



Neutral citation number: [2024] UKFTT 471 (GRC)

**Appeal Number: EA/2023/0388**

**Decision given on: 06 June 2024**

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

**Between:**

**PETER WEBB**

**Appellant:**

**AND**

**THE INFORMATION COMMISSIONER**

**Respondent:**

**Date and type of Hearing:** - 16 May 2024. – On the papers.

**Panel:** Brian Kennedy & Specialist members Rosalind Tatam and Kate Grimley Evans.

**Date of Decision:** - 28 May 2024.

**Result:** The Tribunal dismiss the Appeal.

## REASONS

### **Introduction:**

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA"). The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("DN") dated 21 August 2023 (reference IC-226424 -R8M6), which is a matter of public record.
2. Details of the background to this appeal, the Appellant's request for information and the Commissioner's decision are set out in the DN and the appeal arises subsequent to the Appellants submission for a request for information regarding expenditure for a local park project to Lydd Town Council (the Council). The Commissioner's decision is that the Council is entitled to rely on section 14(1) (vexatious request) of FOIA to refuse to provide the requested information.

### **Background:**

3. The Appellant has submitted multiple requests for information to the Council both personally and as part of the local resident group. The requests follow a similar theme and are aimed at ensuring the Council are accountable for any actions taken and transparent in its use of public funds, as well as its decision-making processes.
4. A number of previous decision notices have found in favour of the Council's entitlement to cite section 14(1) of FOIA to refuse the requests, this includes the most recent First Tier Tribunal (FTT) ruling to dismiss the complainant's appeal for a number of previous similar requests including: EA/2022/0187,

EA/2022/0188, EA/2022/0189, EA/2022/0190, & EA/2022/0218,  
EA/2022/0219

5. The Commissioner has taken into account the FTT findings and considered its relevance in this case as well as the previous decision notices as mentioned above. He has also considered the case on its own merits as per his case-by-case guidance.

6. The Appellant made the following information request to the Council on 21 February 2023:

*Re1ueat in relation to :- "Rype Play Park;*

*1 Copy of the itemized account for the £60k expenditure for the above-named Play Park.*

*2 Copies of the three company invoices that have completed the play park phase one refurbishment*

*3 Copy of the overall plan for the above-named Play Park's refurbishment, including all phases.*

*Under the Act I am entitled to a response within 20 working days of your receipt of this request.*

*Having considered the FOIA premise on disclosure, I have followed the Information Officer's guidance. This request upholds the Public Interest principles by ensuring:*

- Transparency, accountability and promotes public understanding, safeguarding democratic processes,*
- good decision-making by public bodies,*
- upholding standards of integrity,*
- ensuring justice and fair treatment for all,*
- securing the best use of public resources, and*
- ensuring fair commercial competition.*

*Request No 1 and No 2: These requests ensure transparency in securing the best use of public resources i.e. public money.*

*Phase 1 work has now been completed therefore my request will not affect commercial sensitivities between contractors or the public body concerned.*

*Request No 3: This request will promote public understanding of the play park project, evidencing good decision making by this public body. It is worth mentioning at this point, this play park project has been kept secret from the general public, without any consultation (i.e. types of equipment, park layout, impact to resident lives, compliance and protection of Village Green registration and status etc),*

*If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all non-*

*exempt material. I reserve the right to appeal your decision to withhold any information."*

7. The Council did not respond to the request as it considered it was not obliged to do so by virtue of section 17(6) FOIA.

**Reasons for decision:**

8. The DN reasoning covers whether the Council is entitled to rely on section 14(1) of FOIA to refuse to provide the requested information.
9. The position of the Council is that it considers the request to be vexatious and designed to cause a disproportionate and unjustifiable level of distress, disruption, and irritation. It also considers the request to be inappropriate and an improper use of a formal procedure.
10. The Council stated that the Appellant is part of a resident's group who have submitted a large number of requests to the Council. It explained that it has spent a considerable amount of time handling the group's requests which has placed a strain on the Council's time and resources.
11. The Commissioner was aware that the Council has received a large number of requests from the group as the Commissioner has received multiple complaints from its members about the Council's handling of requests
12. The Commissioner recognised that the Council is a small public authority. He therefore accepted the Council's argument that complying with the request would place severe pressure on the Council's limited resources.
13. The Commissioner's decision was that the request is vexatious. Therefore, the Council is entitled to rely on section 14(1) of FOIA to refuse to comply with the request. The Commissioner was also satisfied that, having provided the Appellant with a suitable refusal notice previously, it was appropriate for the Council to rely on section 17(6) to not respond to the request above.

14. The Commissioner required no further action to be taken by the Council in relation to the request.

### **Grounds of Appeal:**

15. The Appellant argues as follows:

*“This Decision Notice supports Lydd Town Council’s decision to ignore my Freedom of Information request dated 21st February 2023 claiming it is a vexatious request. This council’s stance of ignoring my requests began in September 2021; my requests since that date have all been classed as vexatious. You will have on file my previous attempts and their outcomes.*

*The ICO report repeats the same statements I’ve read times before, plus the recent First Tier Tribunal outcome. Their Reason’s for Decision’ statements again, repeat the same words as previously read on earlier cases.*

*My Appeal:*

*This report has failed in supporting my request; instead, it is in agreement with Lydd Town Council and like them fixated to my request being vexatious.*

*Quote: A number of previous decision notices have found in favour of the Council’s entitlement to cite section 14(1) of FOIA to refuse the requests, this includes the most recent First Tier Tribunal (FTT) ruling to dismiss the complainant’s appeal for a number of previous similar requests.*

*My previous requests were 11.4.22 and 13.5.22 these being 9 months prior to this current request 21.2.23, thus hardly meeting the vexatious definition of being designed to cause a disproportionate and unjustifiable level of distress, disruption, and irritation.*

*The ICO refers to:*

*Quote: The Commissioner is also satisfied that, having provided the complainant with a suitable refusal notice previously, it was appropriate for the Council to rely on section 17(6) to not respond to the request above.*

*The commissioner will also be aware that the 21.9.21 refusal notice she refers to has been used repeatedly by Lydd Town Council.*

*I was informed by an ICO Lead Caseworker in writing that expressly stated that:*

*Quote:*

*‘With regards to your concern about the letter that you have received from the Lydd Town Council, a public authority cannot place a blanket ban on an individual from making future requests under FOIA’.*

*In addition, the ICO website re-iterates the same statement: ‘You cannot refuse a request from the same requester just because it is for information on a related topic’.*

*(Source: Section 14- When can we refuse a request for information?)*

*The ICO states that the Freedom Of Information Act does not define what makes a vexatious request. The dictionary definition of the term "Vexatious" is only the starting point: public scrutiny may be irritating or annoying, but it is the essence of the FOIA. Judge Wikeley confirmed that the term 'vexatious' applies to the request, not the requester (Dransfield, para 19). He also warned that the right to deem a single request vexatious "should not be seen as giving licence to public authorities to use section 14 as a means of forestalling genuine attempts to hold them to account" and that "a lack of apparent objective value cannot alone provide a basis for refusal under section 14. 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, paras 36 and 38 respectively). My request is very valid, it asks for information regarding the expenditure of public money on a playpark. The amount spent is unclear and confusing, the council meeting minutes quote £60k, the council financial spreadsheet for this period quoted £50k and the Town Clerk's Report at the Annual Town Meeting was £54k. The Town precept was raised by £29k to help pay towards this project, this being during a serious cost of living crisis for families in the community. I hope this helps you understand why I submitted my request.*

*The ICO website states:*

*'You can ask for any information you think a public authority may hold. The right only covers recorded information which includes information held on computers, in emails and in printed or handwritten documents as well as images, video and audio recordings.*

*My request falls totally within the above criterion and can be seen relates to an issue concerning the community.*

*Conclusion.*

*My hope is that this appeal will be read and understood as to why I submitted my request. When I submit my next request, this whole 'Merry-go-round' will be repeated, wasting everyone's time and especially wasting taxpayer's money, as a customer of the ICO, is this cycle really what they should be promoting? It is disappointing that this Public Authority, for almost two years, is allowed to continue to 'blank' my requests when the FOIA clearly states they are in breach of the FOIA in doing so.*

*The ICO refer to the First Tier Tribunal in her case against me but written in there is a statement from the Judge Oliver stating it is inappropriate for the Public Authority to continually use their letter against me. I am patient, but when am I going to see some evidence of governance, or is this process just a paper exercise? I apologise should I seem facetious but this whole episode is frustrating and is seemingly going nowhere, there are ways in dealing with this repetitive cycle, but no one is prepared to make that decision. Yours sincerely Peter Webb Lydd Resident."*

16. In support of his Grounds of Appeal the Appellant wrote as follows:

*“Dear Sir*

*I have decided to take up your offer of being able to submit more information which may be of assistance.*

*My Freedom of Information request relates to the refurbishment of a Play Park, the overall financial amount varies depending on where you read it, hence my request. The whole project was discussed, and decisions made behind closed doors, total secrecy. My request is in regard to public money expenditure and using our democratic right in holding Lydd Town Council to account for that spend.*

*In my attempt to further understand the complexities of the FOIA I have read the following passage which I believe could be appropriate.*

*Freedom of Information Code of Practice Section 45*

*Transparency and confidentiality obligations in contracts and outsourced services public authorities may be asked to accept confidentiality clauses when entering into a contract with a third party. Public authorities should carefully consider whether these agreements are compatible with their obligations under the Act and the public interest in accountability.*

*It is important that both the public authority and the contractor are aware of the legal limits placed on the enforceability of such confidentiality clauses and the importance of making sure that the public can gain access to a wide range of information about contracts and their delivery. Public authorities should be mindful of any broader transparency obligations to publish regular details of spending, tenders and contracts on external suppliers; contracts should not hinder such transparency reporting.*

*In addition, I'd like to include - Procurement Policy Note Increasing the Transparency of Contract Information to the Public Action Note 13/15 31 July 2015*

*On 24 March 2015, the Government published a set of general transparency principles that require public procurers proactively to disclose contract and related information that may previously have been withheld on grounds of commercial confidentiality.*

*This new presumption in favour of disclosure of information requires procurers to set out in advance of a contract award, the types of information to be disclosed to the public, and then to publish that information in an accessible format.*

*Finally, this Public Authority (Lydd Town Council) sent me a letter dated 21.9.2021 stating they would no longer acknowledge my FOIs; due they claim my requests being vexatious.*

*You were involved with the ICO decisions at that time.*

*That letter has not been rescinded, despite the ICO and GRC stating it can't be used continually as a 'blanket' letter, seemingly, it still is, due to no response to my request. Should you require these documents as evidence I would be pleased to forward them to you, but they are available to you via these previous cases:*

*IC-130872-Q0G5; IC-132723-D5R2; IC-35483-Z6N2; IC-144866-P4L0; IC-180499-L5Z1; and IC-180519-F8R3.*

*Yours sincerely*

*Peter Webb.”*

*Outcome of appeal or application or application:*

*Please tell us what outcome you are seeking from your appeal or application*

*My hoped for outcome is: Lydd Town Council's 'blanket' letter to be removed (They are contually in breach of FOIA in continually using it) My FOI request to be honoured."*

17. The Grounds of Appeal (“GoA”) dated 01 September 2023 demonstrate that the Appellant strongly disagrees with the Commissioner’s assessment of the facts, of his application of the FOIA, and the Commissioner’s understanding of how it can, or should, in this case be used. He accuses Council, and by direct implication the Commissioner, of prejudice and of unreasonable conduct. He in effect argues that the Commissioner erred in law and in the exercise of his discretion in his reasoning and conclusion in the DN.

#### **The Relevant Law:**

18. S.1 FOIA General right of access to information held by public authorities:

- (1) Any person making a request for information to a public authority is entitled;
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

S14 FOIA Vexatious or repeated requests:

S1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

S17 FOIA -Refusal of request - the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

19. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal. The *Dransfield* definition



establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. *Dransfield* also considered four broad issues at paragraph [45]:

*“(1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.”*

### **The Burden:**

20. First, 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.
21. As to the *number*, 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. Volume, alone, however, may not be decisive. Furthermore, if the public authority in question has consistently failed to deal appropriately with earlier requests, that may well militate against a finding that the new request is vexatious.
22. As to their *breadth*, a single well-focussed request for information is, all other things being equal, less likely to run the risk of being found to be vexatious. However, this does not mean that a single but very wide-ranging request is

necessarily more likely to be found to be vexatious – it may well be more appropriate for the public authority, faced with such a request, to provide advice or guidance on how to narrow the request to a more manageable scope, failing which the costs limit under section 12 might be invoked.

23. As regards the *pattern*, a 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.
24. In this case the Tribunal note that Council has dealt with previous undoubtedly burdensome requests with some patience, diligence and courtesy culminating in the decision to rely upon s.14(1) FOIA on 21 September 2021 which was in our view justifiably made. We have to taken note of the history of previous requests and the outcome of previous multiple appeals. We find in the circumstances and on the facts, this request amounts to a significant and unreasonable burden on the Council.

#### **The Motive:**

25. Second, 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”. There is, for example, no need to provide any reason for making a request for information under section 1; nor are there any qualifying requirements as regards either the identity or personal characteristics of the requester. However, 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.

26. 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. 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. In that context it must be relevant to consider the underlying motive for the request. As the FTT 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."*

27. In this case the Requester's motive is ostensibly reasonable, however we were provided with no evidence to support his allegations and find there is no evidence to suggest that the costs of the play park are in any way out of the ordinary nor that the play park raises any grounds for suspicion of wrongdoing on the part of the Council.

**The value or serious purpose:**

28. Third, and usually bound up to some degree with the question of the requester's motive, is the inherent value of the request. Does the request have

a value or serious purpose in terms of the objective public interest in the information sought?

29. The Council, as a local democratic body, has a number of statutory procedures and processes governing its decision-making functions, including holding meetings in open forum and taking questions from members of the public (examples of minutes were provided to us, which has stated that the requester attends each meeting, and his questions are answered at the meetings). It is not reasonable for the Council to be under a constant obligation to continually prove in response to requests that everything it says and does is lawful and above board otherwise it could be constantly overburdened, and the costs would be disproportionate.

**Causing harassment of, or distress to, staff:**

30. Fourth, 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 unacceptable 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.
31. On examination of the exchanges and evidence (e.g. comments made by Councillor Martin Sweeney [D178 in our Bundle] before us we are satisfied that the staff at the Council who were required to deal with this request were caused harassment and distress to an unacceptable degree.

**Conclusion**

32. As the interpretation of a vexatious request has developed over the years the Tribunal and higher courts take a holistic view of all the circumstances in a case to arrive at what admittedly can be a difficult decision. Proportionality is key in this sense and on the evidence before us, the Tribunal take the view that the

Appellant's expectations of the Council in relation to the request in question was disproportionate, manifestly unjustified, inappropriate and an improper use of a formal procedure or the use of FOIA.

33. Accordingly, we also accept the reasoning in the DN and find no error in law or in the exercise of discretion by the Commissioner therein.

34. For all the above reasons and in all the circumstances of this case we must dismiss the appeal.

Brian Kennedy KC

28 May 2023.