IN THE FIRST-TIER TRIBUNAL **Appeal No: EA/2013/0061**
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50461550
Dated: 14 February 2013

Appellant: **Mrs K**

Respondent: **The Information Commissioner**

Determined without a hearing at a meeting of the Tribunal at Fleetbank House on 3 September 2013

Before

HH Judge Shanks

Judge

and

Pieter de Waal and **Mike Jones**

Tribunal Members

Date of Decision: **16 September 2013**

Subject matter:

Freedom of Information Act 2000

s.14	Vexatious or repeated requests

Case:

Information Commissioner v Devon CC and Dransfield [2012] UKUT 440 (AAC)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 14 February 2013.

SUBSTITUTED DECISION NOTICE

Dated: **16 September 2013**

Public Authority: **W Council**

Name of Complainant: **Mrs K**

The Substituted Decision

For the reasons set out below, the Public Authority did not deal with the Complainant's requests for information in accordance with Part I of the Freedom of Information Act 2000 in that the requests were not vexatious and the Public Authority was therefore not entitled to rely on section 14(1).

Action Required

In respect of each request the Public Authority is to supply to the Complainant the requested information or serve an appropriate notice under section 17 of the Act by 21 October 2013.

Dated: 16 September 2013

HH Judge Shanks

REASONS FOR DECISION

Introduction

1. Between 18 March and 5 April 2012 the Appellant made a series of requests for information under the Freedom of Information Act 2000 from her local authority related to its special educational needs (SEN) provision. The local authority refused to supply the information relying on section 14 of the Act on the basis that her requests were vexatious. She complained to the Information Commissioner under section 50 of the Act but he upheld the local authority's decision.

2. She has appealed to this Tribunal against the Commissioner's decision notice. The local authority, although made aware of the appeal, did not apply to be made a party and the parties agreed that the case could be dealt with on the papers, as was appropriate. We have reviewed the Commissioner's decision in the light of the guidance of the Upper Tribunal in the case of *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC) and the relevant facts as they appear from the papers presented to us.

Factual background

3. The Appellant's son (who for obvious reasons we shall refer to as "A") has cerebral palsy, visual impairment and complex learning needs. He is now 7 or 8. He has had a SEN statement since June 2009. It is clear that the Appellant is acutely conscious of her own responsibilities and that she is determined to see that A receives all he is entitled to so as to secure his welfare and that she has very exacting standards in this connection.

4. There were problems and delays with the review of A's SEN statement in early 2011 which led in due course to an appeal to the First-tier Tribunal and in August 2012 (that is well after the requests for information we are concerned with) to a complaint

to the Local Government Ombudsman. The LGO concluded that A had been receiving a high level of support throughout the relevant time (2011), that there was no significant maladministration on the part of the local authority and that, although the Appellant and her husband had found the process stressful, expensive and time-consuming the major part of their complaint arose from their frustration at the local authority's failure to agree with them about the contents of A's SEN statement.

5. In the period June 2011 to March 2012 the Appellant made (on her own figures) three formal complaints to the local authority, one to the Local Government Ombudsman and one to the Department for Education, all of which had to be dealt with through formal procedures and all of which related one way or another to the local authority's SEN provision. We are not in a position to judge how justified the Appellant's various complaints were; we do not doubt, however, that they arose from genuine grievances about the provision made for her son and related issues concerning her treatment by the local authority.

6. During the same period she made numerous requests for information under the Freedom of Information Act on the same general topic. It is not entirely clear how many such requests there were but even on the Appellant's case there were eight main letters or emails requesting information; on the basis of the requests we have seen, we think it very likely that each contained a number of individual requests.

7. The requests which are the subject matter of this appeal undoubtedly all relate to the local authority's special educational needs provision and arrangements. There are four separate letters or emails containing at least 16 separate requests for information, many of which contain sub-requests.

The four Dransfield "themes"

Burden of requests for public authority

8. So far as the previous course of dealings between the Appellant and the local authority is concerned we are quite satisfied that the subject matter of the requests for

information and of the complaints referred to in paragraphs 5 and 6 above was sufficiently similar to the subject matter of the requests we are concerned with for them all to be taken account of. It is plain from the above facts that there had been many requests for information and other dealings over a period of months leading up to March 2012 relating to the same general topic which would have involved a substantial amount of time and cost on the part of the local authority.

9. As to the particular requests in issue, it is plain that there were a large number of them in a short period and it could fairly be said that in March 2012 the Appellant was "bombarding" the local authority with requests. Further, it is clear from the Appellant's own comments that she envisages this process continuing as long as the local authority fails to live up the standards she expects.

10. On the other hand, the Appellant says very clearly in her notice of appeal (and in her reply to the Commissioner's response) that all the information she was requesting in March 2012 was information which the local authority ought to have (but had not) published under the Special Educational Needs (Provision of Information by Local Authorities) (England) Regulations 2001. The Commissioner has not challenged this assertion anywhere and in those circumstances we can only assume that the point is a valid one. This is obviously of some significance in relation to the question of burden. It is also right to say that, looking at the terms of the requests themselves, we formed the view that they would probably not be terribly onerous for a well informed and senior official in the relevant department to answer. As far as we are aware there has been no suggestion that section 12 of the Act was engaged.

Requester's motive

11. It is plain that the Appellant's motivation is based on a genuine concern for A's welfare and that she genuinely believes she needs the information she is requesting.

Inherent value of requests

12. The Commissioner accepted in his decision notice that the requests would provide the public with information about how decisions on SEN were being made and how the local authority was spending money on SEN provision. He considered that they had a serious value in terms of accountability and transparency. We see no reason to doubt that conclusion.

Harrassment of or distress to staff

13. Although the Commissioner concluded that the requests could fairly be categorised as obsessive on the part of the Appellant (a conclusion we accept) we have seen no evidence that the Appellant's conduct was having the effect of harassing or distressing staff. And there is certainly nothing to suggest the Appellant was using distressing or intemperate language, making wide-ranging or unsubstantiated allegations of improper or criminal behaviour or behaving in an offensive way.

Conclusions

14. Having regard to our findings of fact and our conclusions on the four themes, and in particular the points we make in paragraph 10 above, we have reached the view that, although the case is marginal, the requests we are concerned with were not vexatious in the sense explained in the *Dransfield* case (ie they did not amount to a "manifestly unjustified, inappropriate or improper use of a formal procedure") and we think the Commissioner was wrong to conclude that they were. Accordingly we allow the appeal against his decision notice and will require the local authority to deal with them on their merits.

15. We note that the Commissioner in his decision notice referred only to his own Guidance on section 14 and not to the *Dransfield* case which, in fairness to him, was only decided two weeks before the decision notice. We also note that the point about the 2001 Regulations which we refer to at paragraph 10 above does not appear to have been raised by the Appellant before the appeal. Although the Commissioner has resisted the appeal and sought to uphold his decision notice, it may be that he would

have reached a different view if presented with the same material that we were at the time of taking his decision. In any event the case was, as we have said, marginal and there may well come a point in future where, if the Appellant continues with requests of the same volume and frequency, such requests will be vexatious.

16. In order to protect the privacy of the Appellant's son this decision will be disclosed in its full form only to the parties and the local authority. The copy to be placed on the Tribunal's website will name her only as "Mrs K" and the local authority as "W Council".

17. Our decision is unanimous.

HH Judge Shanks
16 September 2013