



Neutral citation number: [2024] UKFTT 00880 (GRC)

Case Reference: EA/2022/0305

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

**Decided without a hearing
Decision given on: 15 October 2024**

Before

**JUDGE STEPHEN ROPER
MEMBER RAZ EDWARDS
MEMBER MIRIAM SCOTT**

Between

HWAN C LIN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is Allowed

Substituted Decision Notice:

The Tribunal's Decision Notice in case reference EA/2022/0305, set out below, is substituted for the Information Commissioner's Decision Notice reference IC-150443-POY0 dated 13 September 2022 with regard to the request for information made to The Council of the London School of Economics and Political Science by Dr. Hwan C Lin dated 3 December 2021.

Substituted Decision Notice

1. The Council of the London School of Economics and Political Science shall make a fresh response to the request for information made to it by Dr. Hwan C Lin dated 3 December 2021.
2. That fresh response must make clear whether or not any information within the scope of the request is held by The Council of the London School of Economics

and Political Science. If any such information is held, The Council of the London School of Economics and Political Science must either disclose it or claim any relevant exemptions to disclosure (other than an exemption pursuant to section 14 of the Freedom of Information Act 2000).

3. The Council of the London School of Economics and Political Science must issue such fresh response within 20 working days (as defined in section 10(6) of the Freedom of Information Act 2000) of the date on which the Information Commissioner sends it notification of this decision in accordance with the Directions below.
4. Such fresh response will be subject to the rights given under section 50 of the Freedom of Information Act 2000 to make a new complaint to the Information Commissioner.
5. Failure to comply with this decision may result in the Tribunal making written certification of this fact pursuant to section 61 of the Freedom of Information Act 2000 and may be dealt with as a contempt of court.

Directions

6. The Information Commissioner must send a copy of this decision to The Council of the London School of Economics and Political Science within 35 days of its promulgation, or (if there is an application to appeal this decision) within 14 days after being notified of an unsuccessful outcome to such application or any resulting appeal.

REASONS

Preliminary matters

1. In this decision, we use the following terms to denote the meanings shown:

Appellant: Dr. Hwan C Lin.

Authority: The Council of the London School of Economics and Political Science.

Commissioner: The Information Commissioner.

Decision Notice: The Decision Notice of the Commissioner dated 13 September 2022, reference IC-150443-P0Y0, relating to the Request.

FOIA: The Freedom of Information Act 2000.

LSE: The London School of Economics and Political Science.

Previous Request:	The request for information made by the Appellant, dated 13 December 2019, as referred to in paragraph 35.
Previous Notice:	The Authority's response to the Previous Request, dated 13 December 2019, as referred to in paragraph 36.
Refusal Notice:	A notice pursuant to section 17(5).
Request:	The request for information made by the Appellant, dated 3 December 2021, as referred to in paragraph 7.
Requested Information:	The information which was requested by way of the Request.
Statement:	The statement which is the subject of (and specified in) the Request, published on LSE's website on 8 October 2019.

2. Unless the context otherwise requires (or as otherwise expressly stated), references in this decision:
 - a. to numbered paragraphs are references to paragraphs of this decision so numbered; and
 - b. to any section are references to the applicable section of FOIA.
3. We refer to the Commissioner as 'he' and 'his' to reflect the fact that the Information Commissioner was John Edwards at the date of the Decision Notice and the Appellant's related complaint to the Commissioner, whilst acknowledging that the Information Commissioner was Elizabeth Denham CBE at the time of the Request and the Authority's response to the Request.
4. Nothing we say in this decision should be taken as an indication as to whether or not the Requested Information is held by the Authority.

Introduction

5. This is an appeal against the Decision Notice, which (in summary) concluded that the Authority was entitled to rely on section 17(6) to decline to issue a Refusal Notice in respect of the Request, on the basis that the Request was vexatious. The Commissioner did not require the Authority to take any steps.

Background to the Appeal

6. The background to the appeal is as follows.

The Request

7. On 3 December 2021, the Appellant requested information in the following terms about a public statement regarding the (now former) Taiwanese President Tsai Ing-wen:

"On 8 October 2019, a news piece titled "LSE statement on PhD of Dr Tsai Ing-wen" was posted at the LSE website:

<https://www.lse.ac.uk/News/Latest-news-from-LSE/2019/j-October-2019/LSE-statement-on-PhD-of-Dr-Tsai-Ing-wen>

As is well known in the public media, President Tsai alleged that she was awarded a doctorate way back in 1984. After 35 years, it was indeed very much surprising that a news statement about her much questioned doctoral degree came suddenly in 2019. Plus, nobody at the LSE signed the statement.

I hereby make an FOIA 2000 request that you please answer the following questions:

#1. Is the statement of 8 October 2019 from a third party unrelated to the LSE?

#2. If not, is the statement from the University of London?

#3. If not, is the statement from the LSE itself?

#4. If it is the LSE that issued this statement, then who or which unity did that?"

8. The Authority replied on 9 December 2021, stating (in essence) that it had previously informed the Appellant that requests on "this subject" were considered to be vexatious and that (under section 17(6)) it was unreasonable to continue to repeat that message.
9. The Appellant contacted the Commissioner on 15 January 2022¹ to complain about the way the Request had been handled by the Authority.

The Decision Notice

10. In the Decision Notice, the Commissioner decided (in summary) that:
- a. it would defeat the purpose of relying on section 17(6) if the Authority were to be required to carry out an internal review of the way it had responded to the Request;
 - b. given the Commissioner's familiarity with the "issues", it would be disproportionate to seek a formal submission from the Authority;
 - c. the scope of his investigation was to determine whether the Authority was entitled to rely on section 17(6) to decline to issue a Refusal Notice in respect of the Request on the basis that it was vexatious under section 14; and
 - d. as the Authority had previously issued a Refusal Notice to the Appellant

¹ The Decision Notice erroneously recorded this as 14 January 2021.

relating to a request on the same subject matter, the Authority was entitled to rely on section 17(6) to decline to issue a Refusal Notice in respect of the Request, on the basis that the Request was vexatious.

The appeal

The grounds of appeal

11. The Appellant's material grounds of appeal were generally based on his views that the Request was not vexatious. In particular:
 - a. the Appellant contended that the Request was not manifestly unjustified, inappropriate, burdensome, threatening, impolite, nor an improper use of a formal procedure;
 - b. the Appellant denied admitting to being a conspiracy theorist (as referred to in paragraphs 16 and 17 of the Decision Notice);
 - c. the Appellant also denied being obsessive and acting in concert with others in respect of making requests to the Authority about the same matter (as referred to in paragraph 18 of the Decision Notice).

The Tribunal's powers and role

12. The powers of the Tribunal in determining the appeal are set out in section 58. In summary, the Tribunal's remit for the purposes of the appeal was to consider whether the Decision Notice was in accordance with the law, or whether any applicable exercise of discretion by the Commissioner in respect of the Decision Notice should have been exercised differently. In reaching its decision, the Tribunal may review any findings of fact on which the Decision Notice was based and the Tribunal may come to a different decision regarding those facts.

Mode of hearing

13. The parties consented to the appeal being determined by the Tribunal without an oral hearing.
14. The Tribunal considered that the appeal was suitable for determination on the papers in accordance with rule 32 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and was satisfied that it was fair and just to conduct the hearing in this way.

The evidence and submissions

15. The Tribunal read and took account of a bundle of evidence and pleadings, as well as separate written final submissions from the Appellant.
16. All of the contents of the bundle (and those separate submissions) were read and considered, even if not directly referred to in this decision.

Outline of relevant issues

17. In accordance with the Tribunal's remit which we have referred to, the fundamental issue which we needed to determine in the appeal was whether the Commissioner was correct to determine, by way of the Decision Notice, that the Authority was entitled to rely on section 17(6) to decline to issue a Refusal Notice in respect of the Request, on the basis that it was vexatious under section 14.
18. In order to determine that fundamental issue, this requires consideration of the following points (having regard to the provisions of section 17(6) which we set out in paragraph 24):
 - a. whether the Authority was relying on a claim that section 14 applies, for the purposes of section 17(6)(a) - which we shall call the 'Reliance Issue';
 - b. whether the Authority had given the Appellant a notice, in relation to a previous request for information, stating that it was relying on such a claim, for the purposes of section 17(6)(b) - which we shall call the 'Previous Notice Issue'; and
 - c. whether, in all the circumstances, it was unreasonable to expect the Authority to serve a further Refusal Notice in relation to the Request, for the purposes of section 17(6)(c) - which we shall call the 'Reasonableness Issue'.
19. We address those issues in turn (under those headings) further below.

The relevant statutory framework²

General principles

20. Section 1(1) provides individuals with a general right of access to information held by public authorities. It provides:

"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."

21. In essence, under section 1(1), a person who has requested information from a public authority is entitled to be informed in writing whether it holds that information. If the public authority does hold the requested information, that

² We acknowledge the Practice Direction dated 4 June 2024 (<https://www.judiciary.uk/guidance-and-resources/practice-direction-from-the-senior-president-of-tribunals-reasons-for-decisions>) and particularly paragraph 9, which refers to the First-tier Tribunal not needing to specifically refer to relevant authorities. We include references to the applicable legislative framework but have accordingly not set out details of the applicable case law.

person is entitled to have that information communicated to them. However, these entitlements are subject to the other provisions, including some exemptions and qualifications which may apply even if the requested information is held by the public authority. Section 1(2) provides:

"Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

22. Accordingly, section 1(1) does not provide an unconditional right of access to any information which a public authority does hold, nor an unconditional right even to be told if the information is held by the public authority. The rights contained in that section are subject to certain other provisions of FOIA and we refer to the relevant aspects below.

Section 14 - Vexatious or repeated requests

23. Section 14 provides:

"(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."

Section 17 - Refusal of request

24. So far as is relevant, section 17 provides:

"(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Discussion and findings

25. We first address some preliminary points before turning to the other issues in the appeal.
26. The Appellant stated in his grounds of appeal that after he had complained to

the Commissioner about the Authority's response to the Request, the Commissioner published on the ICO's website (by reference to a disclosure log) a new policy of not processing FOIA requests seeking information on President Tsai Ing-wen's PhD.³ The Appellant's grounds of appeal included comments regarding that disclosure log and regarding the conduct of one of the Commissioner's case officers.

27. The Appellant also made various submissions, particularly in his reply to the Commissioner's response to the appeal and in his written final submissions, regarding issues surrounding the award of President Tsai Ing-wen's Ph.D. and other related matters.
28. As we noted in paragraph 12, the scope of the Tribunal's jurisdiction relates to the lawfulness of the Decision Notice. Any other issues are beyond the Tribunal's powers to determine and fall outside of the scope of the appeal. Accordingly, the Tribunal's jurisdiction does not extend to any matters regarding the conduct of the Commissioner's investigation prior to the issue of a decision notice under section 50 of FOIA. Put another way, the Tribunal does not conduct a judicial review of the Commissioner's activities. It is therefore outside of our remit to make any finding in respect of the Commissioner's conduct of his investigation leading to the Decision Notice, or in respect of any disclosure logs (as referred to in paragraph 26) or any other decision notices issued by the Commissioner.
29. Likewise, the Tribunal's jurisdiction does not extend to matters such as any allegations relating to impropriety or other wrongdoing by the Authority or the LSE (whether those allegations relate to President Tsai Ing-wen's PhD award or otherwise) and we have no power to consider or determine any such issues.
30. However, as part of the Tribunal's remit, we may review any relevant findings of fact in the Decision Notice and may come to a different decision regarding those facts. Essentially, the Tribunal is empowered to undertake a 'full merits review' of the appeal before it (so far as the Decision Notice is concerned). That is what we have done.

The Reliance Issue

31. As we noted in paragraph 8, the Authority responded to the Request on 9 December 2021. That response stated that the Authority had previously responded to the Appellant (i.e. by way of the Previous Notice) explaining that it considered that the Appellant's requests relating to "this subject" were vexatious. The Authority did not specify what it meant by referring to 'this subject' but we find that it was referring to information relating to President Tsai Ing-wen's PhD award. The response also stated that the Authority's position had not changed and that it considered (citing section 17(6)) that it was

³ A link was cited (by both the Appellant and by the Commissioner in his response to the appeal), as follows: <https://ico.org.uk/media/about-the-ico/disclosure-log/4019585/president-tsai-ing-wen-phd-requestsresponse.pdf>. However, the link is not functioning and a search on the Commissioner's website does not reveal anything regarding this disclosure log.

unreasonable to expect the Authority to continue to repeat that message.

32. Given the contents of that response to the Request, we find that the Authority was relying on a claim that section 14 applied to the Request, for the purposes of section 17(6)(a).

The Previous Notice Issue

33. The test regarding the Previous Notice issue (relevant for the purposes of section 17(6)(b)) is a straightforward one. It simply requires that the Authority had given the Appellant a notice, in relation to a previous request for information, stating that it was relying on a claim that section 14 applied.
34. In our view, it is self-evident from the wording in section 17(6)(b) that there must be a connection between the previous request for information and the current request – namely that it relates to the same subject matter. This is because the obvious purpose of section 17(6) is to avoid the need for a public authority to issue further Refusal Notices to requests for information which have previously been determined to be vexatious by the public authority. It follows that Parliament cannot have intended that it would apply to dissimilar or unconnected requests for information. If that were the case, it would be tantamount to treating the requestor as vexatious, rather than the request itself – which is contrary to established case law on that point. However, even if we are wrong (i.e. there is no requirement that the previous request and the current request must relate to the same subject matter), we consider that any connection between the requests and/or their subject matter would, in any event, be relevant for the assessment of ‘reasonableness’ for the purposes of section 17(6)(c). We address that below in respect of the Reasonableness Issue.
35. The Appellant had previously made a request to the Authority on 13 December 2019 for certain information in connection with President Tsai Ing-wen’s PhD award.
36. The Authority responded to that request later on the same date, notifying the Appellant that it was being treated as vexatious. The response concluded by stating: *“We will not be responding to further requests regarding President Tsai’s PhD thesis”*.
37. Having considered the content of the Previous Notice, we make the following findings in respect of it:
 - a. Whilst the Previous Notice stated that the Authority considered the Previous Request to be vexatious, it did not specify that it was relying on section 14 in refusing the Previous Request.
 - b. The Previous Notice gave some details as to why it considered the Previous Request to be vexatious, but these appeared to be mainly in connection with other requests for information relating to the wider subject of President Tsai Ing-wen’s PhD thesis and it is not clear (and we did not have

any evidence before us on this point) whether or not those other requests were made by the Appellant.

- c. The Previous Notice did not specify any relevant parameters (including any time period) within which it would consider that future requests for information from the Appellant would also be considered vexatious. Rather, as we have noted, it essentially stated that no further requests regarding President Tsai Ing-wen's PhD thesis would be responded to.
38. In respect of the latter point, we have some misgivings about that way of dealing with matters. In part, this is because the Previous Notice was essentially treating all future requests as vexatious if they related in any way to President Tsai Ing-wen's PhD thesis. In doing so, it was inexorably discounting the content of those future requests, even if it pertained to different information than was previously requested. Moreover, even if the future requests were identical or substantially similar then this approach could be inconsistent with the provisions of section 14(2), which only permits a public authority to refuse to comply with a subsequent identical or substantially similar request where "a reasonable interval" has elapsed between compliance with the previous request and the making of the subsequent request. Accordingly, we consider that the Authority's stance to refuse to consider any such further requests, regardless of when they might be submitted, to be potentially incompatible with section 14(2) - although we recognise that section 14(2) differs from section 14(1) in that section 14(1) refers specifically to requests which are vexatious.
 39. However, as we have noted, section 17(6)(b) simply requires that the Authority had given the Appellant a notice, in relation to a previous request for information, stating that it was relying on a claim that section 14 applied. Whilst the Previous Notice did not specify that it was relying on section 14 in refusing the Previous Request, it did state that the Previous Request was treated as vexatious and (in the circumstances) we find that to be sufficient for current purposes.
 40. Accordingly, notwithstanding our misgivings in respect of the Previous Notice, we find that the requirements of section 17(6)(b) are met by the Previous Notice.
 41. This then leads us to the question of whether it was unreasonable to expect the Authority to serve a further Refusal Notice in relation to the Request, for the purposes of section 17(6)(c).

The Reasonableness Issue

42. In considering the Reasonableness Issue, we start by noting that section 17(6) does not expressly require that the current (subsequent) request in question must itself be vexatious. The test in section 17(6)(c) is whether, in all the circumstances, it would be unreasonable to expect the public authority to serve a further Refusal Notice in relation to the current (subsequent) request. For current purposes, as a Refusal Notice means a notice that the Authority is relying on a claim that the Request is vexatious, this means that the test for

section 17(6)(c) is whether (in all the circumstances) it would be unreasonable to expect the Authority to serve a notice that it is treating the Request as vexatious. It follows that, although it is not expressly stated in section 17(6) that the current request (the Request) must itself be vexatious, there must be some assessment as to whether or not the Request is vexatious (even if just as part of the assessment of 'reasonableness' for the purposes of section 17(6)(c)).

43. In the Decision Notice, the Commissioner's view was that the Authority had already given the Appellant a Refusal Notice (the Previous Notice) for a previous vexatious request (the Previous Request) and that it would be unreasonable for the Authority to issue another Refusal Notice in respect of the Request.
44. Paragraph 15 of the Decision Notice stated that the Request: "*seeks to question the provenance of a statement that was published on the LSE's website two years ago – the implication being that some "third party" hijacked or coerced the LSE into both making a statement on its website in 2019 and (presumably) maintaining that statement on its website ever since*". We agree that the Request is seeking to understand the provenance of the Statement and, if it emanated from the LSE, then who (or which unit) issued it. However, we can see no basis for the Commissioner to draw the conclusion about such 'implication'; there was no evidence before us which would support that view.
45. The Decision Notice also determined (in paragraph 15) that the Request was vexatious. For the reasons we set out below, we find that there was insufficient evidence to support that determination. In reaching our conclusions, we have taken into account that:
 - a. the four broad issues or themes outlined in the *Dransfield*⁴ case are a useful starting point for consideration of whether or not a request is vexatious; and
 - b. notwithstanding those issues or themes (which are not intended to be exhaustive, nor meant to create a 'formulaic check-list'), a holistic and broad approach is required in assessing whether or not a request is vexatious – as established by relevant authorities, including in particular the *Dransfield* case itself.
46. The Commissioner's determination that the Request was vexatious appears to be based, in part, on the Commissioner's conclusion regarding the 'implication' behind the Request which we referred to in paragraph 44.
47. We would also comment that a period of almost two years had passed between the date of the Previous Request and the Request itself. The Commissioner stated in the Decision Notice (paragraph 22) that he "*does not consider that anything of significance has changed in the intervening period*". As we referred to in paragraph 38, section 14(2) only permits a public authority to refuse to

⁴ The decisions of the Upper Tribunal and the Court of Appeal in the case of *Information Commissioner vs Devon County Council & Dransfield* - [2012] UKUT 440 (AAC) and [2015] EWCA Civ 454, respectively.

comply with a subsequent identical or substantially similar request made by the requestor where “a reasonable interval” has elapsed between compliance with the previous request and the making of the subsequent request. Put another way, section 14(2) effectively recognises that subsequent identical or substantially similar requests may be made by a requestor and a public authority cannot refuse to respond to such a request where a “reasonable interval” has elapsed since the response to the previous request. There is no evidence that the Commissioner took this into account, although (as noted above) we do recognise that section 14(2) differs from section 14(1) in that section 14(1) refers specifically to requests which are vexatious.

48. Irrespective of our views in the preceding paragraph, we also find that the Commissioner had no evidential basis on which to form his view that ‘nothing of significance had changed’ between the Previous Request and the Request. At the date of the Previous Request (13 December 2019), it is possible that the Appellant had not seen the Statement (which was published online on 8 October 2019). If so, then something had indeed ‘changed’ and it is likely that this could have been ‘significant’ (at least in the eyes of the Appellant). We would note that we do not know whether or not the Appellant had seen the Statement at the time of the Previous Request, because there was no evidence either way on that question. However, the point is that the Commissioner also had no evidence on that issue, yet formed the view that nothing had changed.
49. The Commissioner also did not take into account the fact that the Appellant made the Request in respect of the Statement, which was published on the LSE’s website. The Appellant was seeking information relating to the publication of the Statement and not simply making a request for information which had previously been sought or disseminated. We find that this was a significant factor which militated against the view that the Request was vexatious. Indeed, had the Statement not been published then obviously the Request could not have been made.
50. A related point is that the Request concerned a different subject matter than that covered in the Previous Request. The Previous Request was for information in respect of the viva relating to President Tsai Ing-wen’s PhD. As we have noted, the Authority’s response to the Previous Request stated that there would be no further responses to requests “*regarding President Tsai’s PhD thesis*”. The Request was not asking for information regarding President Tsai Ing-wen’s PhD thesis. It was asking for information in respect of the Statement. Accordingly, we find that this sufficiently distinguishes it from the Previous Request – not only in considering the question of the vexatiousness of the Request but also in the context of whether it was reasonable for the Authority to refuse to issue a Refusal Notice in respect of the Request.
51. Various submissions were made, particularly by the Appellant, regarding the public interest in the Requested Information (as well as the public interest in the subject of President Tsai Ing-wen’s PhD thesis and award) but we do not think it is necessary to go into detail on this issue, nor to make any specific conclusions

on it, for the reasons we will come to. We acknowledge the comments of Arden LJ in the Court of Appeal in the *Dransfield* case⁵ that *"the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public."* However, that is only the starting point and Arden LJ went on to say that there is a 'high hurdle' to satisfying the requirement of vexatiousness and that all of the relevant circumstances should be taken into account in order to reach a balanced conclusion.

52. Although the Commissioner submitted that there was an "extremely limited" serious purpose and value in seeking to determine from whom the Statement came, it appeared to us that there is at least an arguable case regarding a wider public interest, particularly for the people of Taiwan. In addition, we find that the Request was straightforward in terms of the information it was seeking (essentially, where the Statement came from and, if applicable, who or which unit from the LSE issued it) and we consider that it would not have been difficult for the Authority to respond to it. We should also note that the Commissioner's response to the appeal stated that he did not seek to argue that the Request was burdensome in isolation. Therefore, even if we accepted the Commissioner's view about the extremely limited purpose and value in the Requested Information, this could be balanced against the ease with which the Request could have been responded to.

53. In his response to the appeal, the Commissioner referred us to the views of Arden LJ in the Court of Appeal in the *Dransfield* case, in respect of the requirement for a "rounded approach" which did not leave out of account any relevant evidence which could cast light on whether a request was vexatious, including past requests. The Commissioner also referred to the guidance in the *Parker*⁶ case regarding the course of dealings between a requester and a public authority, which included⁷ the following statement:

"In this case and in others where past dealings are of relevance, I find that an appropriately detailed evidential foundation addressing the course of dealings between the requester and the public authority is a necessary part of that assessment. A compendious and exhaustive chronology exhibiting numerous items of correspondence is not required but there must be some evidence, particularly from the IC, about the past course of dealings between the requester and the public authority which also explains and contextualises them."

54. We have taken into account those views of Arden LJ and that approach, as well as the guidance in the *Parker* case, and accordingly we have considered the Previous Request and the relevant evidence before us. However, having done so, we do not consider that there is justification for the Commissioner's view that the Request was vexatious, for the reasons we have given and which we

⁵ At paragraph 68 of that case.

⁶ *Parker v Information Commissioner* [2016] UKUT 0427 (AAC)

⁷ At paragraph 72 of that case.

continue to set out below. The Decision Notice referred to the course of dealings between the Appellant and the Authority, but (using the words from the *Parker* case) we find that there was no appropriately detailed evidential foundation addressing that course of dealings and that there was insufficient evidence from the Commissioner to explain and contextualise them, to support the conclusion that the Request was vexatious. In the *Dransfield* case, Upper Tribunal Judge Wikeley⁸ referred to a “*lack of proportionality that typically characterise vexatious requests*” – we find that there was no evidence of any such ‘lack of proportionality’ in the current instance.

55. The Commissioner concluded in the Decision Notice that the Request was vexatious for three main reasons (aside from his view on the limited public interest which we have referred to). The first was that he considered that the Appellant was acting in concert with others. The second was that the Commissioner considered that the Appellant was a self-confessed advocate of the “doctorate scamming” conspiracy theory. The third was that the Commissioner considered the Appellant to be obsessive about his pursuit of “this matter” and because the Commissioner considered that the Appellant was “*unlikely to be satisfied by any response*” which the Authority provided.
56. In respect of the first of those reasons, the Appellant denied acting in concert with any other individuals. The Commissioner’s view on this appears to have been based only on two grounds; the Previous Request referring to information which an individual (Mr Michael Richardson) had provided to the Appellant via email regarding the exact date of President Tsai Ing-wen's viva, and the Appellant referring to an internal review provided to that individual in respect of a separate FOIA request made to the Authority. However, evidence of people having a shared interest in the same subject matter, and even corresponding in respect of it, is not necessarily evidence of them acting in concert for the purposes of assessing whether a request under FOIA is vexatious. In our view, something more is needed to draw the conclusion that people are acting in concert for those purposes, particularly having regard to the ‘high hurdle’ which is required for a request to be vexatious. The Appellant stated that the individual in question, Michael Richardson, had previously obtained the relevant information from the Authority and published this information online, which the Appellant had obtained as “*merely the fruit of [the] Appellant's research*”. We had no evidence to support the Appellant’s assertion, but equally we find that there was no evidence to support the Commissioner’s view that the Appellant was acting in concert with others in a manner which would support the view that the Request was vexatious.
57. Regarding the second of those reasons, the Appellant also denied being a self-confessed advocate of the conspiracy theory. The Appellant stated that, although the Commissioner alleged in the Decision Notice (paragraph 16) that the Commissioner had previously dealt with “this conspiracy theory” in previous decision notices, the Appellant's first complaint to the Commissioner was that

⁸ At paragraph 45 of that case.

which resulted in the Decision Notice – and therefore those previous decision notices were not associated with the Appellant. Accordingly, the Appellant argued that the previous decision notices referred to by the Commissioner do not implicate the Appellant in the ‘doctorate scamming conspiracy theory’ and that the Commissioner had not provided any evidence in support of this allegation. Whilst the Decision Notice included links to the previous decision notices referred to by the Commissioner, they do not identify the complainant and accordingly we could not verify whether or not they related to the Appellant. However, again the issue is that the Commissioner has not provided relevant corroborating evidence in respect of his views regarding that second reason.

58. The third of those reasons (the Appellant being obsessive and being unlikely to be satisfied by any response from the Authority) was also denied by the Appellant. The Appellant stated that the Commissioner had no factual basis for his conclusion. The Appellant argued that his “acquiescence” to the Authority’s allegation of vexatiousness in the Previous Notice showed that the Appellant can accept an unfavourable response, as he did not complain to the Commissioner regarding the Previous Notice. The Appellant also commented on the Commissioner’s statement (in paragraph 18 of the Decision Notice) which characterised the Appellant’s pursuit of matters as obsessive with reference to the Request being made “*some three years after questions were first raised*”. We concur with the Appellant’s view (in his reply to the Commissioner’s response to the appeal) that the passage of time is not evidence of obsessive conduct and accordingly we find that it was inappropriate for the Commissioner to reach the conclusions which he did regarding this third reason.
59. We also note that the Commissioner’s response to the appeal stated that he did not seek to argue that the Request was threatening or impolite. We find that there was no malice, harassment or inappropriate language contained in the Request.
60. To summarily conclude all of the above, we reiterate our finding that there was insufficient evidence for the Commissioner to draw the conclusion, in the Decision Notice, that the Request was vexatious. That conclusion appears to have been based largely on the Commissioner’s own assumptions. The Decision Notice recorded (in paragraph 8) that the Commissioner was familiar with the “issues” surrounding President Tsai Ing-wen’s thesis and that the Commissioner considered that it would be disproportionate to seek a formal submission from the Authority. It seems to us that the Commissioner based much of his reasoning on his stated ‘familiarity’ with previous issues relating to President Tsai Ing-wen’s thesis, without proper consideration of the evidence which was before him in respect of the Request and without other relevant evidence justifying his conclusions.
61. For all of the above reasons, we consider that the Commissioner was wrong to determine in the Decision Notice that the Request was vexatious.

62. We now return to the crux of the Reasonableness Issue, which is whether, in all the circumstances, it was unreasonable to expect the Authority to serve a further Refusal Notice in relation to the Request. We find that it was not - or, to put it another way, we find that it was reasonable to expect the Authority to serve a Refusal Notice in relation to the Request. This is because of our finding that the Commissioner was wrong to conclude that the Request was vexatious and because of the specific relevant factors we have referred to in connection with that finding, namely:
- a. the time period of almost two years which elapsed between the Previous Request (and the Previous Notice) and the Request;
 - b. the Request relating to something - the publication of the Statement - which was not initiated by the Appellant;
 - c. the Request relating to a different subject matter than that of the Previous Request;
 - d. the Previous Notice stating only that the Authority would refuse to respond to further requests regarding President Tsai Ing-wen's PhD thesis (and not referring to any other subject matter); and
 - e. the relative simplicity of the information required by the Request and of the response to it which would be required by the Authority.

Final conclusions

63. For all of the reasons we have given, we find that the Decision Notice involved an error in law because the Commissioner was wrong to determine that the Authority was entitled to rely on section 17(6) to decline to issue a Refusal Notice on the basis that the Request was vexatious under section 14.
64. We therefore allow the appeal and we make the Substituted Decision Notice as set out above.

Signed: Stephen Roper
2024

Judge of the First-tier Tribunal
Promulgated

Date: 27 September

Date: 15 October 2024