We agree with the Commissioner that the information disclosed is sufficient to meet ACE's duties under s1(1) FOIA to make available information requested.

Part 2 of Request 1

33. Section 12(1) FOIA says that a public authority is not obliged to comply with a request if the authority estimates it would exceed the appropriate cost limit to do so. The appropriate limit is currently £450 for public authorities other than government departments. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request which corresponds to the £450 threshold cited by ACE.

34. Where a public authority claims that section 12(1) FOIA is engaged it should, where reasonable, provide advice and assistance to help an applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) FOIA.

35. We accept the evidence of ACE about the amount of time it would take to respond to this part of the request. Essentially, the request requires ACE to retrieve and search records going back a quarter of a century to ascertain whether it holds material. Even if that initially involves tracking

down minutes of meetings since 1993, it is understandable that that will take ACE over the statutory limit for responding as described above in the decision notice.

36. We agree with the Commissioner and ACE that the Appellant's recent claim that all he wants is an explanation as to what is currently known about previous rejections of AILP recommendations, rather than the actual information held, is not reflected in an objective reading of his request. A request for current understanding or beliefs held by ACE would also not amount to a request for *information* under FOIA.

Request 2

37. Section 14(1) FOIA states that "Section 1(1) [FOIA] does not oblige a public authority to comply with a request for information if the request is vexatious". Vexatiousness is not defined in section 14 FOIA, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.

38. The approach to vexatiousness is set out in the case of *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC). There is an emphasis on protecting public authorities' resources from unreasonable requests which is described by the Upper Tribunal in *Dransfield* when it defined the purpose of section 14 as follows at paragraph 10:

'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1) ...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...' (paragraph 10).

39. Also in *Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question as to whether a request is vexatious ultimately depends upon the circumstances surrounding that request. As the Upper Tribunal observed:

‘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’.

40. One aspect of the consideration was whether the request had inherent value. As the UT said at paragraph 38: -

41. ...Does the request have a value or serious purpose in terms of the objective public interest in the information sought? In some cases, the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests (especially where there is “vexatiousness by drift”) may not have a continuing justification. ...Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, 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.

42. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed at paragraph 68 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... The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.’

43. Specific reference should also be made to paragraph 72 of *Dransfield* in the Court of Appeal where Arden LJ addressed paragraph 10 of the UT decision and said: -

72 Before I leave this appeal I note that the UT held [2012] UKUT 440 AAC at [10] that the purpose of section 14 was “to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA”. 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 JSC indicated in *Kennedy v Charity Commission (Secretary of State for Justice and others intervening)* [2015] AC 455 para 2 above), been carefully calibrated.

44. The recent Upper Tribunal case of *Cabinet Office v Information Commissioner v Ashton* [2018] UKUT 208 (AAC) made clear that s14(1) FOIA can apply on the basis of the burden placed on the public authority, even where there was a public interest in the request being addressed and where there was a ‘reasonable foundation’ for the request: -

27. The law is thus absolutely clear. The application of section 14 of FOIA requires a holistic assessment of all the circumstances. Section 14 may be invoked on the grounds of resources alone to show that a request is vexatious. A substantial public interest underlying the request for information does not necessarily trump a resources argument. As Mr Armitage put it in the Commissioner’s written response to the appeal (at §18):

a. In deciding whether a request is vexatious within the meaning of section 14(1), the public authority must consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.

b. The burden which compliance with the request will impose on the resources of a public authority is a relevant consideration in such an assessment.

c. In some cases, the burden of complying with the request will be sufficient, in itself, to justify characterising that request as vexatious, and such a conclusion is not precluded if there is a clear public interest in the information requested. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

45. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include: • Abusive or aggressive language • Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden • Personal grudges • Unreasonable persistence • Unfounded accusations • Intransigence • Frequent or overlapping requests • Deliberate intention to cause annoyance.

46. As the Commissioner says, the fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

47. Taking a holistic view of this request, it comes in the context of the Appellant raising what it is accepted was a serious issue about the authenticity of a painting accepted in lieu of tax on behalf of the State. However, what is clear from the documents we have seen, is that ACE and the other public authorities contacted by the Appellant have not agreed with him on this issue and have declined to carry out the investigation

that the Appellant believes is necessary. It is palpable from the documents in this case that this has caused the Appellant immense frustration. This has then manifested itself in a series of further requests for information which have culminated in Request 2 – a request ‘all the information ... that the AILP has generated as a result of my emails related to the subject of the AILP decision.’ Thus, the focus of the Appellant’s concerns has moved from the issue of authenticity of the painting, to the way that AILP has dealt with the Appellant’s correspondence on the issue.

48. We bear in mind the chronology of correspondence and FOIA requests provided by ACE in its Response (referred to above) over a fifteen-month period, and agree with ACE’s assessment that each response by ACE simply leads to a new request by the Appellant. In some circumstances such persistence might be proportionate and appropriate, but in this case, it is now clear the AILP and ACE are not going to take the action that the Appellant wants them to take.

49. In our view this is the kind of case referred to by the UT at paragraph 38 of Dransfield where “...the weight to be attached to th[e] value or serious purpose may diminish over time’. It is a case where ‘...the underlying grievance has been exhaustively considered and addressed’ and where ‘subsequent requests (especially where there is “vexatiousness by drift”) may not have a continuing justification’. This is a case where, in our view, there is indeed ‘vexatiousness by drift’, as the Appellant moves from his original concern to the way his correspondence has been dealt with. In our view there is little public interest in this secondary issue.

50. It is against this background that we also consider the arguments that Request 2 imposes a disproportionate burden on the public authority. The burden which compliance with the request will impose on the resources of ACE is a relevant consideration in our holistic assessment of the request. We accept that there would be a considerable burden in collating the

information to be disclosed for the purposes of Request 2 as explained in the passages of the decision notice set out above, and we also take into account that the Appellant's requests and correspondence have already become burdensome to ACE over a period of time.

51. Taking all these factors into account and bearing in mind the consideration in *Dransfield* and the points set out in the Commissioner's guidance we find: -

(a) Even though the underlying issue of the painting is an important one, Request 2 as framed has little public interest and is subsidiary to the main concerns about the painting he has sought to explore.

(b) The request in itself is burdensome and would add to the burdensomeness already imposed on ACE.

(c) The Appellant has demonstrated (a) unreasonable persistence; (b) intransigence; and (c) has made frequent or overlapping requests over a period of time.

52. On that basis we agree with the Commissioner that Request 2 is vexatious for the purposes of s14(1) FOIA.

53. We recognise that the Appellant has recently said that he would be content to receive just two redacted reports. However, this is not the request considered by ACE or the Commissioner, and therefore not a matter which we can take into account in an appeal against the Commissioner's decision notice.

54. Finally, we also consider briefly the Appellant's additional point that the Commissioner failed to consider a third request, made in identical terms

to Request 2, save that it sought information that ACE (rather than AILP) had generated as a result of the Appellant's emails on the subject of AILP's recommendation. We agree with the Commissioner that (a) as the AILP is an ACE panel, the former request is effectively a subset of the information covered by the second and (b) in any event, as ACE responds to FOI requests made to AILP, both requests were made to ACE.

55. If, as we have found, Request 2 is vexatious in relation to the information generated by AILP, the same would inevitably be true about information generated by the identical request in relation to ACE, and we so conclude.

CONCLUSION

56. For those reasons, we dismiss this appeal.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 9th April 2020.