



Neutral citation number: [2025] UKFTT 247 (GRC)

Case Reference: FT/EA/2024/0101

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

**Considered on the papers on: 20 February 2025**

**Decision given on: 27 February 2025**

**Before**

**TRIBUNAL JUDGE HEALD  
TRIBUNAL MEMBER DR MANN  
TRIBUNAL MEMBER COSGRAVE**

**Between**

**PHILIP SWIFT**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

The Appeal was decided without a hearing as agreed by the parties and allowed after consideration by the Tribunal as required by rule 32(1) of the Tribunal Procedure (First - Tier Tribunal) (General Regulatory Chamber) Rules 2009.

**Decision:** The Appeal is Allowed

**Substituted Decision Notice:**

1. the Respondent shall provide a copy of this Decision and pages C64 and C66 of the Bundle to the Chief Constable of Thames Valley Police within 7 days of being sent this Decision.
2. the Chief Constable of Thames Valley Police shall, within 35 days of the delivery of this Decision to him, respond to the request for information made by Philip Swift on 23 August 2023 afresh without reliance on section 14(1) Freedom of Information Act 2000 or shall confirm its response as being that of 17 January 2024 at page C64 of the bundle for this Appeal or that of 22 January 2024 at page C66 of the Bundle.

## REASONS

1. Mr Swift appeals to the Tribunal by section 57 Freedom of Information Act 2000 ("FOIA"). The Appeal relates to a decision notice ("the DN") issued by the Information Commissioner ("the IC") dated 20 February 2024 with reference IC-260971-P6N6. In it the IC supported the view taken by The Chief Constable of Thames Valley Police ("TVP") that it was entitled to rely on section 14(1) FOIA in refusing to provide certain information requested by Mr Swift.
2. What follows is a summary of the submissions, evidence and our view of the law. It does not seek to provide every step of our reasoning. The absence of a reference by us to any specific submission or evidence does not mean it has not been considered.
3. In this Decision page numbers indicated by their inclusion in brackets refer to pages of the Bundle. Where evidence is cited and underlined that has been added for emphasis.

### **Evidence and matter considered**

4. The matter was dealt with on the papers. For the Appeal we had a bundle of 157 pages.
5. TVP was not a party and we had no statement from TVP and so our understanding of its position is derived principally from its letter to Mr Swift of 15 February 2024 and what it explained to the IC in correspondence and as explained by the IC in the DN and elsewhere.
6. Mr Swift provided a lot of detailed information to us but our focus was only as regards the issue to be determined. Mr Swift's position was set out principally in (a) his response on 16 February 2024 to the letter of 15 February 2024 (b) in correspondence (c) in his document called "*FOI Revised Appeal Response, S170 Review & S.A.R. Case Reference IC-260971-P6N6 (C87-C104)*" (d) in his Complaint to the IC and (e) in his Appeal and the Grounds (A17-A33).
7. We also had a document called "*Respondent's completed CMQ and GRC5*" of 8 May 2024 (A37-A42). While this had been prepared for its specific purpose that appears (B52) to have been dealt with on 8 August 2024 in so far as it assisted on the section 14 questions we had regard to its content.

### **Role of the Tribunal**

8. The Tribunal's role in an Appeal by section 57 FOIA is as set out in section 58 which provides that:-
  - (1) *If on an appeal under section 57 the Tribunal considers –*
    - (a) *that the notice against which the appeal is brought is not in accordance with the law, or*
    - (b) *to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently, the Tribunal shall allow the appeal or*

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

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

9. In:-

(a) *NHS England -v- Information Commissioner and Dean [2019] UKUT 145 (ACC) the Upper Tribunal said:-*

*"10. The First-tier Tribunal 'exercises a full merits appellate jurisdiction and so stands in the shoes of the IC and decides which (if any) exemptions apply..."*

(b) *Peter Wilson -v- The Information Commissioner [2022] UKFTT 0149 it was held that:*

*"30...the Tribunal's statutory role is to consider whether there is an error of law or inappropriate exercise of discretion in the Decision Notice. The Tribunal may not allow an appeal simply because it disagrees with the Information Commissioner's Decision. It is also not the Tribunal's role to conduct a procedural review of the Information Commissioner's decision making process or to correct the drafting of the Decision Notice."*

### **Request to Appeal (overview)**

10. The particular request we are asked to consider was made on 23 August 2023 when Mr Swift wrote to TVP (C54) and said:-

*"Please provide all information relating to your information disclosure process which I understand is under review.*

*this will include, but not be restricted to, when and why the review commenced (the basis of this review and the need for same) the exchanges on the subject (arguments, considerations etc.), the instructions you have received not to disclose, the aspects and issues arising. The information should include internal (within TVP) and external (with others) exchanges.*

*To which areas does the review apply – I understand RTC/Traffic reports are an area affected"*

11. On 5 September 2023 TVP replied (C55) and, citing section 8(1)(c) FOIA, said that they concluded that the 23 August 2023 letter did not contain a FOIA request. On 6 September 2023 Mr Swift requested an internal review (C56). On 27 September 2023 TVP replied (C58) and agreed that their 1st response had been wrong. They said:-

*"No information held. No disclosure process review is in place in respect of disclosure to the insurance industry"*

12. TVP added:-

*"Although no actual disclosure process review is being undertaken it is only right that we provide confirmation that the legal gateway in respect of disclosure to the insurance industry in respect of purely sharing the personal details of those that were involved in a collision when*

*this has not already happened is being addressed. We have however determined that this does not fall into the scope of your request as it is not actually reviewing the disclosure process."*

13. On 28 September 2023 (D116/D118) Mr Swift complained to the IC. He said in summary:-

*"The public body says it does not hold the information and I disagree, or I believe it holds more information than it has sent"*

14. Following the involvement of the IC and from the DN we understand that there were a number of relevant developments and interactions between Mr Swift, the IC and TVP. These included:-

(a) a call of about 90 minutes held between Mr Swift and TVP on 20 December 2023.

(b) TVP writing to Mr Swift on 17 January 2024 (C64) stating some information was held, providing some information but with some redactions by section 40(2) FOIA and while and excluding "...any material held which is subject to legal privilege as your appeal email outlined that you accepted that Section 43 exemption was engaged."

(c) TVP writing again on 22 January 2024 (C66).

(d) the IC identifying that TVP had meant to refer to legal professional privilege thus should have cited section 42 FOIA not 43.

15. TVP then changed its position and said it now relied on section 14(1) FOIA on the basis the request was vexatious. Mr Swift was informed on 15 February 2024 (C83) and he provided a response on 16 February 2024 (C87- C99). As set out in the DN (1) the IC's decision was that the request was vexatious.

16. On 20 March 2024 Mr Swift Appealed the DN (A17-29). The Appeal is supported by Grounds (A30-A33). On 8 May 2024 the IC provided a Response (A34).

#### **TVP's change to section 14 FOIA**

17. Mr Swift has challenged the decision by TVP to change their position on his request from their use of various exemptions to section 14 FOIA and the IC's acceptance of it. This occurred prior to the issue of the DN.

18. At para. 24 of the DN (A7) the IC referred to the Court of Appeal Judgments in *Home Office v Information Commissioner* and *DEFRA v Information Commissioner and Birkett [2011] EWCA civ 1606* which is clear legal authority that TVP were entitled (subject to any relevance of the 2009 Rules) to do so.

19. It is also noteworthy that the Upper Tribunal Decision in *NHS England v Information Commissioner and Dean [2019] UKUT 145 (AAC)* in particular at paras 10-12 said:-

"11...And, as I have shown, both the Commissioner and the tribunal are under a duty to consider any exemption that might apply, regardless of whether it has been raised. Once the case is before them, that is their role, not the authority's.

12. So the tribunal was right to be concerned that there could be exemptions that had not been considered by either NHS England or the Information Commissioner. But it was wrong to deal with that issue by remitting the case back to the authority. What it should have done was to give directions to the authority to identify any other exemptions that might apply, to consider whether or not any did, and then to make a decision accordingly."

20. TVP were entitled to change their position and it was not wrong of the IC to allow it.

### **Section 77 FOIA**

21. There has been much said in the papers about section 77. This section provides that:-

(1) Where –

(a) a request for information has been made to a public authority, and

(b) under section 1 of this Act the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

22. The IC states in the DN (A14) under "other matters" that Mr Swift had made an allegation of a section 77 offence. The IC investigated and found no evidence to substantiate it but Mr Swift "repeatedly tried to resurrect this matter at various points.." The IC said that this issue did not form part of the DN. Mr Swift responded in his Grounds (A31) explaining why he still takes the view that TVP had committed a section 77 offence.

23. Section 77 FOIA is not an issue for the First -tier Tribunal and we gave this matter very little attention as it was not part of the DN.

### **Scope**

24. The issue to be determined is therefore whether the IC erred in law in concluding in the DN that TVP were entitled to assert that the request (of 23 August 2023-C54) was vexatious.

### **Law**

25. FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing if that information is held (section 1(1) (a) FOIA) and if that is the case to be provided with that information (section 1 (1) (b) FOIA).

These entitlements are subject to a number of exemptions and in addition to section 14(1) FOIA which provides that:-

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

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

*"27...vexatious connotes manifestly unjustified, inappropriate or improper use of a formal procedure"*

27. The Decision in *Dransfield* provides guidance on the approach to section 14(1) FOIA. Four broad and non-exhaustive issues were identified for consideration namely (1) the burden on the public authority and its staff (2) the motive of the requester (3) the value or serious purpose of the request, and (4) any harassment or distress of or to the public authority's staff.

28. As regards burden:-

*"29...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."*

*"30...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 questions has consistently failed to deal appropriately with earlier requests that may well militate against a finding that the new request is vexatious"*

*"32. As regards 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."*

*"33....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."*

29. On motive:-

*"34...the motive of the requester may well be a relevant and indeed significant factor in assessing whether the request itself is vexatious. The FOIA mantra is that the Act is both "motive blind" and "applicant blind". ....., the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request. What may seem*

*an entirely reasonable and benign request may be found to be vexatious in the wider context of the course of dealings between the individual and the relevant public authority. Thus vexatiousness may be found where an original and entirely reasonable request leads on to a series of further requests on allied topics, where such subsequent requests become increasingly distant from the requester's starting point."*

*"35...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."*

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

*"38...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? In some cases the value or serious purpose will be obvious – say a relative has died in an institutional setting in unexplained circumstances, and a family member makes a request for a particular internal policy document or good practice guide. On the other hand, the weight to be attached to that value or serious purpose may diminish over time. For example, if it is truly the case that the underlying grievance has been exhaustively considered and addressed, then subsequent requests (especially where there is "vexatiousness by drift") may not have a continuing justification. In other cases, the value or serious purpose may be less obvious from the outset. Of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness. In any case, given that the legislative policy is one of openness, public authorities should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident."*

31. On the question of harassment and distress:-

*"39...vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive (e.g. the use of racist language). As noted previously, however, causing harassment or distress is not a prerequisite for reaching a conclusion that a request is vexatious within section 14."*

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

*"28...It is important to remember that Parliament has expressly declined to define the term "vexatious". Thus the observations that follow should not be taken as imposing any prescriptive and all encompassing definition upon an inherently flexible concept which can take many different forms." ..... "There is no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement..."*

and

*In Cabinet Office v Information Commissioner and Ashton [2018] UKUT 208 (AAC), the Upper Tribunal stated "The law is thus absolutely clear. The application of section 14 of FOIA requires a holistic assessment of all the circumstances."*

33. The IC in its Guidance states that:-

*"Section 14(1) is designed to protect public authorities by allowing you to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress."*

34. The IC also states that making a FOIA request is an important right and so engaging section 14(1) FOIA is a high hurdle to satisfy and Arden LJ in the Court of Appeal in *Dransfield & Anor v The Information Commissioner & Anor [2015] EWCA Civ 454 (14 May 2015)* held:-

*"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."*

35. It was the public authority, in this case TVP that has the burden of demonstrating that the high hurdle of section 14(1) has been met.

#### **Request or requester and the vexatious test**

36. In TVP's letter of 15 February 2024 (C83) they said to Mr Swift:-

*"It is our view that your continued communication with our force which comprises of extensive emails; numerous FOI requests/appeals; unreasonable persistence and unfounded accusations, means that your requests on this subject have now engaged the Section 14(1)..."*

37. In his response on 16 February 2024 Mr Swift said (C88):-

*"I understand you can only apply section 14(1) to the request itself, and not the individual who submits it*

*B. Why have you applied the section to me?"*

38. The DN at para 2 the IC says that their decision is that the request is vexatious. In the Appeal (A23) Mr Swift says *"Additionally that the s14 exemption is about my alleged conduct, not the original request and relates to post ICO complaint matters"*. In the Grounds he also made reference to *"whether my conduct was vexatious"* and *"TVP applied section 14(1) to me personally and not the request itself"*.

39. While FOIA does not as a rule consider the identify or motive of a requester it is the case that as set out in *Dransfield* issues such as motivation and conduct of the requester can be part of the considerations for section 14. We did not take the view



that as regards this matter TVP or the IC had in any sense inappropriately made Mr Swift and not the request the object of their position on section 14.

### **Our review**

40. We considered the position of the parties and the evidence for this Appeal keeping in mind *Dransfield* and the high hurdle referred to by the IC.

### **Burden of the request itself**

41. In TVP's letter of 15 February 2024(C83) when giving their reasons to Mr Swift for the section 14 approach they wrote out the request and 5 others and said:-

*"It is our view that your continued communication with our force which comprises of extensive emails; numerous FOI requests/appeals; unreasonable persistence and unfounded accusations, means that your requests on this subject have now engaged the Section 14(1) exemption under the Act."*

and referred to their view of his motives and that:-

*"we have struggled to manage your expectations and the wording of your requests have been difficult to navigate due to your lengthy emails; challenging approach and continued perception of wrongdoing on our part. Ultimately there comes a point whereby our previous endeavours to manage your expectations and requests have become disproportionate and we now believe we have enough evidence to justify engaging Section 14(1).*

42. In the DN the IC says (A10):-

*"40. It is TVP's position that to comply with the request would be "an unreasonable burden and would require a disproportionate effort". It said it considers that the following elements of section 14 of FOIA have been met:-*

- *Frequent or overlapping requests*
- *Unreasonable persistence*
- *Unfounded accusations*
- *Burdensome"*

43. They also refer at para 42 to details provided to them by TVP setting out the "detrimental impact of complying with the request " but then rather than referring to the request go on to say "...explaining that the complainant has made six FOIA requests on the same subject..."

44. The IC also reports (para 45 of the DN) that TVP have said that:-

*"...we have struggled to manage his expectations and the wording of his requests have been difficult to navigate due to their complicated and protracted nature; frequent correspondence and his continued perception of wrongdoing on our part".*

45. Having read the request itself it did not appear to us to be on its face to be a burden to answer. It is quite short and narrow in scope. We also took note of the fact that TVP in fact answered the request in just under 2 weeks with their initial response and when challenged were able to conclude an internal review and respond within about 3 weeks saying "*no information held*".
46. On that basis, and without specific evidence from TVP on this question, we have concluded that, in so far as TVP felt the request was a burden, that was more the result of for example:-
- (a) not getting the 1st response right.
  - (b) having to reconsider the position in the internal review.
  - (c) the IC's intervention
  - (d) TVP's change to providing some information while citing sections 40(2) and 43/42.
  - (e) deciding (for which there is no criticism) that they would have a 90 minute phone call with Mr Swift
- rather than because of this actual request.
47. We also concluded (from the TVP letter of 15 February 2024 as highlighted above) that the decision to consider this request a burden was also the result of having to deal with other (mostly later) requests.

### **Burden by the course of dealing**

48. As seen above TVP in their letter of 15 February 2024 refer to a course of dealing. They say for example (C85):-

*"The volume of emails in respect of this matter; the actual FOI requests (6 in total) & FOI appeals (5 in total) is causing a disproportionate and unjustified level of disruption to our organisation and we have no choice but to try and bring this matter to a conclusion from a legal perspective"*

and

*"We have tried to be reasonable and also spent over 90 minutes discussing your concerns over the telephone. This is purely the case that we have struggled to manage your expectations and the wording of your requests have been difficult to navigate due to your lengthy emails; challenging approach and continued perception of wrongdoing on our part."*

49. The IC in the DN explains that of the 6 requests cited:-

- (a) this one is request 2
- (b) the previous one was on 3 April 2023

(c) the other 4 all post-date this request.

50. The IC says in the DN (A11) for example:-

"44. When considering burden, the Commissioner has only taken account of the request which pre-dates the one under consideration here. However, he is satisfied that the further requests and associated correspondence submitted after 23 August 2023 indicate that complying with this request would be unlikely to bring about an end to the complainant's approaches – it is likely that he will continue to make requests, further adding to the burden on TVP's resources."

"46. TVP said the complainant has appealed almost all of the original FOIA requests and also added new requests at the same time as appealing, which has caused confusion. TVP referenced that the complainant has also submitted a duplicate complaint to the one under consideration here to the Commissioner..."

"47. TVP referenced that the complainant is raising the same issues with other police forces which it believes supports its position, but also highlights the same detrimental impact this is having on a number of public authorities.

"48. The officer at TVP said he had personally spent "countless hours" trying to respond to the complainant's concerns and appeal requests. TVP said that the complainant's various FOIA requests and appeals, together with all the communication relating to these matters, have been burdensome on its resources."

"56. The Commissioner considers that dealing with the complainant's requests has become burdensome to TVP and is detracting from its ability to respond to other requesters. He recognises that it has said it is struggling to manage the complainant's expectations and that the lengthy emails and wording of his requests have also been difficult to navigate..."

51. We also noted para 57 of the DN (A14) and that as at the date of the DN on 20 February 2024 after 6 requests the view that the point "*..has now been reached...*" :-

52. Based on *Dransfield* our starting point was to consider this question by the situation as it stood at the date of this, the 2nd, request. We noted:-

(a) the one before was some 4 months earlier.

(b) the two do not appear to be about a similar thing even if on the same topic broadly. Request 1 says (C83):-

"I asked to be provided all information / consideration that resulted in this determination; why 'not in the spirit of the Act' was considered reasonable, correct and appropriate. I am without this and trust it will be forthcoming without further delay."

whereas request 2 asked about a review of "*your information disclosure process*".

53. We did not find from the previous course of dealing evidence suggesting an issue with "*the number, breadth, pattern and duration of previous requests*" or that Mr Swift was

constantly submitting "...multiple FOIA requests or associated correspondence within days of each other.." or "...a long history of requests e.g. over several years"

54. *Dransfield* does refer to the to the need to consider "the context" of the burden and section 14 FOIA holistically. We did review the evidence of what came after this request and a number of issues supported the suggestion there was a degree of burden being encountered. These included that:- -

(a) there were in the end 4 more requests making 6 in total and they must have been quite close together between August 2023 and February 2024.

(b) while they are somewhat different to each other and from request 2 they do continue to address the same topic in a general sense.

(c) we are told, there are a number of other appeals.

(d) TVP is struggling to manage Mr Swift's expectations.

(e) these requests have been a burden on TVP's resources.

(f) dealing with these requests is "...detracting from its ability to respond to other requesters."

(g) an officer reports spending countless hours.

(h) Mr Swift's communications are lengthy and complex and cross refer to other contacts with TVP and so would require considerable time to analyse.

(i) Mr Swift has made contemporaneous contact with various parts of TVP on the same issues (D118, D119).

55. We would have been assisted by some evidence or submissions directly from TVP explaining the detail on issues such as resources and impact on its ability to deal with other requesters however we did get a good sense of the issues TVP faced and accept the realities of them. We gave some weight to this element as being suggestive of there being burden by reference to what came later.

56. To be clear we did not consider the reference to Mr Swift raising the same issues with other police forces and TVP's belief of the detrimental impact that is having on a number of other public authorities to have much if any relevance to this Appeal.

### **Motive /purpose**

57. In the various submission from Mr Swift we did not get a clear sense of exactly what his purpose was as regards this request save that he wanted to know the answer to his question. TVP says referring again to all 6 requests that (C86):-

*"It is clear to us that your motive for making these FOI requests on the same subject is to vent your continued dissatisfaction with our access & disclosure regime and your endeavour to circumvent these procedures and undermine our reasons for refusing disclosure"*

58. The IC adds that TVP has said that his purpose is (A10):-

*"...to further his agenda due to his perception that we are treating him and his company differently and being unfair in respect of our disclosure regimes. This FOI request and others and his whole interaction with our force which has been going on for some time is due to his ultimate aim of circumventing existing disclosure regimes that we have in place and undermining our approach to such matters in an unhelpful manner and this matter has become a significant burden on our organisation"*

and (A10):-

*"This is purely an issue whereby the applicant's motive is to unfairly undermine our processes in respect of releasing police information. He is the only [redacted] company taking this approach to such matters with us but we also believe that he is doing so with other forces and the NPCC."*

and (A12)

*"Ultimately he is trying to get access for [redacted] purposes and is not prepared to use the correct processes which have been put in place to share with the [redacted] industry. He is using FOI in an endeavour to find a way of undermining our legal approach when we are purely trying to be responsible data controllers in respect of the way we release police data outside of our domain."*

59. The IC says that (A13):-

*"51. The Commissioner is mindful that the complainant has a business reason for requesting the information and that, whilst he may consider there is a serious purpose and value to his requests, the Commissioner must also take into account that there is another route (for which he understands a fee is payable) by which he can access much of the information he is seeking."*

*"52 The Commissioner has seen no evidence that other businesses and individuals are seeking to use FOIA or DPA Subject Access Requests to try to secure similar information and he understands that the established access route operates effectively, and as intended..."*

60. There is a sense from TVP and the IC that there is something inappropriate about trying to circumvent a fee and/or using FOIA when a different process exists (if that is part of his motive). We do not agree. A different route with or without a fee does not make a FOIA request inappropriate or vexatious while it may result in a public authority if it wishes responding as allowed by other parts of FOIA.

61. In any event on the facts of this matter we do not accept these submissions. In our view while the arguments might be relevant if we were looking at a request for some case specific data that was deemed to be an attempt to circumvent a procedure that is not the case here where the question asks for information about a specific review.

## Value

62. TVP's letter of 15 February 2024 (C83) does not address the question of value directly. In the DN the IC says A13:-

*"He has therefore concluded that there is little purpose or value to the complainant's request under consideration here."*

63. We do not agree. In considerable summary the request seeks information about a possible review being undertaken also involving the National Police Chiefs Council regarding the way in which the Police can, do or should, share data for example with insurers. In our view the question of whether there is or might be such a review is self evidently of interest and has a value or serious purpose and in any event:-

*"...a lack of apparent objective value cannot alone provide a basis for refusal under section 14, unless there are other factors present which raise the question of vexatiousness."*

## Harassment and/or distress

64. In TVP's letter of 15 February 2024 to Mr Swift (C83) they make reference when talking about the numerous FOI requests / appeals to *"unreasonable persistence and unfounded accusations.."* They also say:-

*"... due to your lengthy emails; challenging approach and continued perception of wrongdoing on our part."*

65. In para 40 of the DN (A10) the IC says that TVP's position is that these elements of section 14 have been met *"..Unreasonable persistence, Unfounded accusations.."*

66. TVP also told the IC (A12):-

*"It is also fair to state that the tone when he emails has not helped matters."*

67. In para 53 of the DN the IC says (A13):-

*"The complainant seeks to challenge much of what he has been told and the tone of some of his emails to TVP are accusatory and have caused distress to some of its staff members involved in handling his requests and associated correspondence."*

68. In para 56 of the DN the IC refers to Mr Swift's *"challenging approach"*

69. We reviewed the email traffic passing between Mr Swift and TVP. We accept that he might be described as persistent and challenging but in this case he had some justification for being so and it caused a marked change in response from TVP.

70. We were concerned to read that his emails *"...caused distress to some of its staff members"* and there was an issue with the "tone". This would be a serious issue for us but we were not told which emails, nor directed to them, nor told what was said, when or to who. In our review we looked for evidence of where his approach may have overstepped the line. We did not find it.

71. On that basis, in the absence of evidence (other than knowing what the IC has been told) we do not accept that *vexatiousness* in a *Dransfield* sense is present in this case.

### **Holistically**

72. Having considered all these elements and together holistically we do not conclude that the high hurdle has been reached to show that the request relevant to this appeal was a manifestly unjustified, inappropriate or improper use of a formal procedure.

### **Decision**

73. It is for the public authority to satisfy the Tribunal that the high hurdle of section 14(1) FOIA has been met. The Upper Tribunal in *Dransfield* said:-

*“There is no magic formula – all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA”*

74. For the reasons set out above the request of 23 August 2023 was not, in our view, vexatious and the DN was therefore not in accordance with the law.

75. Accordingly the Appeal is allowed.

76. As requested by the IC (A35) in its Response to the Appeal a substituted decision notice is also provided.

**Signed Tribunal Judge Heald**

**Date: 21 February 2025**