



Case Reference: FT/EA/2024/0351
Neutral Citation Number: [2025] UKFTT 281 (GRC)

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

**Decided without a hearing
Decision given on: 7 March 2025**

Before

**JUDGE SOPHIE BUCKLEY
MEMBER DR PHEBE MANN
MEMBER ANNE CHAFER**

Between

PETER STEAD

and

Appellant

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is allowed.

Substituted Decision Notice:

Organisation: Governing Body of the University of York

Complainant: Peter Stead

The Substitute Decision - IC-307050-S3Z2

1. For the reasons set out below:
 - a. The Governing Body of the University of York (the University) was not entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA).

2. The University is required to take the following steps within 35 calendar days of the date that this decision is sent to the parties by the tribunal:
 - a. The University is required to issue a fresh response to the request, confirming whether it holds the information and must either
 - i. supply the information sought, or
 - ii. serve a refusal notice under section 17 FOIA including the grounds relied on other than section 14(1).
3. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice IC-307050-S3Z2 of 2 September 2024 which held that the Governing Body of the University of York (the University) was entitled to rely on section 14(1) of the Freedom of Information Act 2000 (FOIA).
2. This appeal was heard at the same time as FT/EA/2024/0352 but a separate decision has been issued.

Background to the appeal

3. This factual background is based largely on the factual background provided by the Commissioner in his response to the appeal.
4. This appeal concerns the Creative Industries Independent Standards Authority (CIISA), which is an organisation with the stated purpose and vision to "uphold and improve standards of behaviour across the creative industries and to prevent and tackle all forms of bullying and harassment, including bullying and harassment of a discriminatory nature ... "
5. The CIISA website states as follows:

"...In 2021, in light of a number of serious allegations being made in the public domain relating the Creative Industries, Time's Up UK Chair, Dame Heather Rabbatts joined forces with legal advisors from FieldFisher and scoped the concept for an Independent Standards Authority for the Creative Industries and began to consult with leaders

across Film, Music, TV and Theatre. In September 2022, CIISA brought on board Jen Smith as interim CEO, to lead the work and CIISA is now expanding its team, finalising its governance, legal and operational processes, funding and business plan aiming to provide some services by the end of 2024”

6. In October 2023, Dr Anna Bull from the education department at the University of York ("University") released a 64-page Report entitled "Safe to Speak Up?" about sexual harassment in the UK film and television industries. A summary, policy briefing and industry briefing were also released at the same time.
7. On 31 October 2023, Mr Stead made the following request for information to the University (the first request):

“Please send to me all of the materials you hold in connection with the report:

“Safe to Speak Up?” By Dr Anna Bull

...

However, please exclude the following:

- Anything which may lead to the identities of the interviewees being exposed.

- The raw material of the interviewees’ accounts to which the report makes reference

8. The University refused to comply with the first request in reliance on section 22A FOIA (information intended for future publication).
9. On 26 November 2023, the Appellant requested an internal review of the University's response to the first request as follows:

... I ask that you reconsider whether the prejudice you cite is a genuine risk.

....

The "Safe to Speak?" report endorses CIISA. An event was held by its backers on 15th November '23, supported by CIISA and where CIISA's CEO spoke on a panel. Therefore the "Safe to Speak?" report is now inextricably linked with CIISA.

However, there are significant concerns with regard to how this body has been formulated. ...

I am interested to understand ... why the gender split of the research subjects is so skewed. ... I am particularly keen to understand why a completely unrepresentative gender split was approved as ethical.

II) CIISA Formulation

This somewhat feeds into a similar concern I have with the makeup of the individuals who formulated CIISA in a series of 'roundtable meetings' held with the DCMS which formulated CIISA.

It came to my attention earlier in the year that one of the individuals involved in these meetings has tweeted repeatedly and claimed on a podcast that she, herself, was cautioned by police for harassment.

I have been raising this with some of the various organisations involved in CIISA's set up and have been receiving often evasive responses.

However, I did manage to obtain the meeting minutes of some of these roundtables from the DCMS, but this was only after a protracted battle via the ICO. I link to the decision notice for it as I think this may give you more background to where I'm coming from, here:

<https://ico.org.uk/media/action-weve-taken/decisionnotices/2023/4027141/ic-230000-g4w4.pdf>

Therefore, I am eager to understand how the ethics of the "Safe to Speak Up?" report fits into the broader ethics of the formulation of CIISA.

With the above factors in mind, I feel it is in the public interest to examine the methodology, ethics and general culture behind this study, given that reasonable questions may be asked about it and that it will be very influential on individuals in the creative industries via the organisation it supports - CIISA.

You say the report programme is due to be finished in late 2024. I do not think it is reasonable to expect the public to wait that long given that CIISA is also expected to become operational in 2024 and people need to have the tools to reasonably challenge its overall culture and strategy,

I therefore request that you recognise the considerable public interest in these materials as per the above and include this into your deliberation as part of an internal review of my request, with a view to sending me the materials I have requested ... "

10. On 22 December 2023, the University issued its internal review of its response to the first request in which it said:

" ... the public interest arguments laid out in the University's email of 23 November 2023 remain applicable. Whilst I appreciate you have presented a number of additional arguments in support of disclosure, many of them could, in part, be addressed by scrutinising the 'methods and limitations of the study' section of the Safe to Speak Up? report. Ultimately, the additional arguments presented do not rebalance our public interest test assessment ..."

11. On 31 December 2023, the Appellant complained to the Commissioner about the University's handling of the first request.
12. On 5 March 2024, the Commissioner issued his decision notice in relation to request one with the reference IC-282929-F5J6 in which he upheld the University's reliance on s22(A).
13. On 9 March 2024, the Appellant submitted another FOIA request (the second request) and a subject access request to the University:

"... This is (1) a FOI request and (2) a SAR.

1. I request the following information under the Freedom of Information Act:

All the materials you hold related to my previous FOI request, ICO reference IC-282929-F5J6.

Please note that this is not a repeat of the above request, it is about the above request. This is sometimes referred to as a 'meta request'. For more information, please see the ICO's guidance: ..."

14. On 26 March 2024 the Appellant appealed the Commissioner's decision in relation to the first request. This remains a live appeal (EA/2024/0109).

Request, Decision Notice, and appeal

The request and the response

15. Mr Stead made the following request to the University on 10 March 2024:

"Please send to me all of the emails sent and received between Anna Bull, and Jennifer (or Jen) Smith, Caroline Norbury and Heather Rabbatts.

Please include emails whether or not the emails came from or went to University of York and Creative Industries Independent Standards Authority (CIISA) email accounts or not, however - please only include emails which were professional/academic in nature - for example, if they were to do with the Safe to Speak Up? Report or its associated launch event, or other such matters and so on. If emails were part personal and part professional/academic, please redact the personal material contained therein as necessary, rather than excluding the entire email.

Please also include any of the emails' attachments - again - only the professional/academic ones or parts thereof, redacting out anything personal, as above.

Please obviously ensure not to include anything such as an individual's personal account of abuse or any associated names.

Please go back only as far as 1st January, 2023."

16. On 10 April 2024 the University confirmed that it held 8 email threads within the scope of the request and relied on section 14(1) FOIA (vexatious requests) to withhold the information. The University upheld its position on internal review.

The decision notice

17. In a decision notice dated 2 September 2024 the Commissioner decided that the University was entitled to rely on section 14(1) FOIA to refuse to comply with the request.
18. The Commissioner agreed with the University that the request was an attempt to circumvent the Commissioner's previous decision and to glean information about and associated with the report in question. The Commissioner concluded that the requested information may have value to Mr Stead but it was of little wider value.
19. The Commissioner concluded that amongst other possible motivations not detailed in the decision notice, one motive behind the request appeared to be to circumvent the Commissioner's previous decision in relation to the first request. The Commissioner considered that the request caused harassment to the University's staff, irrespective of the tone of the complainant's correspondence appearing courteous.
20. Having considered all the circumstances of the request, the Commissioner was satisfied that the negative effects of complying with the request outweighed the request's value. His decision was that the University correctly applied section 14(1) FOIA.

Notice of appeal

21. In essence, the grounds of appeal are that the Commissioner was wrong to conclude that the request was vexatious. In particular Mr Stead submitted:
 - 21.1. The Commissioner did not properly consider the wider value in the request or the seriousness of his purpose. Mr Stead submitted that there was a wider public interest.
 - 21.2. The Commissioner was wrong to conclude that the Appellant was trying to circumvent the Commissioner's previous decision and his reasoning in the decision notices is contradictory. Mr Stead submitted that even if this were true it does not meet the high hurdle of vexatiousness.
 - 21.3. The only burden is to go through 8 email threads.
 - 21.4. The Commissioner does not explain how the Appellant's request causes harassment to staff. Mr Stead submitted that he has been courteous throughout and has only raised three FOIA requests with the University.

The Commissioner's response

22. The Commissioner stated that he was aware of the points made by the appellant as to the value of the request and stood by his findings in the decision notice.
23. In relation to Mr Stead's submission that there was a contradiction between the reasoning in two of the Commissioner's decision notice, the Commissioner submitted that the tribunal is not concerned with establishing whether there are contradictions in reasoning in two separate decision notices.
24. In relation to harassment the Commissioner relies on closed material provided to the Commissioner by the University.

Mr Stead's reply

25. Mr Stead reiterated that the Commissioner had not considered the value of the request nor explained why he had concluded that there was no wider value. Mr Stead expanded on the wider value and purpose of the request.
26. Mr Stead noted that it was the Commissioner who had relied on his reasoning in the previous decision notice. He reiterated that this request is not for the same information in the previous request. He submitted that if the materials were the same, the University could have relied on section 22A. Mr Stead submitted that the requests were for different information, albeit with some overlap.
27. Mr Stead submitted that the lack of detail in the Commissioner's explanations suggests that the arguments presented by the University are weak.

28. Mr Stead submitted that it is difficult to see how addressing 8 email chains for release could reasonably cause harassment or distress.
29. Mr Stead makes a number of other points that we have taken into account.

Legal framework

S 14(1) Vexatious requests

30. Guidance on applying section 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC).
31. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA. That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).
32. The test under section 14 is whether the request is vexatious not whether the requester is vexatious. The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule.
33. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account. The Commissioner's guidance that the key question is whether the request is likely to cause distress, disruption, or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of whether or not there is an adequate or proper justification for the request.
34. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic checklist.

35. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.
36. As to burden, 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 the request is properly to be described as vexatious. In particular, the number, breadth, pattern, and duration of previous requests may be a telling factor. Thus, 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. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request.
37. Ultimately the question was whether a request was a manifestly unjustified, inappropriate, or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests.
38. In the Court of Appeal in **Dransfield** Arden LJ gave some additional guidance in paragraph 68:

“In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, 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...”

39. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.
40. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

41. The tribunal's remit is governed by section 58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Evidence and submissions

42. We had before us and took account of where relevant an open and a closed bundle. It is necessary to withhold the closed bundle to avoid defeating the purpose of the proceedings.

Discussion and conclusions

Section 14

Preliminary observations

43. In **Kennedy v Charity Commission** [2014] 2 WLT 808, Lord Sumption, with whom Lord Neuberger and Lord Clarke agreed, said as follows, at para 153:

"The Freedom of Information Act 2000 ... introduced a new regime governing the disclosure of information held by public authorities. It created a *prima facie* right to the disclosure of all such information, save in so far as that right was qualified by the terms of the Act or the information in question was exempt. The qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure. The Act contains an administrative framework for striking that balance in cases where it is not determined by the Act itself. The whole scheme operates under judicial supervision, through a system of statutory appeals."

44. It is important to remind ourselves of those observations. FOIA creates a prima facie right to disclosure of information held by public authorities, save in so far as that right is qualified by the terms of FOIA or the information in question is exempt. Further, we remind ourselves that the qualifications and exemptions embody a careful balance between the public interest considerations militating for and against disclosure.
45. The purpose of section 14 is “to protect the resources (in the broadest sense of that word) of the authority from being squandered on disproportionate use of FOIA.” (UT, *Dransfield*, para 10). In order to achieve this purpose, as the Court of Appeal noted (CA, *Dransfield*, para 68), Parliament has chosen to use a strong word, and therefore the hurdle of satisfying it is high.
46. Section 14 must not be interpreted in a way that in effect introduces a ‘public interest’ threshold that all requestors have to pass. If no exemption is engaged, there is a right to disclosure of information held by public authorities whether or not there is any public interest in disclosure.
47. We note what the Upper Tribunal said in **Dr Yeong-Ah Soh v Information Commissioner and Imperial College London** [2016] UKUT 0249 (AAC) [79] and [80] (**Soh**):

“79. The FTT’s reasons conclude that “at the time the requests were made they were vexatious in their content by reason of the burden on the [second respondent] ... and the distress to the second mentor ...; the benefit sought from the disclosure was [the appellant’s] private interest ... not the public interest. It was an inappropriate use of the FOIA and therefore vexatious”. From these words, I find it inescapable that, at the least, a factor in the FTT’s decision was the perceived lack of any public interest in the appellant’s request for information.

80. However, it seems to me that the real issue is whether there was a value or a serious purpose to the appellant’s request. A request can have a value or a serious purpose while serving an entirely private interest. Judge Wikeley referred to objective public interest. He later stated at paragraph 14 that “of course, a lack of apparent objective value cannot alone provide a basis for refusal under section 14”. He continued, “..., unless there are other factors present which raise the question of vexatiousness”.

81. It appears to me that the FTT would err in law if it considered that the request was vexatious for lacking public interest alone.”

48. Nor should section 14 be interpreted in such a way that it operates as a ‘catch all’ exemption. It should not be used to avoid the need to consider whether the authority is entitled to rely on an exemption to withhold the information, even where it might appear obvious to the authority, the Commissioner or the tribunal

that the requested information ought to be withheld either in the public interest or for some other reason. Parliament has chosen which exemptions to include and determined how those exemptions operate in order to embody the 'careful balance' identified above. Section 14 is not designed to avoid the need to consider the application of individual exemptions.

Application of section 14

49. Although the four broad issues or themes identified by the Upper Tribunal in **Dransfield** are not exhaustive and are not intended to create a formulaic checklist, they are a helpful tool to structure our discussion, although some elements do not fit neatly under one heading. In adopting this structure, we have taken a holistic approach, and we bear in mind that we are considering whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Burden

50. This is not a particularly burdensome request taken alone. The University does not appear to have had any difficulty in locating the 8 email chains within the scope of the request. There is no suggestion by the University that there will be any particular burden in considering the application of exemptions to those emails. Mr Stead has made two related FOIA requests and a subject access request, but the University does not suggest that responding to the requests overall has been burdensome. Looked at in the context of the course of dealings we do not accept that this request places a particular burden on the University.

Purpose or value

51. There is no need for a requestor to establish a public interest in disclosure at this stage. A request can have a value or a serious purpose while serving an entirely private interest. We accept that there is a serious purpose behind the request. Mr Stead has explained why he is interested in the nature of the relationship between the University and CIISA. He has highlighted the intersectional links between the University and the CIISA, CIISA's potential impact and that fact that it is not subject to a regulator's code.
52. As well as accepting that there is serious purpose behind the request, we also accept that there is likely to be at least some public interest in transparency in the relationship between the University and the CIISA, for the reasons outlined by Mr Stead. We have not seen the requested information, but it may well cast light on the issues Mr Stead raises.
53. In our view, this is not 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.

Motive

54. There is no evidence before us on which we could conclude that there is any kind of improper motive for the request. We accept, as does Mr Stead, that there may be some overlap between the information covered by this request and the information covered by the first request. That overlap is not, in our view, substantial.
55. We note from paragraph 9 of the decision notice in relation to the first request that the list of types of information identified by the University as falling within the scope of the first request does not include correspondence, but includes:

“...versions of the funding proposal, ethics documentation, data collection documentation, funding proposal, documentation, documentation, funding proposal, literature review notes, presentations, data analysis, interview notes, presentations, analysis, presentations, analysis, transcripts, transcripts, report drafts and industry and policy briefing drafts.”
56. That is quite different to the information that the University has identified as being within scope of this request, namely 8 email chains.
57. Not only is the information identified by the University as being in scope quite different, but the wording and focus of the request is also different. Mr Stead has explained the different focus of the request in issue in this appeal, and why he was interested in correspondence between the two bodies in particular, because it might illuminate the nature of the relationship between them and any influence or involvement that CIISA might have had in or on the research report.
58. The difference in the wording and focus of the requests and the difference in the information identified by the University as falling within scope point away from a conclusion that Mr Stead was attempting to ‘circumvent’ the refusal in the previous request. We do not accept that he was. We accept his explanation for why he was interested in the correspondence in particular. It is clear that both requests arise out of the same broad concerns, but that is not, in itself, an indicator of vexatiousness.

Harassment and distress

59. Having carefully considered the evidence in the closed bundle, we are not satisfied that there is sufficient evidence before us on which we could conclude that the request was harassing or distressing. Further reasons for this conclusion are set out in the closed annex to this decision.

Conclusions

60. One of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account. It is important for that qualified right of access that vexatiousness is a

high hurdle. Further, whilst we have structured our discussion around a number of convenient headings, we must take a holistic approach to our assessment and we bear in mind that the fundamental question is whether or not the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

61. In looking at the matter holistically we take account of the limited burden, the lack of evidence in relation to any harassment and distress caused by the request, our finding that Mr Stead was not attempting to circumvent a previous refusal, the evidence of serious purpose and our finding that this was not a request where there was no reasonable foundation for concluding that the information sought would be of value to the requester or to the public or any section of the public. Overall, we are not persuaded that this request is vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of FOIA.

Next steps

62. An appeal in which the public authority has relied on section 14 (or, for example, given a neither confirm nor deny response or relied on section 12) is sometimes referred to as a 'gateway' appeal because the public authority has not yet given a substantive response to the request. The University has not yet passed through the "gateway" of compliance with ss. 1, 2 and 17 of FOIA which, following the Upper Tribunal's Decision in Malnick v IC and ACOBA [2018] UKUT 72 (AAC), the University would have to do before being entitled to raise a late exemption before the tribunal.
63. The correct course of action is for the University to issue a fresh response and at that stage, it should disclose the information or claim any exemptions that it considers apply other than section 14(1).

Signed

Sophie Buckley

Date:

3 March 2025