



Neutral citation number: [2024] UKFTT 00941 (GRC)

Case Reference:

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

**Heard Remotely  
Heard on: 24 September 2024  
Decision given on: 24 October 2024**

**Before**

**DISTRICT JUDGE WATKIN  
MEMBER EDWARDS  
MEMBER MURPHY**

**Between**

**DMITRI SHVOROB**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: No attendance

**Decision:** The Appeal is allowed

**SUBSTITUTED DECISION NOTICE:**

1. The Public Authority must reconsider the requests listed in the Appendix to this decision and issue a fresh decision which does not rely on either section 14 Freedom of Information Act 2000 (vexatious) or regulation 12(4)(b) Environmental Information Regulations (manifestly unreasonable) by 4pm 24 November 2024.

**REASONS**

The following terms will be abbreviated:

Case Management Directions	CMDs
Environmental Information Regulations 2004	EIR
Freedom of Information Act 2000	FOIA
Information Commissioner	ICO
The Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009	The Rules

1. This Appeal dated 14 May 2024 brought by Mr Dmitri Shvorob (the “**Appellant**”) arises following requests for information (the “**Requests**”) made by the Appellant to London Borough of Bexley (“the **Public Authority**”) between the period 8 July 2023 and 29 February 2024. The Public Authority refused the requests on the grounds that they were vexatious and/ or manifestly unreasonable. The Appellant complained to the Information Commissioner (the “**Respondent**”).
2. On 14 May 2024, a decision notice (the “**Decision Notice**”) was provided by the Respondent upholding the decision of the Public Authority and finding that, having considered previous historic requests, the requests were vexatious/manifestly unreasonable.

## **BACKGROUND**

3. The Tribunal has had the opportunity to consider a 262-page open bundle provided by the Respondent and heard from the Appellants at a remote hearing on 24 September 2024. Any references to page numbers within this decision are to page numbers within this bundle. The Respondent did not attend, having previously indicated that it did not intend to attend the hearing.
4. The Appellant explained to the Tribunal that he is involved with a local blog known as “Bexley Council is Bonkers” (page D181). He advised that this is a blog that was set up some 20 years ago by an 87-year-old resident of Bexley. The Appellant understands the blog to have between 5 to 10,000 followers.
5. The Appellant explained that it was important for accurate information to be published within the blog and, therefore, he makes requests for information to either establish or check facts prior to publication. He indicated that he has a particular interest in road safety and that, as a former auditor, he considered that it was his nature to ask questions and check facts. In relation to road safety, he mentioned a petition that he was running for which he required information.
6. The Appellant does not consider that any of his requests were vexatious or without motive. He was plainly aggrieved at having been called vexatious by the

Public Authority. He accepted that he has made a number of requests for information but indicated that as there was an absence of local journalists in the area. Therefore, it is up to amateurs to make the inquiries. Whilst he accepted that 87 request seems high, he did not consider that the requests themselves translated into a high burden. He suggested that if the information had been in the public domain - as he considers it should have been - then the requests would not have been necessary. He also reiterated that he makes his requests individually rather than in one "omnibus" documents in order to keep the request simple.

## **RELEVANT LAW**

7. In the interest of brevity, the Tribunal does not repeat the law which is already known to the parties. However, it has been necessary for the Tribunal to consider whether it was appropriate for the requests to be considered under FOIA or EIR. The Tribunal has considered regulation 2(1) EIR and has determined that the Requests can be dealt with under EIR as they relate to the environment (request 1 – ULEZ Request) and the landscape (requests 3 to 9) but that requests 2 and 10 are matters that will be considered under FOIA.
8. The Respondent had determined that nine of the requests fell within EIR and the final request (request 10) is to be considered under FOIA. The Tribunal only disagrees with the Respondent in relation to request 2 as it relates to the roles of officers dealing with matters of advising schools in relation to travel plans and pedestrian skills. The Appellant did not have a strong view.
9. The Respondent concluded that the requests under EIR were manifestly unreasonable and that the requests under FOIA were vexatious. The decision is largely based on the fact that 87 requests had been made over an 18-month period from 23 June 2022 to 31 October 2023 (the "Previous Requests") which covered a wide range of the Public Authority's service areas and preceded the Requests.

## **Vexatious/manifestly unreasonable**

10. Under section 14 FOIA, a Public Authority is not obliged to comply with a request for information if the request is vexatious. Under regulation 12 EIR, a Public Authority may refuse to disclose environmental information requested if the request is manifestly unreasonable and, in all the circumstances, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

11. At paragraph 78 of ***Dransfield v The Information Commissioner and Devon CC [2015] EWCA Civ 454*** ("***Dransfield***"), the Court of Appeal indicated that the difference between "vexatious" and "manifestly unreasonable" is "*vanishingly small*":

*"Leaving the word "manifestly" to one side for a moment, if I am right that the approach to section 14 should primarily be objective and should take as its starting point the approach that "vexatious" means without any reasonable foundation for thinking that the information sought would be of value to the requester or the public or any section of the public, then the difference between the two phrases is vanishingly small."*

12. In relation to the approach to be taken in identifying whether a request was vexatious or manifestly unreasonable, Lady Justice Arden in *Dransfield* sets out:

*"68. ...I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public. 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. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatiousness can be inferred. If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available.*

69. ...

70. *In responding to any request, the authority has to exercise its judgment in good faith in the light of all the information available to it"*

13. The Public Authority referred to the following factors set out within the Upper Tribunal's decision in Dransfield as key to establishing whether the Requests were vexatious or manifestly unreasonable:

- a. The burden on the Public Authority
- b. The motive of the requestor
- c. The value or serious purpose of the request
- d. Any harassment or distress caused to staff.

The Tribunal will consider each of these as well as having regard to all other circumstances in assessing whether the Requests were vexatious or manifestly unreasonable.

14. In the case of Dransfield, the Court of Appeal also considered whether it was appropriate for the Tribunal to consider all of the background in determining whether a request was vexatious/manifestly unreasonable, or whether a line should be drawn between any request and those that went before.
15. The approach taken by the Court of Appeal was that all the circumstances need to be considered in relation to any request. Therefore, whilst a solitary request could be vexatious/manifestly unreasonable based on its wording and approach, equally, a precise and politely worded request could be considered vexatious/manifestly unreasonable if there was a history that was sufficient to lead a Tribunal to determine that the request was vexatious/manifestly unreasonable.
16. It is important to note that it can only be a request that can be considered vexatious/manifestly unreasonable for the purposes of the legislation, and it is not appropriate for the requester to be considered vexatious. In this regard, the Tribunal highlights that the wording used by the Public Authority "*our decision to make him vexatious*" (page D162) and "*maintaining our earlier decision that he be considered vexatious*" (page A16) was not appropriate and may be considered offensive to the Appellant. Section 14(1) FOIA clearly states "*if the request is vexatious*",
17. **For the avoidance of doubt, the Tribunal found the Appellant to be fair, measured and having the public interest at heart. The Tribunal did not consider him to be self-serving. This would not, of course, prevent the Requests from being vexatious/manifestly unreasonable.**

## **THE REQUESTS**

18. The Tribunal has considered each of the Requests in turn to establish whether each should be considered vexatious/manifestly unreasonable in light of all the circumstances, including the fact that the Previous Requests had been made. The circumstances include the burden on the Public Authority, the Appellant's motive, the value or serious purpose of the request and any harassment or distress caused to the staff of the Public Authority.
19. It is to be noted that the circumstances in relation to the present Appellant are different to those of Dransfield. Whilst, on occasion, some of the Appellant's requests may have been onerous and even burdensome, it is not considered that he has ever used extreme tone or language, neither it is said that he has been abusive which is contrary to the position in Dransfield.
20. Furthermore, in his approach to the blog, the Tribunal considers the Appellant as akin to a local journalist as he seeks information on a range of issues for the purposes of distributing the information to the readers of the blog. The Tribunal has seen no evidence of the Appellant obtaining the information for purposes which were "self-serving" and his evidence, which was accepted, was that the information was intended to serve a wider purpose. The Tribunal considers that the Appellant has acted prudently by checking matters prior to publication. It would be hoped that this approach would be of assistance to the Public Authority in limiting negativity and ensuring that the public were aware of the truth.
21. The Public Authority state that they have "*not seen any evidence that the information provided ... is used elsewhere to enhance further public awareness.*" However, it may be that the information was not used if it did not support any particular suspicion which would mean that the information was beneficial in quashing concerns. Furthermore, it is not known whether the officers of the council read the blog which the Appellant is involved with.

### **The Previous Requests**

22. The Tribunal has been provided with a schedule of the Previous Requests (pages 171 to 176 of the Bundle). The Previous Requests were submitted to the council within the period from 1 April 2022 and 31 October 2023. The list is not numbered. However, as the Appellant does not dispute that there were 87 requests during this period, the Tribunal accepts that to be correct. On average, this could be said to amount to about 4.8 requests per month., However, it is noted that the Appellant tends to ask questions within separate documents that could have been included within one request. If it is the Public Authority's

preference for the requests to be within one document, the Public Authority could have requested this from the Appellant to assist in easing any burden.

23. None of the Previous Requests appear to be burdensome, demanding or impolite and it is anticipated that, if any were, the Tribunal's attention would have been drawn to them.
24. The Previous Requests appear to be the type of requests that might be made by a journalist and the Tribunal accepts that the Appellant was akin to a journalist and notes his submission that there was a shortage of local journalists.
25. The Tribunal notes that responses were provided to the Previous Requests.

### **The ULEZ Request - IC-263567- M3S3,**

26. The first of the Requests is dated 8 July 2023, and given the reference number IC-263567- M3S3 (the "**ULEZ Request**") by the Respondent. It reads:

*"...can you please supply all emails sent from the Council Leader's work e-mail address between March 1, 2022 and March 1, 2023 that have "ULEZ" or "Ultra Low Emission Zone" in message body or subject, and have "bexley.gov.uk" in recipient's e-mail address"*

27. This is a broad request. The initial response from the Public Authority relied on s.12 FOIA and complained of the burden of the work to be carried out, indicating that there were potentially 526 emails to be considered. Whilst the Appellant challenges the accuracy of the time that would be spent in dealing with the matter, the Tribunal considers that this request falls under EIR and, therefore, the specific exception at a section 12 FOIA does not apply. Instead, regulation 8 EIR confers on the Public Authority the power to charge a reasonable fee before complying with the request. Despite quoting the incorrect legislation, the Public Authority did request that the Appellant pays the sum of £650 for the information.
28. Whilst the Tribunal accepts the ULEZ Request would have been burdensome to comply with, it does not accept, in the absence of further evidence, that £650 is a reasonable fee - 26 hours (3 minutes per email) seems high. It is anticipated that a number of the emails will be very short and may be reviewed in seconds.

29. The Tribunal accepts that by setting out the fee, even if incorrect, the Public Authority was informing the Appellant of the burdensome nature of the ULEZ Request. Additionally, within their letter dated 23 August 2023, the Public Authority give the following advice:

*“If you narrow the scope of your request, we may be able to provide the information free of charge because it would cost less than the appropriate limit to do so. You may wish to refine your request by being more specific about what information you particularly wish to obtain, including any dates or period of time relevant to the information required. Any reformulation request the council receives from you will be treated as a fresh request.”*

30. By his response to the Public Authority’s indication that there would be a charge for the information, in his email dated 15 August 2023, the Appellant appears to have misunderstood the position of the Public Authority. He suggests that identifying the emails should be easy. However, it is clear from the Public Authority’s reference to 526 emails, that they had identified the emails, but that they needed to review them. The Tribunal considers it reasonable for the Public Authority to review the emails.
31. In the absence of a clear purpose for this request, and in light of the numerous previous requests that had been made, the Tribunal accepts that the ULEZ Request could be considered to be manifestly unreasonable by the fact that it is unduly burdensome in circumstances where there has been a volume of other requests. Perhaps having come about due to a failure to focus and appropriately narrow the search criteria given the history of the number of requests previously made.
32. In considering this request, together with the history of the Previous Requests and the nature of the Appellant, the Tribunal does consider that this request was burdensome. However, the Tribunal must not to conflate the fact that a request was burdensome with it being manifestly unreasonable. To conclude that the request was manifestly unreasonable is a high hurdle that the Tribunal does not consider has been reached, particularly as the public authority could have changed the applicant for making the information available (section 8 EIR). The request relates to matters that are of public interest generally and the Appellant is an individual involved with a community blog for the purpose of informing the public.



## Road Safety Requests

33. The next eight requests have been allocated the following reference numbers by the Respondent - IC-275932-M7V1, IC-276032-F9Z3, IC-277155-V0F2, IC-292023-S1X5 IC-292019-B0K2 IC-277148-Y7K1, IC-277149-V3V8, IC-277151-K9K6. These all relate to matters concerning road safety (the "Road Safety Requests"). They are considered together in the interests of brevity.
34. The Tribunal considers that the Road Safety Requests come within the EIR as matters concern landscape under regulation 2(1)(a) save for the first (**IC-275932-M7V1**) request. This request relates to the work carried out by officers. Whilst the work relates to the road safety, it is not considered that the request itself would be covered by EIR.
35. The Tribunal considers the Road Safety Requests in light of the background of numerous requests having been made previously, including the burdensome nature of the ULEZ Request, and also the role taken by the Appellant with the community blog. The Tribunal is mindful that the hurdle in determining a request to be either vexatious or manifestly unreasonable is a high one. However, the Road Safety Requests themselves are not considered to be burdensome, although they may have been less burdensome if included in one document. However, the Tribunal is mindful that by them being submitted as multiple requests this does enable the Public Authority to distribute them to different officers to deal with and, therefore could be beneficial. The Public Authority are, of course, free to advise the Appellant of a better way to deliver his requests if they wish to do so. It is not understood that this has occurred, or that it would be the Public Authority's preference for them to be set out in one document.
36. As road safety is a matter of public interest, the Road Safety Requests are considered to be of public interest and given the Appellant's role with community blog, the Tribunal is satisfied that the Appellant's motive was to be able to ensure that any information passed to the public through the blog was accurate. It is not understood that any harassment or distress has been caused to staff.
37. On balance, the Tribunal does not consider the Road Safety Requests to be vexatious or manifestly unreasonable.

## The Procurement Request

38. The last request referred to within the schedule provided by the Public Authority has been given the reference number **IC-291541-W0T7 (the "Procurement")**. The

Request was made on 27 February 2024 by email and requests emails to a supplier from 1 March 2021 to 1 August 2021.

39. At the hearing, the Appellant explained that the purpose and motive behind making the Procurement Request was to establish the truth relating to a concern that the Public Authority had appointed a supplier without adhering to the appropriate procurement policy. This request falls under FOIA as it does not relate to any matter referred to in s.2 EIR.
40. The Tribunal considers that whether the Public Authority is complying with policy is a matter of public interest and accepts that the request was not self-serving. The Tribunal does not consider that it would have been burdensome for the Public Authority to provide the information and does not consider that the Previous Requests, including those referred to above, render this request vexatious.

## **SUMMARY OF DECISION**

41. Therefore, despite the volume of requests made by the Appellant, and the acknowledgement by the Upper Tribunal that "*a torrent of individually benign requests may well cause disruption, so one further such request may also be vexatious*" (paragraph 26, **Dransfield**) the Tribunal does not consider that the Requests are vexatious/manifestly unreasonable in the circumstances.
42. In the main, the Appellant's individual requests are not burdensome and are considered to serve the public interest. In circumstances where they appear to be more burdensome, there is no evidence that the Public Authority has provided him with the appropriate level of advice and assistance which they are required to provide under regulation 9(1) EIR.
43. The Appellant acts in the public interest by sharing information through the blog and is not motivated by self-interest. The Requests are of value in not only informing the public but, importantly, ensuring that the public are provided with accurate information. It would hope that this would work to assist the Public Authority by dispelling any inaccuracies. There is no evidence or suggestion that the Requests have harassed or caused distress to the of the Public Authority.
44. In all the circumstances, it is not considered that the Requests are vexatious/manifestly unreasonable. It is considered that the Appellant is serving a public interest by fact checking information prior to publication. As such, there is

no requirement for the Tribunal to consider whether the public interest in maintaining the exception outweighs the public interest in disclosure (as required by regulation 12(1)(b) EIR and s.2(1)(b) FOIA.

45. If the Tribunal had determined that the exception at regulation 12(4)(b) applied in relation to the requests covered by the EIR, it would have been necessary to consider whether the public interest in disclosure outweighs the benefit of maintaining the exception.
46. In relation to the ULEZ Request, the Tribunal is unable to fully consider the public interest benefit as the purpose of it is not clear. Whilst the Tribunal itself accepts that information in relation to ULEZ schemes generally are of public interest, in light of the lack of information in relation to the specific purpose of the information the burdensome nature of the request, and the number of requests made previously by the Appellant, the Tribunal would not, if it had been necessary, considered that the public interest in disclosure outweighs the public interest in maintaining the exception and not overwhelming the Public Authority for a purpose that is not clear.
47. In relation to the Road Safety Requests, the Tribunal does consider it is important for information in relation to road safety to be made available to the public. The requests are specific, and the Tribunal would have considered that the benefit of ensuring that information reaches the public does outweigh the benefit of maintaining the exception. However, this is based on the Tribunal having accepted that the Appellant's intention is to either share the information received on the community blog or to not share it if it is not newsworthy. The Tribunal notes that the allegation of manifest unreasonableness in this case is based only on the volume and burden of previous requests and does not consider that volume of requests is the deciding factor, all the circumstances must be considered. A different conclusion may have been reached in different circumstances.

## **APPEAL**

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, General Regulatory Chamber. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

Judge R Watkin

16 October 2024

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APPENDIX  
The Requests

**THE ULEZ REQUEST**

**IC-263567- M3S3,**

This request is dated 8 July 2023 and requests:

*"can you please supply all emails sent from the council leaders work e-mail address between March 1, 2022 and March 1, 2023 that have "you LL Z" or "ultra low emission zone" in message body or subject, and have open quotebexley.gov.uk" in recipients e-mail address"*

**ROAD SAFETY REQUESTS**

**IC-275932-M7V1**

This request is dated 28 September 2023 and requests:

*"In response to an earlier FOI request, Highways team advised that the council (presumably, the Highways team) has (a) "an advisor to support schools in updating their School Travel Plans", (b) a "Pedestrian Skills Officer". Can you please provide the list of these two officers' engagements with schools since January 2021. I'm looking for a list of format "year/officer (one of the two above)/ school"*

**IC-276032-F9Z3,**

This Request is dated 22 November 2023 and requests:

*"Discussing correspondence with the council regarding Rd safety concerns around the school, the headteacher of Our Lady of the Rosary Catholic Primary School wrote to me: "We looked at a project Wyborne Primary have adopted where the road is blocked off at the beginning and end of the day - Bexley knocked it back". Can you please 1. Confirm that Our Lady of the rosary Catholic primary school expressed interest in a "school streets closed quote proposal. 2. (if yes) confirm that the proposal was rejected. 3. (If yes) Share any correspondence or documents explaining the decision."*

**IC-277155-V0F2,**

This request is dated 9 December 2023 and requests:

*"Can you please share any reports summarising the recent survey of potential pedestrian crossing locations, and describing proposed action. (No need to resupply earlier materials related to ADP V2 calculations, unless modified)."*

**IC-277151-K9K6,**

This request is dated 9 December 2023 and requests:

*Details of traffic calming projects at 2 school sites in Slade green planned as part of the Slade Green Superzone project for summer term 2023/ 2024*

*Were these projects included in the appropriate LIP submission?*

*Have these projects received funding? If yes, how much?"*

**IC-277149-V3V8**

This request is dated 10 December 2023 and requests:

*...details of the planned £100,000 spend recorded as "Local Area Accessibility: Small Scale Ad Hoc Pedestrian Access Improvements" in Appendix 1, "Transport and road safety programme of investment 2023/2024".*

- 1. What months of 2023/24 does the programme cover?*
- 2. Which of the items in (1) have been delivered?*

**IC-277148-Y7K1,**

This request is dated 10 December 2023 and requests:

*...details (including location of works) of the planned £125,000 spend recorded as "school travel highway schemes" in Appendix 1, "Transport and road safety programme of investment 2023/2024.*

- 1. What months of 2023/24 does the programme cover?*
- 2. Which of the items in (1) have been delivered?*

**IC-292019-B0K2**

This request is dated 29 February 2024 and requests:

*Can I please see any documents and emails regarding flooding concerns at the proposed pedestrian crossing on Yarnton Way, included in the council's 2023 survey of pedestrian-crossing locations.*

**IC-292023-S1X5**

This request is dated 29 February 2024 and requests:

*report(s) summarising the council's 2023 survey of pedestrian-crossing locations*

**THE PROCUREMENT REQUEST**

**IC-291541-W0T7**

This request is dated 29 February 2024 and requests:

*emails, if any send by council staff to city events limited or two (XXX] (owner of City Events Ltd) between March 1, 2021 and August 1, 2021. In your response, please describe how you searched for information, preferably including search screenshots. Please feel free to redact out any amounts. The same request with wrong dates - year given as 2023 instead of 2021, when the Bexley Volunteer Event was held - was earlier submitted (ref. 14749006 ), and answered. (After being delayed, then dismissed as vexatious, then raised to the ICO, then apparently re classified as not vexatious). Can you please read you the e-mail correcting the date filter.*