



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

**Appeal No: EA/2014/0019**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50517493  
Dated: 7 January 2014**

**Appellant: Colin Parker  
Respondent: The Information Commissioner  
Heard on the papers: Newcastle  
Date of Hearing: 27 June 2014**

**Before  
Chris Hughes  
Judge  
and  
Jean Nelson and Paul Taylor  
Tribunal Members**

**Date of Decision: 5 July 2014**

**Date of Promulgation: 8<sup>th</sup> July 2014**

**Subject matter:**

Freedom of Information Act 2000

## **REASONS FOR DECISION**

### **Introduction**

1. The Appellant in these proceedings (Mr Parker) has a long-standing concern about the termination of his unpaid or voluntary membership of a Research Ethics Committee which occurred in 2010. He has raised a number of issues with the Health Research Authority (HRA). On 8 August 2013 the Chief Executive of the HRA wrote to him:-

#### ***Complaint # 13/012A***

*Thank you for your letter of 6 August 2013 appealing against the rejection of your complaint and asking for a response to the complaint outlined in your letter of 25 July 2013.*

*We have been in considerable correspondence with you since 2008 in respect of various requests from, or as a result of actions by, you including:*

[the letter then listed 10 separate requests, tribunal cases and complaints]

*This is in addition to extensive correspondence you have also had with the Strategic Health Authority, the National Patient Safety Agency and the Information Commissioner's Office.*

*The Health Research Authority has decided that it can no longer justify the time and expense in corresponding further regarding your complaints and requests for information. We consider that all matters have been fully dealt with in the numerous letters and documents we have provided to you during the last five years.*

*We believe the point has now been reached when further work in relation to requests from you will have an adverse effect on the services we offer to researchers and the public who have a legitimate claim on our time. We will not therefore enter into any further correspondence or communication on any matters with you.*

*We wish to make it clear that this in no way restricts your right to approach any other external body in relation to these matters. Nor does it preclude you from raising other – legitimate – matters with the Health Research Authority at this or any other time.*

[the letter then gave details of how to complain to the Parliamentary and Health Service Ombudsman ("PHSO")]

2. Mr Parker responded promptly on 13 August. The letter made a subject access request, indicated that he had unsuccessfully complained to PHSO, criticised HRA's handling of his requests and made the request which is the subject of this appeal:-

*"Under the FOI Act I request disclosure to me of the documentation indicating the legal and temporal parameters which would guide you in making your distinction between what I may legitimately raise with you and what I may not."*

3. The Board Secretary and Chief Executive Business Manager provided a succinct reply on 22 August:-

*Regarding the above request, we hold no relevant documentation to disclose.*

4. This was confirmed in subsequent correspondence and on 22 September 2013 Mr Parker wrote to the Respondent in these proceedings ("ICO") explaining that the request

*"stems from my unsuccessful attempt to gain transparency and accountability in a decision they made some years ago. There is a factual aspect to this intended ban and I started an FOI request to determine its nature, ie to see how they would intend to arrive at a judgement of legitimacy or illegitimacy. But perhaps the more important consideration regarding any attempted justification of their intended ban is whether it would be just or reasonable. I would appreciate the IC's judgement on the matter."*

5. The ICO contacted the HRA who confirmed:-

*The HRA has received a number of complaints and FOI requests from the complainant over the years and the HRA has deemed the complainant to be vexatious. Ultimately the request is a hypothetical question and a management judgement was undertaken to certify that no documentation is, or has previously been, held which relates to the request."*

6. In his decision notice the ICO considered this information from the HRA, he noted that Mr Parker had not provided him with evidence to support his position that the requested information was held and concluded on the balance of probabilities, that the HRA did not hold the requested information.

7. Mr Parker in his appeal challenged the way the HRA had interpreted the request claiming that it was “inappropriately strict”. It was for factual material and not a hypothetical request. He argued (appeal paragraph 11):-

*One may acknowledge that the consideration of earlier correspondence by the HRA in the context of generating a policy of non-communication with Mr Parker would on the balance of probabilities lead to new statements or documents on the policy. This generated additional recorded information would be relevant to the request.*

*Similarly, the construction of a policy making a claim to legitimacy by a number of staff would in itself require recorded texts.”*

8. Mr Parker therefore argued:-

*The Commissioner’s reference to the wording of the request suggests that he had understood it in a particular way, ie that it was strictly interpreted to refer only to formally legal matters... Thus it seems that the Commissioner has not been impartial in his understanding of this FOI request... from this analysis it follows that the Commissioner’s judgement that on the balance of probabilities the requested information is not held is unreliable and with insufficient evidence or no evidence.*

9. In his response to the appeal The ICO maintained his position. He argued that it was a factual issue on the balance of probabilities whether the information was held. The issue was not *whether the information should be held*. He confirmed his view that the request was for (response paragraph 20):-

*...information from policy, guidance or documents of a general kind that discuss legal or temporal reasons for determining whether the HRA should respond to complaints, information requests or other kinds of correspondence from the public.*

10. The ICO stated that he had thoroughly considered the case and rejected any allegation of bias.

#### Consideration of the Case

11. The Tribunal found Mr Parker’s justifications in his appeal over-elaborate and confused. The position is very simple. The Chief Executive wrote to him listing the extensive contact, drawing attention to the impact of the time spent on this contact which was drawing away support from the real work of the HRA and stating that the HRA could not justify spending any more time on dealing with him. Mr Parker’s

appeal is a convoluted exercise in semantics in which he seeks to redefine his request away from the actual terms of the request and arguing that there should have been more elaborate and detailed searches carried out. The ICO correctly characterised the request as for formal policy documents setting out generalised criteria. The request was coupled with a subject access request from Mr Parker which would reveal any specific documents relating to him, including, for example, any email correspondence between staff which discuss the best approach to take. Mr Parker was attempting to achieve comprehensive coverage of any document which related to his position; whether general or specific.

12. The simple issue is whether there are any documents “indicating the legal and temporal parameters which would guide you”. He has put forward no evidence that there are such documents, he has however a view (set out in his appeal at paragraph 7 above) that any decision would involve the consideration of documents and the creation of further documents in a seemingly unending flow of interlinked documents providing a full and complete explanation of every step of every decision.
13. The HRA dispute this. In an attempt to avoid being further drawn into correspondence with Mr Parker they set out the issues in the letter of 8 August and drew a line under the contact. This was clearly an exercise of discretion and judgement based on the knowledge of the person making the decision, that the HRA should not expend further time and resources on Mr Parker. This did not require detailed analysis, advice and reflection on “*legal and temporal parameters*”.
14. The HRA has confirmed that there are no documents which fall within the scope of Mr Parker’s request for “*documentation indicating the legal and temporal parameters..*”. Mr Parker has produced no evidence in support of his interpretation, in all the circumstances of the case it is most unlikely that there are any such documents. As a question of fact, on the balance of probabilities, there is no evidence to suggest the existence of such documents, the factual basis of the ICO’s decision notice is robust; there was no error in law in the decision notice.

#### Conclusion and remedy

15. For the reasons stated above the tribunal is satisfied that the Commissioner did not err in law in formulating his decision notice and the appeal must be dismissed. In coming to its conclusions the tribunal would draw to his attention his duty in exercising his

powers (when a complaint is made to him asking him to investigate how a public body has dealt with a request for information to consider whether s.50(2)(c) FOIA applies to the case.

16. Our decision is unanimous.

Judge Hughes

[Signed on original]

Date: 5 July 2014