



NCN: [2024] UKFTT 00256 (GRC)

Case Reference: EA/2023/0158

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

**Heard by Cloud Video Platform  
Heard on: 16 February 2024  
Decision given on: 22 March 2024  
Promulgated on: 25 March 2024**

**Before**

**TRIBUNAL JUDGE HEALD  
TRIBUNAL MEMBER SCOTT  
TRIBUNAL MEMBER MURPHY**

**Between**

**THOMAS BRIGHT**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER  
(2) THE ROYAL BOROUGH OF GREENWICH**

Respondents

**Representation:**

The Appellant: in person

The 1<sup>st</sup> Respondent: was not represented

Counsel for the Second Respondent: Cecilia Ivimy

**Decision:** The appeal is Dismissed

**REASONS**

1. Mr Bright appeals to the Tribunal by section 57 Freedom of Information Act 2000 (“FOIA”).
2. The Appeal relates to a decision notice (“the Decision Notice”) issued by the Information Commissioner (“the Commissioner”) dated 16 February 2023. In it the Commissioner supported the view taken by The Royal Borough of Greenwich (“Greenwich”) that it was

entitled to rely on section 14(1) FOIA in refusing to provide certain information requested by Mr Bright.

3. The underlying issues between Mr Bright, his employer, the then Leader of Greenwich Councillor Thorpe (“Mr Thorpe”) and Greenwich are not matters for the Tribunal save only as they relate directly to the issues to be determined. By way of background Mr Bright was employed as a teacher at a school in Greenwich operated by a Multi Academy Trust (“the MAT”). Mr Bright had an account on Twitter. Mr Bright posted certain tweets which Mr Thorpe viewed as being inappropriate. He raised his views with the MAT (Mr Bright’s employer) in early 2020. Mr Bright was concerned about the way in which Mr Thorpe acted in this matter.
4. Counsel for Greenwich provided a chronology which Mr Bright agreed was accurate. The chronology attached as an appendix to this Decision is based on that agreed version. References to page numbers in this Decision are to a bundle provided for the Appeal.

### **Evidence**

5. Mr Bright represented himself and made submissions on his own behalf. Greenwich was represented by counsel. We thank both for the assistance they gave the Tribunal and the manner in which they set out their respective positions.
6. For the hearing of this matter the Tribunal was provided with and considered a bundle running to 356 pages. We also had a skeleton argument, chronology and an authorities bundle from counsel for Greenwich.
7. Mr White, who is the Head of Information Safety and Community at Greenwich, provided a witness statement with exhibits (D149-D356). He was asked questions by Mr Bright. We found Mr White to be a witness with a good understanding of the subject matter of the Appeal who gave his evidence honestly and with clarity.

### **The Request, Response and Internal Review**

8. In January 2021 Mr Bright made a request for information to Greenwich pursuant to FOIA (D234) to which Greenwich responded on 19 March 2021 (D240). On 26 March 2021 Mr Bright sought an internal review of that response (D262-264). Greenwich took the view that part of Mr Bright’s request for an internal review was in fact a new FOIA request. In it Mr Bright asked 5 things as follows (numbering added):-

*“Additionally, I request a response in relation to the following information:*

*[1] Have councillors or has the Leader of the Council either inquired and/or requested that certain content be posted on twitter, or has the Royal Borough of Greenwich received a direct message (DM) from the Leader of the Council’s private and personal twitter account containing a tweet posted by the Leader of the Council?*

*[2] Has the Royal Borough of Greenwich followed the Leader of the Council’s private account or retweeted the Leader of the Council’s personal tweets and how are these decisions made?*

*[3] Has the Leader of the Council made complaints to employers of residents of the Royal Borough of Greenwich, whilst attaching copies of their tweets referencing services provided by the Royal Borough of Greenwich?*

*[4] Has Legal Services been involved in any way with the processing of my request of 3rd January? Please provide all information in relation to the handling of this request and all associated email communication.*

*[5] Please can you provide all telephone records between the Royal Borough of Greenwich and the Inspire Partnership Academy Trust.”*

9. On 26 April 2021 (D309) Mr Bright clarified question [5] above saying (numbering added):-

*“[1] I require all telephone records and correspondence between the Inspire Partnership Academy Trust, including but not limited to the CEO Robert Carpenter, and the Royal Borough of Greenwich, including but not limited to Cllr Danny Thorpe.*

*I request all correspondence between 1st August 2019 and 1st April 2021.*

*Specifically, please conduct a search of Cllr Danny Thorpe’s personal phone, which is not exempt from disclosure under the FOIA if, as it appears, it was used to conduct council business with Cllr Thorpe acting as Leader-designate.”*

10. Mr Bright went on to add further requests for information which was taken to be a further new FOIA request. He asked:-

*[2] I also require all records relating to a Code of Conduct complaint against Cllr Thorpe made on 10th and 15th June 2020 and all correspondence between and amongst councillors, senior and chief officers in relation to this matter. Please conduct a search of the personal email accounts and personal phones of Ms Debbie Warren, Chief Executive of the Royal Borough of Greenwich, [name redacted], Director of Legal Services, [name redacted], Director of Children's Services, [name redacted], Deputy Chief Executive of the Royal Borough of Greenwich and Cllr Danny Thorpe, Leader-designate. You will be aware that data held within personal email accounts and on personal mobile phones is not exempt from disclosure under FOIA if, as I understand, it has been used to conduct council business.*

*[3] I also require the advice provided by the independent person in relation to a Code of Conduct complaint of 10th and 15th June 2020. Disclosure of this advice is in the public interest and is not exempt in accordance with FOIA.*

*[4] Please could you confirm if Cllr Thorpe made written representations in relation to the matter of 10th and 15th June 2020. If so, I request that this written representation is disclosed as it relates to Cllr Thorpe acting as Leader-designate and disclosure is in the public interest.”*

11. In summary the Request in this Appeal derives from 2 elements. These are (1) the FOIA requests in the letter of 26 March 2021 (taking account of the clarification of question 5 in the letter of 26 April, 2021) and (2) parts 2- 4 of the request in the 26 April 2021 letter.

## **Response**

12. On 25 May 2021 (D307) and on 1 July 2021 (D281) Greenwich informed Mr Bright that it refused to respond to the April Request and the March Request in reliance on section 14(1) FOIA. This position did not change following an internal review.

### **Scope of the Requests**

13. “Information” is, by section 84 FOIA, defined as “*information recorded in any form*”. We were satisfied that questions 1, 2 and 3 of the March Request sought a yes or no answer and thus did not engage FOIA.

### **The Complaint (C103-104)**

14. On 9 December 2021 Mr Bright complained to the Commissioner by section 50 FOIA. He said:-

*“The public body has refused to disclose information that is in the public interest in an apparent attempt to avoid political embarrassment. The public body has also refused to explain why they consider the request vexatious”*

### **The Decision Notice (“DN”)(A1-8)**

15. In the DN the Commissioner took the view that parts 1 - 3 of the March Request were not FOIA requests. As regards parts 4 and 5 of the March Request and the April Request, the Commissioner agreed with the view taken by Greenwich saying (para 28):-

*“... the Council is entitled to rely on section 14(1) to refuse parts [4] and [5] of the request of 26 March 2021 and the entire request of 26 April 2021.”*

### **The Appeal (A9-17)**

16. On 17 March 2023 Mr Bright lodged his appeal by section 57 FOIA in respect of the DN. An overview of the procedure in this Appeal follows:-

12 June 2023	the Commissioner's Response (A18-21)
16 June 2023	Greenwich is made a party (A22)
13 July 2023	Greenwich Response (A25-37)
25 July 2023	Mr Bright's Reply (A38-44)

### **Role of the Tribunal**

17. The Tribunal's role in an appeal by section 57 FOIA is as set out in section 58 which provides that:-

*(1) If on an appeal under section 57 the Tribunal considers—*

*(a) that the notice against which the appeal is brought is not in accordance with the law, or*

*(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or*

*substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.*

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

### **Relevant Law**

18. FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing if that information is held (section 1(1) (a) FOIA) and if that is the case to be provided with that information (section 1 (1) (b) FOIA). These entitlements are subject to a number of exemptions and in addition to section 14(1) FOIA which provides that:-

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

19. FOIA does not provide a definition of the word vexatious. Judge Wikeley in the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013)* provided this guidance on its meaning:-

*“vexatious” connotes manifestly unjustified, inappropriate or improper use of a formal procedure”*

20. The Decision in *Dransfield* provides guidance on the approach to section 14(1) FOIA. Four broad and non exhaustive issues were identified for consideration namely (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 or to the public authority’s.

21. As regards burden:-

*“..the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor.”*

*“the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. “*

*“..requester who consistently submits multiple FOIA requests or associated correspondence within days of each other, or relentlessly bombards the public authority with e-mail traffic, is more likely to be found to have made a vexatious request.”*

*“a long history of requests e.g. over several years may make what would otherwise be, taken in isolation, an entirely reasonable request, wholly unreasonable in the light of the anticipated present and future burden on the public authority.*

22. On motive:-

*“...the motive of the requester may well be a relevant and indeed significant factor in assessing whether the request itself is vexatious. The FOIA mantra is that the Act is both “motive blind” and “applicant blind”. ....., 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.”*

*“...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. Thus section 14 serves the legitimate public interest in public authorities not being exposed to irresponsible use of FOIA, especially by repeat requesters whose inquiries may represent an undue and disproportionate burden on scarce public resources.”*

23. For the question of the value or serious purpose and again from *Dransfield*:-

*“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. In other cases, the value or serious purpose may be less obvious from the outset. 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.”*

24. Finally on the question of harassment and distress:-

*“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 (e.g. 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.”*

25. These questions are non exhaustive and illustrative only. As was said in *Dransfield*:-

*“It is important to remember that Parliament has expressly declined to define the term “vexatious”. Thus the observations that follow should not be taken as imposing any prescriptive and all encompassing definition upon an inherently flexible concept which can take many different forms.” .....* “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”.*

26. In *Dransfield-v- (1) Information Commissioner and (2) Devon County Council and Craven - v-(1) The Information Commissioner and (2) The Department for Energy and Climate Change [2015] EWCA Civ 454* the Court of Appeal added (para 68):-

*“The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious”*

27. The Commissioner in its guidance notes states that making a FOIA request is an important right and so engaging section 14(1) FOIA is a high hurdle to satisfy. This approach is endorsed by Arden LJ in the Court of Appeal in *Dransfield (at 68)* who says:-

*“...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.”*

28. Finally it the public authority, in this case Greenwich, that has the burden of demonstrating that the high hurdle of section 14(1) applies.

### **Mr White’s Evidence**

29. In his statement (D149) Mr White sets out the background and the chronology for the various matters raised by Mr Bright and the complaints procedures utilised. He explains his role as the manager of the team that deals with FOI requests and says (D156) that he was not involved with the decision to designate the relevant Requests as vexatious. Mr Bright put questions to him.
30. Mr White was asked about his role and the roles and responsibilities at Greenwich for deciding a request was vexatious. Mr White said that responses to requests are issued in his name but that he does not deal with them all personally. His evidence was that it was very rare for Greenwich to decide a request was vexatious and this would only be done on a case by case basis in discussion with relevant team leaders and on the basis of legal advice. He said their approach was to enable openness and transparency and that section 14(1) was not something they took lightly.
31. Mr White was asked if issues about the conduct of the Leader of the Council was a significant issue. Mr White agreed that while it depended on the context Members’ conduct was important. When asked about the context Mr White said that there was a general public interest for example in ensuring processes at a council work properly but that in this case the Request was in his view focused on Mr Bright’s issues with Mr Thorpe and that these concerns had already been the subject of previous enquiries.
32. Mr White was asked if he agreed that FOIA requests could shed light on things not ordinarily available for example if not proactively published. Mr White agreed.
33. Mr Bright asked Mr White about timescales referring to delays between requests and responses and thus breaches of ICO guidelines. He put it to Mr White that Greenwich should comply with its regulatory obligations. He referred Mr White to the criticism of them by the Commissioner (in the DN). Mr White agreed and accepted there had been delays. He said that he thought these were the result of a mixture of (a) the issue for staffing

during the covid pandemic with people off and redeployed to other tasks and (b) at times the need to seek clarification of Mr Bright's requests. He also spoke of changes to ICO guidance on the timescales during the covid period.

34. Mr White was asked about the costs and fees incurred by Greenwich in the Appeal process about which Mr White had no relevant information.
35. Mr Bright asked on what basis Greenwich applied exemptions. Mr White said that it always depended on what was being asked and the circumstances and that the more senior a person the more they might be subject to third party scrutiny but it would always depend on the context.
36. Mr White was taken to page D156 and paragraph 21 of his statement in which he said "*...Mr Bright's requests show a clear pattern of using FOI process to target the then Leader of the Council....*" Mr Bright challenged this characterisation of the Requests however Mr White repeated his evidence saying that he saw Mr Bright's dispute with Mr Thorpe as the backdrop to the Request.
37. Mr Bright suggested to Mr White that Greenwich could have suggested some form of mediation before moving to label the request as vexatious. Mr White was not able to assist with an answer to this.
38. Mr White was asked by the Tribunal if anyone had been actually distressed. He said he could not speak for the whole team but he was not aware of anyone and that the issues were more of annoyance, frustration and burden.

### **Greenwich's Case**

39. Counsel referred the Tribunal to the skeleton and chronology. Counsel's submissions for Greenwich in the skeleton and as reinforced to us in the Appeal in summary were as follows:-
  - the Commissioner was right to find in the DN that the March and April Requests were vexatious.
  - they were meta requests and unreasonable and unreasonably persistent and repetitive with an argumentative tone. They have no obvious public interest.
  - the burden on Greenwich in responding to the requests was wholly disproportionate to the value of the information sought.
  - the requests involved the private interest of Mr Bright not a public interest and there was little or no public interest in the information requested because (1) it was all related to Mr Bright's personal disputes and (2) much has already been dealt with in other processes in which Mr Bright's complaints had been considered and dismissed -even if he does not accept the outcome.
  - page 210 is an example of the very wide SARs asked by Mr Bright in October 2020 and responded to by Greenwich.

- page 215 is evidence of Mr Bright asking for data about how his complaints about his previous request for data were handled.
- because Mr Bright does not accept the outcome of other determinations this infers that his actual motive is to continue with his dispute with Mr Thorpe. Evidence for this can be seen in the Requests which are concerned with Mr Bright's personal dispute.
- As regards "distress" *the effect of the requests was harassing of Cllr Thorpe, individual named officers, and those charged with having to respond to his requests.*" and the people involved at Greenwich are entitled to have finality.

40. Greenwich argue that the way in which the Request arises makes it a meta request being in part at least in a request about how previous requests have been dealt with. They suggest that the Request should be seen in the context of what has gone before. In counsel's submission the history of the matter showed vexatiousness by drift.

41. In Greenwich's view the history is relevant because it shows the "twitter dispute" as the start point that leads to Mr Bright's various challenges. Greenwich list the other processes commenced by Mr Bright and argue that for each the outcome has been that Mr Bright's complaints have not been upheld. They refer to:-

(1) Mr Bright's Code of Conduct complaint to Greenwich (D179 -186) and the Chief Executive's reasoned conclusion on 25 September 2020 (D183) that:-

*"Having carefully considered all the above information, I have decided that the complaint, if proven, would not show a failure to comply with the Code of Conduct by Councillor Thorpe and I will not be referring the matter for investigation."*

(2) his complaint about the handling of his Code of Conduct complaint (D193) on 10 September 2020 which was considered by the Director of Legal Services (D195) and on the basis of a reasoned review not upheld.

(3) his complaint to the Local Government & Social Care Ombudsman where the outcome on 25 November 2020 (page D204) in summary was:-

*"...The Ombudsman will not investigate how the Council decided not to pursue a complaint about the conduct of a councillor. It is unlikely he would find evidence of fault by the Council"*

42. Counsel (para 11) in the skeleton argues that while Mr Bright says he is not seeking to re-open his complaint:-

*"... he continues before the Tribunal to maintain very serious and unwarranted accusations against Cllr Thorpe and against the Council, and he seeks to justify his use of FOIA by reference to those accusations. He maintains that "the public interest lies in ensuring that public officials, such as Cllr Thorpe, are held accountable for their actions and statements". Continuing to make accusations, however, cannot in itself justify continued use of FOIA, particularly in circumstances where the statutory Code of Conduct procedures, which are designed precisely for the purpose of ensuring proper standards are maintained by democratically elected officials, have been properly followed and completed"*

43. Greenwich also refer to the number of and content and breadth of scope of the 3 SAR and the FOIA requests. They cite wording such as in SAR 3 on 20 October 2020 where Mr Bright asks (D215) for “*all data specifically copies of original emails in relation to correspondence between the [MAT] and LADO*” and then “*I am requesting all data .....including but not limited to....*”.

44. Greenwich note that their responses to SAR requests are themselves then subject of complaints to the ICO. As regards the FOIA Requests Greenwich’s say:-

- there is an inference that Mr Bright did not accept the outcome of other complaints and the March Request is motivated by an attempt to “fish” for information to continue with the underlying complaints.
- there is an inference that by the Requests Mr Bright intended to continue to harass the various people involved.
- even if Mr Bright had a belief that Mr Thorpe “*was guilty of misconduct in the way that he had complained about him, that the Council had colluded in and/or not properly responded to his complaint about this, and that the information requested would help establish these matters, that was objectively unreasonable and unreasonably persistent.*”
- while the Requests were of interest to Mr Bright *the public interest value in the information sought was minimal, in particular given that the underlying complaint had been carefully considered and rejected on a reasoned basis, and extensive disclosure given to Mr Bright of all records relating to his original dispute and handling of his complaints.*”
- the burden on Greenwich’s resources of dealing with Mr Bright’s FOI requests “*was very considerable and wholly disproportionate to any residual public interest value in the information sought.*”
- part 5 of the March Request would be specifically burdensome and the effect was:-

*“to harass Cllr Thorpe, and the senior officers named in the clarified Part 5, as well as the CEO of the [MAT]. Mr Bright’s insistence on searches of private emails and phones underscores this harassment. Whilst Councillors and senior officers can expect to be transparent and to be held accountable in the exercise of their public duties, they are also entitled to expect that there be finality in determination of complaints, and not to continue to have to answer questions on matters which have been determined months or years earlier.”*

45. Greenwich also say at the start of their Response (A25)

*“The Commissioner’s conclusion that the Requests were vexatious under section 14(1) FOIA was correct for the reasons given in the DN and further explained below. Mr Bright has identified no arguable grounds of appeal. The Requests were an unreasonable and improper use of FOIA, in that they were seeking to re-open a personal dispute which had been finally dealt with under the Council’s formal Code of Conduct and complaints procedures. Responding to the requests would, having regard to this context and relevant background, have placed a burden on the Council which was disproportionate to any public interest in the requested information...”*

### **The Commissioner’s case**

46. The DN sets out the Commissioner's position (A1) and this is then referred to in the Commissioner's Response (A18-21). From the DN para 28 and following we noted that:-

*"The Commissioner's position is that the Council is entitled to rely on section 14(1) to refuse parts [4] and [5] of the request of 26 March 2021 and the entire request of 26 April 2021."*

47. As regards part 4 of the March Request the Commissioner's says (A6 para 29) that it:-

- *"...is a meta request and while not an inherently vexatious type of request may be refused as such if a public authority can evidence that to comply with the request would pose a disproportionate level of disruption"*
- *"...complying with the request would require the involvement of four service areas and a diversion of officer resources away from core duties, placing a significant burden on the Council."*

48. As regards part 5 of the March Request as clarified by the April Request the Commissioner in the DN (para 30 A7) concludes that these are matters personal to Mr Bright which have been raised within the procedures of Greenwich. The DN says:-

*"Making information requests in an attempt to settle a personal dispute is unreasonable and an improper use of FOIA, therefore the Commissioner is satisfied that section 14(1) is engaged in respect of part [5] of the request on the basis that the complainant's motive is to reopen matters that have been considered closed by the Council"*

49. Items 2-4 of the April Request the Commissioner again considered were meta requests and (para 31 A7)

*"...therefore may be an attempt to obtain information with a view to reopen matters that have been considered closed by the Council."*

50. The Commissioner also concluded (A7 para 32) that even if Greenwich were to reply to the Request Mr Bright would submit more requests and that:-

*"there is limited public interest in the type of information the complainant is seeking, within the given context. It is fairly transparent that the information request has been made in relation to matters affecting the requester only."* (A7 para 33)

### **Mr Bright's case**

51. Mr Bright's position was set out in his Appeal (A9-17) and Reply (A38-44). He was able to expand on these at the Appeal. For example:-

- he told us that he was seeking the truth as a member of the public but Greenwich were trying to silence him based on his beliefs and views and had "hit a wall" trying to engage.
- He said that this was not a twitter dispute but started when Mr Thorpe's abused his power and harassed him by going to his employer – which he did because of the Equalities and Human Rights Commission report on antisemitism in the labour party published in October 2020 raised by Mr Bright. He said that Mr Thorpe was harassing him to avoid criticism.

- he referred to page C117/C118 (a letter from Greenwich to the Commissioner in January 2023) which he said had sought to downplay the harassment of him by Mr Thorpe.
- Mr Bright referred to the costs incurred by Greenwich in this process which he said could have been spent engaging more constructively.
- he was concerned about what he saw as discrepancies in what he was being told.
- he thinks there is a genuine interest in the connection between the MAT and Greenwich.
- He said that while he may be considered “abrupt” there was no evidence of harassment, no rudeness, no insults and that it was vexatiousness on the part of Greenwich that had led to this.
- He referred to the public interest in public accountability and that Greenwich was seeking to avoid this by the misuse of section 14(1).

52. In the Notice of Appeal (A14-15) Mr Bright in summary says:-

- that the Commissioner’s decision to allow Greenwich to rely on s14(1) is *entirely unfounded and should be reconsidered*
- that he has “*a legitimate interest in the information, and the public interest in disclosure outweighs any potential harm or prejudice that may arise from disclosure*”.
- Greenwich made an error in its reply to him at one point which may “*suggest that the Council did not properly consider the request and raises questions about their competence and commitment to transparency and accountability.*”
- that Greenwich should be required to carry out “*a proper search of all relevant records, including personal email accounts and phones, to ensure that all information that is not exempt from disclosure is provided to the complainant and that they should be required to provide it to him in a reasonable time frame.*”
- that “*the Council's assertion that the requests were an attempt to reopen issues that have already been substantively addressed by the Council is unsupported by evidence.*”
- that he has “*..legitimate reasons for making repeated requests, centering on concerns that the information was not being lawfully disclosed and that the Council had not fully addressed his complaints.*”
- that “*Without evidence to support the Council's assertion, it is inappropriate to dismiss the complainant's requests as an attempt to reopen issues.*”

53. Mr Bright's Appeal concludes as follows (A15):-

*“In summary, the Council's response to the Commissioner does not provide sufficient justification for its actions in regards to data protection, and its assessment of the complainant's requests is unsupported by evidence. The Council should be held accountable for its obligations under data protection law and should not dismiss legitimate requests without sufficient cause.”*

54. His position as set out in his Reply (A38-40) includes that:-

- these matters are not a personal dispute with Mr Thorpe but were “2...a legitimate expression of concern regarding Cllr Thorpe's conduct and statements, which I perceived as discriminatory and based on my political and philosophical beliefs and Jewish background.”
- his use of FOIA was “4...a legitimate attempt to gain access to information related to my complaints against Cllr Thorpe, which, I believe, would have shed light on the Council's handling of the matter.”
- “5....the importance of obtaining the requested information is substantial, as it pertains to matters of public interest, transparency, and accountability. The Council's handling of my complaints and its subsequent reluctance to provide the information raise concerns about due process and adherence to the law.”
- ““6.. the public interest lies in ensuring that public officials, such as Cllr Thorpe, are held accountable for their actions and statements. Transparency in the Council's decision making processes is crucial to maintaining public trust in local governance.”
- “15 Transparency in governance is essential for upholding public trust and accountability. By attempting to divert attention from the substance of the appeal and focusing on personal matters, the Council undermines the principles of openness and accountability that are the foundation of a democratic society.”
- “17...my requests were not merely a rehashing of personal matters. They were driven by the public interest in ensuring that elected officials and public bodies uphold high standards of conduct and transparency”.

55. Mr Bright makes reference to *Dransfield* and says (A42) “I firmly assert that my requests do not fall under any of these themes.”

56. In the conclusion of his Reply at para 37-39 (A44) Mr Bright says:-

*“...I believe that my Grounds of Appeal have raised valid concerns about the Council's decision to refuse my requests under section 14(1) FOIA. The public interest in transparency and data protection should be given due consideration when evaluating the burden on the Council.*

*I firmly believe that the Council's response fails to address the crux of the matter and mischaracterises the nature of my complaints and the requests for information. The Council's assertion that the requests were vexatious and its refusal to disclose the information sought undermines the principles of transparency, accountability, and fairness.”*

*“.....Upholding the Information Commissioner's decision would set a dangerous precedent, enabling public bodies to avoid scrutiny and accountability by dismissing legitimate requests under the guise of vexatiousness.”*

## **Review**

57. We considered whether in our view the Commissioner had been correct in the DN to support the designation of the Request as being vexatious.

### **Burden**

58. As regards the Request itself it is clear to us that to answer it would have involved Greenwich with a significant amount of work. For example Mr Bright asks for

*“...all telephone records and correspondence between the [MAT] including but not limited to the CEO ...and the Royal Borough of Greenwich, including but not limited to [Mr Thorpe] - I request all correspondence between 1st August 2019 and 1st April 2021.*

*Specifically, please conduct a search of [Mr Thorpe’s] personal phone, which is not exempt from disclosure under the FOIA if, as it appears, it was used to conduct council business with Cllr Thorpe acting as Leader-designate.”*

59. Greenwich say (A33/34)

*“In order to respond, the Council would have had to liaise with four service areas in the Council (the Chief Executive’s Office, the Leader’s Office, Legal Services and the FOI/Data Protection team) which had been involved in answering the January Request to determine what information was held, and to consider such matters as exemptions and redactions for personal data and legal privilege.”*

*“The terms of this request went significantly wider, seeking all communications between the Council and the [MAT] over a period of 20 months. As the [MAT] operates a number of schools in ...Greenwich, and accordingly has dealings with the Council for a range of reasons and across different service areas, that information is likely to be extensive; further there is no one centralised record-keeping system which would record all interactions of this kind. All of the information would have had to be considered for appropriate exemptions and redactions of personal data. The burden of responding was therefore substantial.”*

60. Mr Bright acknowledges (page A43 para 29) that the Request was “broad” but we accept counsel’s submission in the skeleton that (page 12):-

*“There was also a specific and very considerable burden associated with Part 5. As the [MAT] operates a number of schools in the Royal Borough of Greenwich, and accordingly has dealings with the Council for a range of reasons and across different service areas, the information within scope of this part of the request is likely to be extensive; further there is no one centralised record-keeping system which would record all interactions of this kind. All of the information would have had to be considered for appropriate exemptions and redactions of personal data.”*

61. Mr White says (D156 para 22)) that Mr Bright's requests created significant *challenges and workload for the team due to their number and overlapping nature including two requests being submitted as part of internal reviews for preceding requests.*”

62. Greenwich (A34) says:-

*“The burden of responding in these circumstances, in particular given the wider background was clearly disproportionate. The burden has to be considered, in particular, in*

*circumstances where the Council has already devoted resource to considering Mr Bright's original complaint carefully in accordance with its statutory procedures, and to responding to his earlier SAR and FOI requests."*

63. We concluded that the Request was also burdensome based upon the wider background noting:-

- the many matters listed in the chronology from early 2020 including the Code of Conduct complaints process.
- the overlapping nature of the FOIA requests from January 2021 to March then April 2021
- the similarity in scope between the SAR and FOIA requests.

64. The Request(s) are meta requests. While "*there is nothing intrinsically vexatious about a request for information about a request*" it was our view that based on the evidence in this appeal they would cause a disproportionate and unjustified "*level of disruption, irritation or distress...*" when judged against the value and/or serious purpose.

65. In our view "*the number, breadth, pattern and duration of previous requests...*" is a telling factor from which we concluded that "burden" was present.

66. Finally we also noted that Mr Bright's reaction to the Response to the April Request on 4 June 2021 was to make a further FOIA request (which Greenwich have refused by section 14(1) (see D319 and 343). He asks:-

*"In accordance with FOIA, I require all records (including but not limited to all correspondence, invoices etc) in relation to the commencement and renewal of legal services provided to Inspire Partnership Academy Trust for the following periods: 2019-2020 and 2020-2021."*

67. The existence of this further FOIA request was in our view also evidence of burden caused by "*the anticipated present and future burden on the public authority.*"

### **Motive**

68. The Respondents refer to Mr Bright's motive for the Requests as being to continue with his dispute with Mr Thorpe. Mr White in his statement (D156) says:-

*"Mr Brights requests show a clear pattern of using the FOI process to target the then leader of the Council...as part of a disagreement between the two of them, and named officers of the Council.*

*"Mr Bright's SARs and FOI requests exclusively related to a dispute between Mr Bright, Councillor Danny Thorpe (the leader of the Council) and the [MAT] and related complaints made by Mr Bright"*

69. In Greenwich's reply to the Commissioner on 23 January 2023 (D355) they also say

*“....this request is made to further Mr Bright’s personal disputes with the Council and particularly Councillor Thorpe..... Mr Bright is attempting to reopen issues which have been addressed by the Council.”*

70. In its Response the Council says for example:-

*“The Requests were an unreasonable and improper use of FOIA, in that they were seeking to re-open a personal dispute which had been finally dealt with under the Council’s formal Code of Conduct and complaints procedures (A26)”*

*“The reasonable inference is again that the motive of Mr Bright was to reopen his complaint about Cllr Thorpe and/or its handling, both of which had been finally determined by the Council under its formal procedures.(A34)”*

71. Mr Bright says that for him it was not a personal dispute with Mr Thorpe. The purpose of his requests were explained by him in his Reply as follows:-

- *“my requests were not merely a rehashing of personal matters. They were driven by the public interest in ensuring that elected officials and public bodies uphold high standards of conduct and transparency. As a concerned citizen, I firmly believe that public authorities should be held accountable for their actions and that transparency is essential for building and maintaining public trust.(A48)”*
- *Contrary to the Council's assertion, my information requests were not an unreasonable or improper use of the Freedom of Information Act. Rather, they were a legitimate attempt to gain access to information related to my complaints against Cllr Thorpe, which, I believe, would have shed light on the Council's handling of the matter. (A39)*
- *It is vital for the public to understand how the Council handles complaints against its members and how it ensures transparency and accountability in its proceedings (A40)*
- *My requests for information are motivated by a sincere desire to shed light on the Council's decision-making processes and the handling of my complaints. (A40)*
- *The questions asked were not intended to target individuals personally but to understand how certain decisions were made by the Council and its members. Seeking information about interactions on social media and the Council's record-keeping practices is essential in assessing transparency and accountability within the Council. (A41)*
- *Inquiries about the handling of complaints and the advice provided by the independent person are necessary to ensure that the Council's procedures are fair and impartial. Seeking information about whether Cllr Thorpe made written representations is also relevant to understanding the decision-making process surrounding the complaint. (A41)*
- *My inquiries were made with a genuine and legitimate public interest in mind, seeking essential information relevant to matters concerning Cllr Thorpe's conduct as a public official and the Council's handling of my Code of Conduct complaint. My intentions were not to harass or distress the Council's staff but to seek accountability and transparency in public affairs, which is essential for a functioning democracy.(A42)*

72. A requester may have more than one motive and we accept that Mr Bright's motives included the themes referred to above. However he also says:-

*“my initial complaints were... a legitimate expression of concern regarding Cllr Thorpe's conduct and statements, which I perceived as discriminatory and based on my political and philosophical beliefs and Jewish background.(A38)”*

73. It was also noted that within the Requests themselves Mr Bright refers directly to Mr Thorpe almost throughout including (underlining added):--

*“[1]...has the Leader of the Council either inquired and/or requested that certain content be posted on twitter, or has the Royal Borough of Greenwich received a direct message (DM) from the Leader of the Council's private and personal twitter account containing a tweet posted by the Leader of the Council?”*

*[2] Has the Royal Borough of Greenwich followed the Leader of the Council's private account or retweeted the Leader of the Council's personal tweets and how are these decisions made?*

*[3] Has the Leader of the Council made complaints to employers of residents of the Royal Borough of Greenwich, whilst attaching copies of their tweets referencing services provided by the Royal Borough of Greenwich*

74. This is also the case in the April Request:-

*“I require all telephone records and correspondence between the Inspire Partnership Academy Trust, including but not limited to the CEO Robert Carpenter, and the Royal Borough of Greenwich, including but not limited to Cllr Danny Thorpe. I request all correspondence between 1 August 2019 to 1 April 2021.*

*Specifically, please conduct a search of Cllr Danny Thorpe's personal phone, which is not exempt from disclosure under the FOIA if, as it appears, it was used to conduct council business with Cllr Thorpe acting as Leader-designate.”*

*“[2] I also require all records relating to a Code of Conduct complaint against Cllr Thorpe made on 10th and 15th June 2020 and all correspondence between and amongst councillors, senior and chief officers in relation to this matter. Please conduct a search of the personal email accounts and personal phones of Ms Debbie Warren, Chief Executive of the Royal Borough of Greenwich, Mr John Scarborough, Director of Legal Services, [name], Director of Children's Services, [name], Deputy Chief Executive of the Royal Borough of Greenwich and Cllr Danny Thorpe, Leader-designate. You will be aware that data held within personal email accounts and on personal mobile phones is not exempt from disclosure under FOIA if, as I understand, it has been used to conduct council business.*

*[4] Please could you confirm if Cllr Thorpe made written representations in relation to the matter of 10th and 15th June 2020. If so, I request that this written representation is disclosed as it relates to Cllr Thorpe acting as Leader-designate and disclosure is in the public interest.”*

75. Mr Thorpe was the Member against whom Mr Bright brought a complaint in June 2021 (C120) due to the way in which (on Mr Bright's case) Mr Thorpe had in his role as Leader of Greenwich “brought about a complaint with my employer to address a disagreement on

*his personal social media account*” This remains the theme in Mr Bright’s code of conduct complaint form (C130) in which Mr Bright starts *“I would like to raise a formal complaint relating to the conduct of Cllr Danny Thorpe”*

76. Whether justified or not (and that question is not for this Tribunal) in our view Mr Bright’s motives in making the FOIA requests did involve the issues he had with Mr Thorpe.
77. In the skeleton (page 14) counsel for Greenwich also suggests that an inference can be drawn that Mr Bright by his actions *“intended to harass the various parties concerned”*. We did not accept this.
78. Our conclusion is that Mr Bright’s motives in making the Requests were a combination of a desire to continue to challenge Mr Thorpe’s actions and have those actions reviewed, and, connected to that, the way in which his concerns had been dealt with by Greenwich. This is in effect what he says in his Reply at para 31 (A43):-

*“While I acknowledge that some aspects of my inquiries were related to personal disputes, it is important to recognise that these disputes were linked to broader concerns about accountability, governance, and public interest..”*

#### **The value/serious purpose**

79. Greenwich in its response (A34/35) says that

*“There was no or no significant public interest in the information requested. As the Commissioner found, it was “fairly transparent the information request has been made in relation to matters affecting the requester only.”..... “Looked at in the round, the information requested was of interest to Mr Bright personally because of his disputes but was not of any or any significant wider public interest.”*

80. Counsel for Greenwich also referred us to the First-tier Tribunal Decision of *Cyril Bennis - v- (1) The Information Commissioner (2) Stratford on Avon District Council [2021] UKFTT 2017/0220*. In this Decision, when considering section 36 FOIA, the Tribunal said at 45-47:-

*“We agree that transparency, openness and accountability are always important public interests, but are satisfied that these should not be afforded especial weight in the context of local democracy. Rather, the weight afforded must always be fact dependant and varies according to context.*

*We note that the Council has provided the Appellant with most of the information held, and that Councillor A has already agreed to a degree of transparency in relation to her personal data, having agreed that the Appellant could see the comments she made in response to his complaint and in relation to her actions.*

*In the context of the investigation of a complaint found to be unwarranted, we accept that the complainant will have a particular interest in seeing all information that led to such a conclusion. However, this is a private interest, and is therefore irrelevant to the public interest balancing exercise.”*

81. The Commissioner in the DN says:-

*“...there is limited public interest in the type of information the complainant is seeking, within the given context. It is fairly transparent that the information request has been made in relation to matters affecting the requester only.”*

82. Mr Bright says that the information is of concern to him but also:-

- *“. it pertains to matters of public interest, transparency, and accountability.”*
- *the public interest lies in ensuring that public officials.... are held accountable for their actions and statements. Transparency in the Council's decision making processes is crucial to maintaining public trust in local governance.”* and for *“.... upholding public trust and accountability.*
- *“...my requests were not merely a rehashing of personal matters. They were driven by the public interest in ensuring that elected officials and public bodies uphold high standards of conduct and transparency”.*
- *My inquiries were made with a genuine and legitimate public interest in mind, seeking essential information relevant to matters concerning Cllr Thorpe's conduct as a public official and the Council's handling of my Code of Conduct complaint. “*

83. We accept that replies to the Requests could have a value for Mr Bright. As regards the information sought where it relates to a continuation of his personal interest regarding Mr Thorpe, we do consider there is minimal public interest served in responding to the Request. In so far as the Request is motivated by a desire to have *“transparency, and accountability”* that could have been a serious purpose in terms of the objective public interest. However in this case any such public interest there may have been had been satisfied in the investigations and processes conducted by Greenwich and the Ombudsman, their outcomes and the previous information provided to Mr Bright.

84. As is said in *Dransfield*

*“.. 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.”*

and *Bennis:-*

*“in the context of the investigation of a complaint found to be unwarranted, we accept that the complainant will have a particular interest in seeing all information that led to such a conclusion. However, this is a private interest, and is therefore irrelevant to the public interest balancing exercise.”*

### **Causing harassment of or distress to staff**

85. Mr Bright in his Reply (A42) says *“My intentions were not to harass or distress the Council's staff”* and as set out above, we do not conclude that Mr Bright was motivated by an intention to harass or cause distress.

86. Counsel in the skeleton (page 11) refers to the *argumentative tone of accompanying correspondence*”. Those in receipt of the communication with Mr Bright may have felt under pressure by its *“pattern, frequency and overlapping nature.”* However we did not

conclude that it was “argumentative” or that even if it was that was evidence of the Request or Mr Bright causing distress or harassment of staff.

87. We had no witness evidence in which it was said that Mr Bright had caused harassment or duress to staff. Mr White in his statement only goes as far as to say that the Requests caused challenges and workload issues for the team involved and that Mr Bright was being “unreasonably persistent”(D156). We noted that Mr White did not know of anyone who had actually been distressed.
88. In its Response (A33) Greenwich say “*Given the background set out above, the request was harassing of staff...*” and then at A36 “*The Council is also mindful of the harassing and distressing effect that responding to the Requests looked at in the round would have on individuals....*”
89. The Response refers specifically to Mr Thorpe and “*senior Council officials, who had been the subject of Mr Bright’s original complaints.*” We accept that for Mr Thorpe in particular the issue might have been worrying for him but note there was no evidence from him saying that. We also noted from Greenwich’s Response that they say:-
  - “*Whilst the Council accepts that councillors and senior officials can be expected to be held accountable, and to be robust when responding to complaints, they are also entitled to expect that final decisions on complaints will be treated as final, and they will not be subject to repeated re-opening of the subject matter of the complaint through the application of FOIA.*”
90. From the available evidence, from the submissions and having heard from Mr Bright in the Appeal we concluded that Greenwich had not satisfied us that Mr Bright's conduct had in fact harassed or distressed staff. However we did conclude that for the people involved to be further and repeatedly involved a FOIA request that seek to re open these same matters could be harassing and distressing.

### **Decision**

91. We have reached the conclusion that Greenwich did face a significant burden in being asked to respond to the Request itself and in the context of the history of requests and the wider course of dealing seen in the chronology.
92. We have also concluded that the Request did not have a serious purpose as regards the objective public interest.
93. Additionally, while on the evidence, harassment and distress has not yet been caused we consider it likely it would be if FOIA requests continue to be used to re open these issues as seems to be the case even after the April Request.
94. It is our view that taken together in the context of all the circumstances these issues do mean that the Request was vexatious. Accordingly the DN was in accordance with the law and the Commissioner ought not to have exercised his discretion differently.
95. The Appeal is dismissed.

**Signed Tribunal Judge Heald**

**Date: 22 March 2024**

## Appendix - Chronology

<b>Date</b>	<b>Event</b>
5 March 2020	SAR 1
8 June 2020	Response to SAR 1
15 June 2020	code of conduct complaint relating to Mr Thorpe
16 July 2020	SAR 2
10 September 2020	Complaint against council officers
25 September 2020	Code of conduct complaint determined
7 October 2020	Officer complaint determined
14 October 2020	Complaint to Ombudsman
15 October 2020	Response to SAR 2
20 October 2020	SAR 3
25 November 2020	Ombudsman final determination
3 January 2021	January FOIA Request
19 March 2021	Response to January FOIA request
26 March 2021	Request for review of 19 March response (also the March FOIA request)
14 April 2021	Response to SAR 3
15 April 2021	ICO formal response to SAR complaint
26 April 2021	April FOIA Request
27 April 2021	Internal review of January FOIA request
25 May 2021	Response to April Request
4 June 2021	Request for review of April request
4 June 2021	FOIA request
25 June 2021	Response to June FOIA request
30 June 2021	Review of the April Request
1 July 2021	Response to March request
9 July 2021	Response to SAR complaint
14 July 2021	ICO response on the SAR complaint
25 August 2021	Request for internal review of the March FOIA request
22 September 2021	Internal review of the March request
19 December 2021	Section 50 FOIA complaint
16 February 2023	Decision Notice