



**IN THE FIRST-TIER TRIBUNAL**  
**GENERAL REGULATORY CHAMBER**  
**INFORMATION RIGHTS**

**Case No. EA/2014/0046**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice dated 3 February 2014  
FS50512663**

**Appellant: Andrew Killingbeck**

**First Respondent: Information Commissioner**

**Considered on the papers**

**Before**  
John Angel  
(Judge)  
and  
Jacqueline Blake and Pieter de Waal

**Decision**

**The appeal is dismissed.**

**Reasons for Decision**

**Background**

1. On 4 September 2013, the Appellant made the following request to the West Yorkshire Fire & Rescue Service ("WYFRS"):

*"I refer to the letter addressed to myself dated 31 July 2013 from [named individual], HR Team leader, Your ref PRF2535/peb. In it she makes the comment,*

*"I write with regard to your pension review to inform you of the Authority's decision now the process has been concluded. Due to the fact that you have refused to give consent to release your most recent GP records to the IQMP, the Authority has made its decision under rule H1(3). This rule allows the Authority to make its decision using medical evidence other than that of the IQMP, or indeed, without any medical evidence. The Authority is of the view that your mental health condition has improved since your ill health retirement".*

*I conclude that the decision mentioned above was taken at a properly convened meeting of the Fire Authority, or one of its subgroups.*

*I therefore request,*

*1/ Details of all the meetings where this matter has been discussed, including copies of the agenda and minutes, including dates and time of the meetings.*

*2/ Details of medical qualifications held by the persons who made the decision".*

2. WYFRS responded stating that the request was considered to be closely related to previous requests and therefore considered to be vexatious.
3. In a Decision Notice dated 3 February 2014 ("DN") the Information Commissioner ("the Commissioner") found that the request was vexatious.

#### Legislative Framework

4. Under section 1(1) of the Freedom of Information Act 2000 ("FOIA") a person who has made a request to a 'public authority' for information is, subject to other provisions of the Act: (a) entitled to be informed in writing whether it holds the information requested (section 1(1) (a)) and (b) if it does, to have that information communicated to him (section 1(1) (b)).
5. This appeal concerns the application of section 14 of the Act. Section 14(1) provides that:-

*"(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".*
6. The law on vexatious requests has been clarified following the recent decision of the Upper Tribunal in **Information Commissioner v Devon CC and Dransfield** [2012] UTUT 440 (AAC) ('Dransfield').
7. The Upper Tribunal concluded that "vexatious" means more than simply irritating, annoying or disappointing. It signifies "a *manifestly unjustified, inappropriate or improper use of FOIA*" (para 43).
8. The Upper Tribunal further had regard to four core issues: (1) the burden on the public authority; (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) any harassment of, or distress

caused to, the public authority's staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive, rather stressing the "*importance of adopting a holistic and broad approach to the determination of whether a request is vexatious*".

9. The Commissioner argues that what needs to be considered in such cases is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. The Commissioner believes that such a consideration will mean weighing the purpose and value of the request and balancing this against the evidence about the impact on the authority. As the Upper Tribunal in ***Wise v Information Commissioner*** (GIA/1871/2011) commented when refusing permission to appeal:

*"Inherent in the policy behind section 14(1) is the idea of proportionality. There must be an appropriate relationship between such matters as the information sought, the purpose of the request and the time and other resources that would be needed to provide it".*

10. The factors considered by the Upper Tribunal may or may not be relevant or important to this consideration depending on the particular circumstances of the case.
11. The Commissioner also submits that the context and history in which the request is made and a consideration of the wider circumstances surrounding the request will often be a major factor in determining whether the request is vexatious. In practice, he argues that this means taking into account factors such as other requests made by the requester to the public authority, the number and subject matter of those requests and any other previous dealings between the authority and the requester.
12. The Commissioner argues that this approach was approved by Upper Tribunal in its decision in ***Dransfield***. The Upper Tribunal held that "*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*" (para 29).
13. The Commissioner further submits that the Upper Tribunal's decision that the requester's past pattern of behaviour may be a relevant consideration should be a relevant factor when considering the burden on the public authority. For instance if the authority's experience of dealing with his previous requests suggests that the requester would not be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority.

14. We consider these arguments are a correct interpretation of the Upper Tribunal's decisions, the judgments of which we are bound by.

#### Whether the request was vexatious

15. As we understand it from the evidence there have been a number of previous information requests and further correspondence totalling in excess of 150 individual communications all related to the same subject of the ill health pension review conducted by the authority in accordance with the Firefighters Pension Scheme.

#### **Motive of Mr Killingbeck**

16. From the evidence it is clear Mr Killingbeck's motive is to challenge the ill health pension review as to its result and process. This is clearly a genuine motive. However the evidence provides the following facts:

1. In 2009 a Consultant Psychiatrist stated that in his opinion Mr Killingbeck "*is unlikely to ever be able to be fit to return to his previous organisation given his current symptoms and views*";
2. In 2012 Mr Killingbeck was observed being involved in Fire Service related activities;
3. This triggered the review which is always possible as part of the process when an early pension is provided on the grounds of ill health;
4. Mr Killingbeck was uncooperative in providing an up to date medical opinion and the review was eventually undertaken without it;
5. There is no evidence to suggest that the process used to come to the decision to undertake the review and the review itself was unlawful or irregular despite Mr Killingbeck's reservations about how or why the review was carried out in his case.

17. This leads us to the conclusion that Mr Killingbeck's motive was largely personal and has little wider application of a public interest nature.

#### **Purpose and value**

18. The Commissioner maintains that he was correct to conclude in the DN (at paragraph 19) that the purpose of the request is a highly personal one, namely the issue concerning Mr Killingbeck's ill health pension review. Mr Killingbeck does not appear to dispute this conclusion in his grounds of appeal.
19. The Commissioner further maintains that a request in pursuance of a highly personalised matter which is of little if any benefit to the wider public can restrict the value of the request, even where there is clearly a serious purpose behind it.
20. Mr Killingbeck in his grounds of appeal argues that "*without the information requested in my FOI, it is not clear as to whether the "independent" review is in fact been undertaken by the same person/s who made the original decisions and therefore unbiased and neutral. This would then be contrary to the comments made in 20 & 21 [DN] in that "there is a wider public interest" and "that the pension review has been undertaken appropriately". WYFR's honesty, integrity and reputation are in question*".
21. However, whilst Mr Killingbeck may have private concerns as to whether the review of the decision in issue would be unbiased and neutral, there is no evidence before us to suggest that there is a wider public concern regarding the administration of ill health pensions and reviews of decisions relating to the same generally.
22. Further, the value of the request is limited by the fact that it is based on Mr Killingbeck's incorrect assumptions in his request (as set out in paragraphs 15 and 16 of the DN). Whilst Mr Killingbeck has argued in his grounds of appeal that this may prompt other questions he may have, such questions are not within the jurisdiction of either the Commissioner or Tribunal to determine.
23. In light of the above, the Commissioner maintains that he was correct to conclude on the facts of this particular case that even if it could be said that the request, when considered in isolation, could appear to have a serious purpose, when considered in the context and history of the request any such purpose would not justify the disproportionate effect of the request on the authority.
24. We have considered the evidence and agree with the Commissioner's arguments that although there is serious personal purpose for the request the value is limited. The reason for this is that the use of FOIA can have only limited value in the circumstances of this case which is focused on challenging an ill health pension review. FOIA is not designed or intended to provide a vehicle or mechanism for such a challenge. Perhaps this is why so many attempts at requesting information have not provided the desired result for Mr Killingbeck.

## **Burden**

25. In considering whether a request or the impact of dealing with it is justified and proportionate, an important factor to consider is the burden placed upon the public authority in responding to the request. In doing so, in light of the decision of the Upper Tribunal in *Dransfield*, it is necessary to consider the request in the context and history of Mr Killingbeck's other requests and related correspondence from him to the WYFRS.
26. The Upper Tribunal found that "*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*" (para 32).
27. The Upper Tribunal further concluded that:-
- "The purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA"* (para 10).
28. On the facts of this particular case, WYFRS has stated the following:-
- i) Mr Killingbeck sent a series of eight linked requests between October 2012 and April 2013.
  - ii) Mr Killingbeck sent 140 emails between October 2012 to April 2013 to several different departments and individuals across the authority all connected to the ill health pension review.
  - iii) Responding to the requests and emails has taken up 100s of hours of staff time.
  - iv) Following receipt of the vexatious refusal notice, Mr Killingbeck has made attempts to request related information from a number of different departments suggesting that any attempt to answer the request is likely to lead to further requests.
29. In light of the above, the Commissioner accepted in his DN that the number of FOI requests and non-FOI correspondence on the same issue of ill health pension review conducted by WYFRS has proved to be a significant burden on the public authority and a distraction to staff.
30. When considered in light of the wider context and history, set out above, the Commissioner contends that it is reasonable to conclude that any response would be very likely to lead to a significant number of further requests and complaints with the consequential burden on staff.
31. Mr Killingbeck in his grounds of appeal relies upon emailed correspondence provided with the notice of appeal which he maintains "*aim to show that the vast majority are nothing more than day to day communications between 2 people and those that are relevant are as a direct result of the authority's attempts to be obtrusive and hide evidence which will ultimately prove my case*".

32. The Commissioner asks us to accept that the emails relied upon by Mr Killingbeck all relate to the same issue of the ill health pension review. The Commissioner accepts that the emails do not provide evidence to suggest that the volume of communications result from “*attempts to be obstructive and hide evidence*”.

33. However the Commissioner submits that, on the facts of this case, the impact of the burden on the authority of the request, when the context and history of the other requests and correspondence relating to the same issue is taken into account, has been disproportionate to the purpose and limited value of the request.

34. Again we find ourselves agreeing with the Commissioner. The evidence clearly indicates to us that the level of correspondence and associated requests have placed an undue and disproportionate burden on WYFRS.

### **Conclusion**

35. The Tribunal, having considered all these issues and the fact that it appears FOIA is an inappropriate vehicle to achieve Mr Killingbeck’s real purpose, upholds the Commissioner’s DN and dismisses the appeal.

Signed

John Angel

Judge

29th May 2014