



Appeal Number: EA/2023/0344

Neutral Citation Number: [2024] UKFTT 487 (GRC)

Decision given on: 11 June 2024

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

Between:

DENIS GOODWIN

Appellant:

And

THE INFORMATION COMMISSIONER

First Respondent:

AND

LIVERPOOL CITY COUNCIL

Second Respondent:

Date and type of Hearing: - 28 May 2024. – On the papers.

Panel: Brian Kennedy KC, Naomi Matthews and Kerry Pepperell.

Date of Decision: - 4 June 2024.

Result: The Tribunal allow 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 27 June 2023 (reference IC- 232559 G3S1), which is a matter of public record.
2. The Appellant requested from Liverpool City Council (the Council) information relating to social workers and their work with adult social services. The Council determined the request to be vexatious and refused it under section 14(1) of FOIA.
3. The Commissioner's decision is that the request was vexatious and therefore the Council was entitled to rely on section 14(1) of FOIA to refuse to comply with the request for information. The Commissioner did not require the Council to take any steps as a result of this decision.

Request and Response:

4. On 22 February 2023 the complainant wrote to the Council and requested information in the following terms: "How many social workers either solely, or involved in a complaint, have there been with Adult Social Services over the past 5 years. May I please have the figures year by year for the past 5 years. I have figures that show there are approximately 300 complaints per year but they do not show what they are for. I would like to know the figures for social workers who work for adult social services. General numbers please - nothing that can identify anyone."
5. On 2 May 2023 the Council responded, it determined the request to be vexatious and cited section 14(1) of FOIA.

6. Following a request for an internal review on 4 May 2023, the Council provided its review response on 12 May 2023. It maintained its original position to refuse the request under the exemption cited.
7. The Appellant contacted the Commissioner to complain about the way their request for information had been handled. The Commissioner considered whether the Council was correct to refuse to comply with the request under section 14(1) of FOIA and concluded that the request was vexatious setting out his reasons in paragraphs 6 – 33 of the DN.
8. The Appellant in his submissions demonstrates that he strongly disagrees with the Commissioner’s assessment of the facts and 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:

1. 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.
2. S14 FOIA Vexatious or repeated requests:
 - (1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
 - (2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
3. 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:

4. 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.
5. 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.
6. 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.
7. 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.

8. Likewise, as to *duration*, the period of time over which requests are made may be significant in at least two ways. First, 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. Second, given the problems of storage, public authorities necessarily have document retention and destruction policies in place, and it may be unreasonable to expect them to e.g. identify whether particular documents are still held which may or may not have been in force at some perhaps now relatively distant date in the past.
9. In this case the Tribunal note the Appellants submissions to include; as follows;

“I made 15 FOI requests over a 20-month period between 4 May 2021 and 4 January 2023 (decision notice para 23). I do not accept that these requests individually or in aggregate caused the "significant additional and onerous burdens! that Liverpool City Council (LCC) suggest in their letter to the ICO of 19.6.23. The majority of these requests were for copies of existing policies, procedures or guidance dealing with social work and care homes. The council will have been able to find these easily. Some were for statistics that appear to have been readily available to the council.

Four of the 15 requests were refused in full. These are:

- the request of 25/4/2022 (ref. 11576097) of which LCC says “Rejected relating to complaint already dealt with”
- the request made on 29/7/2022 (ref. 12798419) which was refused under section 40(2) as seeking personal information about my mother
- the request made on 29/7/2022 (ref. 12421569) of which LCC says “withdrawn as duplicate, already provided”
- the request of 14/12/2022 asking for the procedure that social workers should follow in replying to emails (LCC said they did not hold the information)

10. The work required to recognise that these requests could be refused would have been minimal. Excluding these refused requests from the total leaves 11 requests over the 20-month period.

11. A number of my other requests were answered simply by providing links to published information. Here too the work involved would have been negligible. Other requests were made because social workers who I had asked for information told me to make my requests under FOIA. Some required so little work that they could not have imposed any appreciable burden at all. My request of 2 November 2022 was for clarification of information about adult social care found on the council's web site. I asked whether adult care plans should be assessed every 6 or every 12 months (the answer provided was every 12 months), for the number of trained staff needed to support the individuals needs (answer: this is determined on a case-by-case basis) and for an explanation of the abbreviation "ICW!" (answer: it refers to the casework management system used). This would have made negligible demand on staff time.
12. The ICO's guidance on vexatious requests says that a public authority is most likely to have a viable case (for finding a request vexatious) where a request requires it to examine a large volume of information which could not be refused on cost grounds under section 12 of FOIA. The guidance says that where the requested information is voluminous and likely to contain exempt information scattered throughout the request may be vexatious if the task of identifying the exempt information "would impose a grossly oppressive burden! on the authority. None of my requests fell into this category. None would have required the council to search through large volumes of emails or manual records.
13. One of his requests (11495877 of 9.5.22) was initially held to exceed the cost limit under section 12 of FOIA. This sought: "copies of all policies, guidance and information you have brought in since the covid crisis began. Especially concerning visiting and visitors to the care homes and how these should take place. I would like the dates each one came into force, and the date it was stopped, and if it is still in force for that to be mentioned in regard to each also, please!"
14. The Council held that responding to the first sentence of my request in isolation would exceed the cost limit but reading the first and second sentences together, to focus on covid-period guidance relating to the visiting of care homes would not. The Appellant accepted this narrower interpretation of my request as accurately reflecting my intention. He did not attempt to insist on the provision of all policies and guidance introduced since the pandemic. The response to this request and some others were provided with "limited redactions' to

remove references to identifiable staff. The workload implications of making these would have been minimal. Significantly, the Council has not offered any estimate of the time it has spent answering his requests, either individually or collectively. He does not believe they imposed the "onerous burden! that the council refers to or the "grossly oppressive burden' cited in the ICO's guidance.

The Motive:

15. 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.

16. 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.”

17. This approach 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. For example, an investigative journalist may make a single request which produces certain information, the contents of which in turn prompts a further request for more information, and so on. Such a series of requests may be reasonable when viewed both individually and in context as a group. The same may also be true of a request made by a private citizen involved in a long-running dispute or exchanges with the public authority. As the IC’s Guidance for public authorities helpfully advises (p.3).

“Many previous cases of vexatious requests have been in the context of a longstanding grievance or dispute. However, a request will not automatically be vexatious simply because it is made in the context of a dispute or forms part of a series of requests. There may be genuine reasons for this. For example, a series of successive linked requests may be necessary where disclosures are unclear or raise further questions that the requester could not have foreseen. Similarly, in the context of a dispute, a request may be a reasonable way to obtain new information not otherwise available to the individual. You should not use section 14 as an excuse to avoid awkward questions that have not yet been resolved satisfactorily. You must always look at the effect of the particular request and consider the questions [the five factors] set out below.”

18. In this case the Appellant submits; my motive throughout has been to obtain the information described in my requests in relation to the care of vulnerable patients, not to disrupt the work of Liverpool City Council, seek revenge against it, or attack or cause distress to its staff.

The value or serious purpose:

19. 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?
20. The Court of Appeal’s Dransfield judgment said: “the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester or to the public or any section of the

public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one, and that is consistent with the constitutional nature of the right. The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious”.

21. The information I requested was of value to me (otherwise I would not have asked for it), it is also of public interest and in particular is likely to be of use to others in Liverpool who may face problems similar to mine. The decision notice (DN) suggests that my purpose in making these requests was in connection with what it describes as a "grievance" which "has been exhaustively considered and addressed" (para 19). Significantly, it provides no indication of the nature of the "grievance! or of the 15 requests, apart from quoting the text of the final request which prompted the vexatious refusal. Instead, it describes the council's view that the requests were prompted by "the complainants' private interests! (DN para 20) and the ICO's conclusion that my request (in the singular) has been made "in relation to matters affecting only the complainant. (DN para 32). These descriptions might suggest that my requests relate to, for example, the failure to offer me an appropriate discount on the purchase of goods. Nowhere does the decision notice acknowledge that my concern relates to the suffering caused to my mother who had been held on a locked landing of a care home for over two years without being taken into the care home's garden; or that she had an assessment under the Care Act when what was required was an assessment under the Mental Capacity Act (as she has no capacity). The section 21A review was delayed for over 14 months, and a second care review was 9 months late. I became concerned that others may have been similarly affected and began to wonder how many other families were experiencing such treatment. The thrust of my requests has been to obtain guidance, policies and procedures, including complaints procedures relating to social work and care homes, including guidance relating to visiting care homes during the pandemic. These are not matters only affecting myself, let alone issues solely involving my private interests. I note in passing that the Upper Tribunal has held that: "A request can have a value or a serious purpose while serving an entirely private interest."

22. Both the Council and the Commissioner have failed to recognise the wider implications of the information I sought and have wrongly asserted that they involve my purely private interests. This indicates a failure to adopt the "holistic approach! required by the Upper Tribunal or to comply 4 with the Court of Appeal's instruction to "consider all the relevant circumstances!

Causing harassment of, or distress to, staff:

23. 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.
24. Paragraph 21 of the decision notice states: "In highlighting harassment or distress (of and to staff) the Council stated that in some instances, the complainant had directed personal grievances against members of staff which have been reviewed and responded to. Although, the Council said, this has not distressed staff on an individual level, the requests are the latest in a series of communications demonstrating obsessive behaviour. The Council believes this can have the effect of harassing staff, due to the collective burden placed on individuals and services. (emphasis added).
25. A public authority, as a corporate body, cannot suffer "distress". If the council say that individual staff have not been distressed, then distress is not a factor in this case. Paragraph 21 DN also suggests that staff have been harassed by the "collective" burden placed on individuals and services. This is to double count the alleged burden of my requests, which is treated not only as a burden in its own right but, because of the workload, also as a source of harassment to staff. It is not suggested that I have used abusive language towards staff or made unsubstantiated allegations against individuals or the authority.
26. I was present with two members of LCC staff in January 2023 who I learned were moving on - I genuinely wished each of them well in their future roles. One staff member in an email mentioned he was moving on - I emailed and genuinely wished him well in his future role also. He replied wishing me the same. I have no ill will - and I truly do wish them all well. What I do have is a case - and a case worth making.

Obsessive behaviour:

27. In paragraph 21 of the DN the council describes my requests as forming 'a series of communications demonstrating obsessive behaviour.' The passage in question is actually a direct quote from the ICO's guidance on vexatious

requests which the council has adopted without explaining what specific behaviour of mine justifies the term 'obsessive'. I do not agree that my conduct has been obsessive. In particular, I have accepted without challenge the redactions that the council has made to information provided to me and its decision to interpret my request of 9.5.22 narrowly. I have not attempted to insist that my requests be answered in full or exactly as made. I believe my conduct does not demonstrate the intransigence, inflexibility or refusal to compromise which are often seen as indicative of obsessiveness.

28. As for 'the pattern of requests and correspondence' referred to by the council (DN para 18) this appears to refer to or include a series of emails I sent when I realised that Liverpool City Council were about to interview my mother under the Care Act - and not the Mental Capacity Act. I emailed the social worker on 8 December 2022 with my concerns. I received no reply. I then emailed the team leader - no reply. I emailed the Team manager - no reply. I emailed the overall section officer - no reply. Finally, I emailed the independent advocate - once again no reply. LCC then carried out this interview under the wrong legislation via the independent advocate despite my many warnings that it was acting under the wrong legislation. Persistence in the face of failures to reply does not indicate vexatiousness. Moreover, this flurry of emails stopped once the misjudged interview took place. The council also claims that if it replies to my latest request about complaints statistics it 'anticipates future requests would be received from the complainant'.
29. In fact, my first request for statistics, which the Council received on 4 May 2021, was not the subject of any follow-up correspondence from me. There is no reason to assume that a reply to the latest FOI request will elicit such correspondence either.
30. The DN states at paragraph 30 that despite receiving answers from the council I have subsequently progressed my concerns to 'multiple channels' which is presumably indicative of my 'obsessive' behaviour. I have attached a summary of the complaints I have made. The multiple channels have contacted have resulted in multiple apologies: from the hospital that discharged my mother without due attention to the Mental Capacity Act; from the Care Home for the prejudice I had suffered at their hands in the early days (the ex-manager is now subject to an investigation by the Nursing and Midwifery Council for her part in my mother's care); and from LCC for inappropriate sharing of personal information with another authority.

31. Additionally, I have just received a report from the Local Ombudsman dated 23 November 2023 finding that LCC were 'at fault for the way it refused to consider [my] complaint.' The council had held that my complaints about my mother's care were out of time because they were made more than 12 months after the events concerned and did not investigate them. The Ombudsman found that two of my four complaints were in fact made within the necessary 12-month period and the council has now agreed to look at them again. These are amongst the matters which the council told the ICO had been 'exhaustively considered and addressed'. (DN para 19) Other complaints with the Local Ombudsman are still pending.
32. Please note Liverpool Councillor Alan Gibbons has sent me a statement dated 23rd October 2023 for me to forward to the tribunal which states: "*I believe the questions raised by Mr Goodwin could highlight general issues related to adult social care in the city and should be regarded as such.*"
33. The ICO guidance illustrates "vexatiousness by drift by reference to the First-tier Tribunal's decision in Peter Shaw vs IC and Arts Council England EA/2019/0304. This was a case in which the requester had been in correspondence with the public authority for 15 months. He had initially sought information about the authenticity of a painting accepted in lieu of inheritance tax, gradually moving to more remote issues culminating with the request which prompted the section 14 refusal. This sought information about "the way his correspondence has been dealt with.
34. In the present case, the request which LCC considered to indicated "vexatiousness by drift" and which the ICO has held to be vexatious was made by me on 22 February 2023. I asked:
"How many social workers either solely, or involved in a complaint, have there been with Adult Social Services over the past 5 years. May I please have the figures year by year for the past 5 years. I have figures that show there are approximately 300 complaints per year, but they do not show what they are for. I would like to know the figures for social workers who work for adult social services. General numbers please - nothing that can identify anyone."
35. However, this is not the end product of a shift from what Judge Jacobs described as "the central issue" towards satellite issues that have become increasingly remote from [the requesters] ultimate purpose.
36. This was the issue I pursued with my first FOI request to LCC of 4 May 2021. That initial request asked:

37. "Please may I know how many complaints have been received by Liverpool Children and Adult Social Services;

Over the past 12 months,

The past 24 months, and

The past 36 months."

38. I asked: "How many social workers either solely, or involved in a complaint, have there been with Adult Social Services over the past 5 years. May I please have the figures year by year for the past 5 years. I have figures that show there are approximately 300 complaints per year, but they do not show what they are for. I would like to know the figures for social workers who work for adult social services. General numbers please - nothing that can identify anyone.!

39. However, this is not the end product of a shift from what Judge Jacobs described as "the central issue towards "satellite issues that have become increasingly remote from [the requester's] ultimate purpose."

40. No "drift" exists here. My February 2023 request was a continuation of an issue I raised in my initial FOI request and not the end product of a series of increasingly remote "satellite issues". My May 2021 request had asked for the number of complaints about social services. My February 2023 request is a refinement of this request, focussing on the number of social workers featuring in complaints.

41. The February 2023 request falls within the class of legitimate requests described by Judge Wikeley at paragraph 36 of the Upper Tribunal Dransfield decision: 'an investigative journalist may make a single request which produces certain information, the contents of which in turn prompts a further request for more information, and so on. Such a series of requests may be reasonable when viewed both individually and in context as a group. The same may also be true of a request made by a private citizen involved in a long-running dispute or exchanges with the public authority (see e.g. Ainslie). In this case, the essential attribute of vexatiousness by drift - drift itself - is simply absent. "I submit that my requests had serious purpose and value. Any burden on the authority was modest and, in the circumstances, proportionate. I have not harassed or caused distress to staff. The requests are not vexatious."

Discussion and Conclusions:

42. The Tribunal have considered the submissions from a holistic view. The previous requests were not in our view burdensome. No previous appeal or review request had been made. The Appellant's motive was to understand if systemic failure existed by asking how many social workers were subject of complaint. In all the circumstances and on the evidence before us we do not accept any finding of harassment or distress – we find that link was tenuous. §32 DN whilst stating it was personal motive, we find the personal motives were subject to separate personal complaints in another channel. The requests were more about the system. This has been supported by a Councillor who also indicated these were in the Public Interest [ss OB E181]. *"I believe the questions raised by Mr Goodwin could highlight general issues related to adult social care in the city and should be regarded as such."*
43. Some of the previous requests could be characterised as business as usual. The social workers could have given him documents that could be accessed easily in house without advising as they did on 4 or 5 occasions to make an FOI. The social worker should be able to explain the process, or he should otherwise have had more assistance. He was an elderly man who was struggling to find the policies and procedures online. The requests were not particularly burdensome. There was a serious purpose to the request which related not only to his mother's care but also to systematic failures as evidenced by the supporting e-mail. He had not exhausted the complaints process. He was not using a scattergun approach. Although there was a danger that there could be vexation by drift and that the issues were finally balanced, we do not find that this particular request was vexatious.
44. The interpretation of a vexatious request has developed over the years and 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 requests in question was not disproportionate, nor manifestly unjustified, nor inappropriate and neither were they an improper use of a formal procedure or the use of FOIA.
45. For all the above reasons and in all the circumstances of this case we must allow the appeal.

Brian Kennedy KC
Promulgated on: 11 June 2024

4 June 2024.