



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

**Case No. EA/2014/0089**

**ON APPEAL FROM:**

**Information Commissioner's  
Decision Notice No: FS50526958  
Dated: 17 March 2014**

**Appellant: COLIN PARKER**

**Respondent: THE INFORMATION COMMISSIONER**

**On the papers**

**Date of decision: 10<sup>th</sup> November 2014**

**Before  
CHRIS RYAN  
(Judge)  
and  
JEAN NELSON  
ANDREW WHETNALL**

**Subject matter:** Vexatious or repeated requests s.14

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

## DECISION OF THE FIRST-TIER TRIBUNAL

The appeal is dismissed.

### REASONS FOR DECISION

#### Introduction

1. The Appellant, Mr Parker, has appealed to this Tribunal from a Decision Notice of the Information Commissioner dated 17 March 2014, which rejected his complaint about the way in which the Health Research Authority (“HRA”) handled a request for information he submitted to it on 27 September 2013 (“the Request”). The HRA had rejected the Request on the basis that it was vexatious and the Information Commissioner concluded, in a decision notice dated 17 March 2014 (“the Decision Notice”) that it had been justified in doing so.
2. The Request had been submitted under section 1 of the Freedom of Information Act 2000 (“FOIA”) which imposes on the public authorities to which it applies an obligation to disclose requested information unless certain conditions apply or the information falls within one of a number of exemptions set out in FOIA.
3. FOIA section 14 provides:  

*“(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”*
4. The term “vexatious” is not defined in the FOIA. However, in the case of *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AAC) Upper Tribunal Judge Wikely said this:

*“27. The common theme underpinning section 14(1), at least insofar as it applies on the basis of a past course of dealings between the public authority and a particular requester, has been identified by Judge Jacobs as being a lack of proportionality (in his refusal of permission to appeal in *Wise v Information Commissioner* GIA/1871/2011; see paragraph 17 above). This issue was also identified by the recent FTT in *Lee v Information Commissioner and King’s College Cambridge* at [73] as a relevant consideration. ... I agree with the overall*

*conclusion that the FTT in Lee reached, namely that “vexatious” connotes “manifestly unjustified, inappropriate or improper use of a formal procedure” (at [69]).”*

5. Judge Wikely went on to identify four questions which he suggested might help those considering whether or not a request was truly vexatious. They were:
  - i. How great a burden did the request impose on the public authority and its staff?
  - ii. What was the requester’s motive?
  - iii. Did the request have value or a serious purpose?
  - iv. Was there any evidence of the requester harassing staff members or causing them distress?

However, the Judge also made it clear that those considerations were not intended to be exhaustive and that they should not be treated as a formulaic check-list.

6. The Upper Tribunal also made it clear that it is necessary to assess whether an information request is vexatious by considering it in the context of the course of dealings between the requester and the public authority to whom an information request is addressed. In this case there has been a long history of such dealings.

#### The history of dealings between Mr Parker and the HRA

7. In July 2009 the Strategic Health Authority (“SHA”) informed Mr Parker, that he would not be reappointed as a non-paid volunteer on a Research Ethics Committee operated under the aegis of the HRA. His five year term on the committee was due to come to an end in December 2009.
8. Mr Parker felt that he had been unjustly treated, partly because the SHA refused to take account of the report he prepared on the meeting in July 2009 at which he had been informed about the proposed non-renewal. He attempted to bring a claim in the Employment Tribunal but found that its jurisdiction did not extend to committee members as they were not treated as employees for the purposes of employment legislation.
9. In January 2012 Mr Parker complained to the HRA’s senior management about both the process that led to him not being re-appointed and other aspects of his treatment by HRA/NRES. His complaint was rejected and he appealed that decision to higher authority within HRA. He addressed the complaint to Ms Debbie Corrigan as the Interim Deputy Chief Executive, but received a reply from her in her capacity as Director of Finance. The appeal failed but he invited Ms Corrigan to reconsider it in July 2013. At that time he was told that, in the absence of new evidence, there were no grounds for reopening the previous investigation, but that, if he remained

dissatisfied, he had a right to complain to the Health Services Ombudsman.

10. In the event the Ombudsman's office informed Mr Parker that its jurisdiction did not extend to employment issues so that the issue could not be pursued further by that route. Mr Parker also failed in a complaint to the Minister for Workforce Policy in the Health Service (on the basis that lay members on committees had no available redress from the Health Service Ombudsman) and an application to the National Research Ethics Advisors' Panel for the review of his original complaint.
11. In addition to the above steps, Mr Parker also lodged FOIA requests with the HRA from time to time, all touching on the broad issue of HRA's processes in respect of committee appointments and complaints in respect of them. These led to at least one instance of a complaint to the Information Commissioner and an appeal from his determination to this Tribunal and from there to the Upper Tribunal.
12. Matters between Mr Parker and the HRA came to a head in July and August 2013. First, on 29 July 2013 Mr Parker asked the HRA for all the information it held about *"the powers and responsibilities of the HRA Board including the Board's standing orders, its policies and procedures, mission statement and statement of values; with a description of any constraints imposed on the Board by any regulation coming from the National Health Service."* On 9 August 2013 the HRA replied to that request. This notwithstanding that on the previous day, the 8 August 2013, it had written to tell Mr Parker that, in light of the appeal referred to in paragraph 9 above and his earlier requests and complaints, it could no longer justify the time and expense required to correspond with him and would not enter into further correspondence. (Mr Parker's response to that letter was to lodge a FOIA request on 13 August 2013 for *"the documents 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"*. He also included as subject access request under section 7 of the Data Protection Act 1998 updating an earlier one lodged in October 2011).
13. The HRA response of 9 August 2013 provided a link to sections of its website where standing orders and the framework agreement between the HRA and the Department of Health could be found. It also told Mr Parker that the mission statement and statement of values were not currently available but that a values paper would be published shortly.
14. It is clear that Mr Parker accessed the material on line because on 23 August 2013 he wrote to the HRA referring to the Framework Agreement and Standing Orders and raised the following five requests, which were said to be based on them and each of which was followed by a cross reference to them:

a. First Request:

*“ I request the determination of the Board on whether it approves the current HRA arrangements for dealing with individual complaints as an independent, just and complete system”*

Mr Parker added background to the request, to the effect that there was in his view no independent regulator in the NHS which has the power to investigate individual complaints made to the HRA by a lay member and added *“This as things stand without transparency and accountability the HRA is judge and jury of the propriety of tis complaints system and decisions.”*

b. Second Request:

*“Given the above lack of regulation or independent scrutiny by an independent NHS body of individual complaints made to HRA by lay members of RECs, I request a determination by the Board on whether it approves HRA management policies which operate in this exclusive context.”*

c. Third Request:

*“Given the financial and staff costs in any HRA mishandling of individual complaints from ex or current lay members of RECs I request the determination of the HRA Board on the effectiveness of HRA management systems that aim to safeguard public funds and corporate governance, achieve value for money and provide effective implementation of good practice.”*

d. Fourth Request:

*“In the context of these requests I request the determination of the HRA Board on whether the conduct of the HRA ensures proper and widely publicised procedures for voicing complaints, concerns about maladministration, breaches of Code of Conduct and other ethical concerns.”*

e. Fifth Request:

*“Following the questions raised by the above matters I request the determination of the HRA Board on whether the HRA maintains an effective system of policies and reviews and updates these policies on a regular basis.”*

15. On 13 September the HRA responded to the requests in the following terms:

*“Your request is noted however please be advised the HRA complaints policy is published on the HRA website (<http://www.hra.nhs.uk/hra-publications/?entryid85=138965>) and the HRA Values papers will be published on the website with the HRA Board papers in due course. All Board meetings are held in the public domain and announced 10 days before the meeting on the HRA website”.*

The Request for Information and the Information Commissioner’s Decision Notice

16. Mr Parker’s response to this letter was to submit the information request on which this appeal is based (“the Request”). He did so on 27 September 2013 in the following terms:

*“... I request the following information on the work of the HRA Board and the HRA administration:*

- 1. The HRA Board’s record and information on its consideration of the current HRA arrangements for dealing with individual complaints (reference in my letter of the 23<sup>rd</sup> August (ref): item 8, p28 Standing Orders (5.0).*
- 2. The HRA Board’s record and information on its consideration of HRA management policies (ref: Policy Determination, item 1 p30, 5.0).*
- 3. The HRA Board’s record and information on its consideration of HRA management systems that aim to safeguard public funds and corporate governance, achieve value for money and provide effective implementation of good practice (ref: p33, 5.0).*
- 4. The HRA Board’s record and information on its consideration of whether the conduct of the HRA ensures proper and widely publicised procedures for voicing complaints, concerns about maladministration, breached of Code of Conduct and other ethical concerns (ref: 1.3.1.8. p35, 5.0).*
- 5. The HRA Board’s record and information on its consideration of whether the HRA maintains an effective system of policies and reviews and updates these policies on a regular basis (ref: p34, 5.0).*
- 6. The HRA Board’s record and information on its consideration that the HRA are controlled or regulated by the HRA Board.*
- 7. The HRA Board’s record and information on its consideration regarding voluntary members of research ethics committee the HRA are unregulated by the Parliamentary and Health Service Ombudsman.*
- 8. The HRA Board’s record and information on its use and consideration of its six key functions (ref: pp35 + 36, 5.0).”*

17. The Request was refused on the basis that it was vexatious. That decision was upheld following an internal review and Mr Parker

exercised his right, under FOIA section 50, to complain to the Information Commissioner about the rejection of the Request. The Information Commissioner investigated the complaint and recorded his conclusions in the Decision Notice. He came to the conclusion that, in light of the history of dealings between the parties, Mr Parker's persistence had reached the stage where it could reasonably be described as obsessive and that it was designed to cause disruption and annoyance to HRA staff. The Information Commissioner also concluded that although there appeared to be a serious purpose behind the requests for information at the outset, the continued pursuit of information which had previously been provided demonstrated, to his satisfaction, that Mr Parker's purpose had become the harassment and annoyance of the HRA. Accordingly, the Information Commissioner concluded that the HRA had been entitled to refuse the Request under FOIA section 14.

#### The Appeal to this Tribunal

18. Mr Parker appeals against the Decision Notice to this Tribunal.
19. Appeals to this Tribunal are governed by FOIA section 58. Under that section we are required to consider whether a Decision Notice issued by the Information Commissioner is in accordance with the law. We may also consider whether, to the extent that the Decision Notice involved an exercise of discretion by the Information Commissioner, he ought to have exercised his discretion differently. We may, in the process, review any finding of fact on which the notice in question was based.
20. Mr Parker opted to have his appeal determined on the papers, without a hearing. That procedure appears to us to be appropriate in the circumstances and we have therefore reached our decision on the basis of an agreed bundle of documents and written submissions filed by each party.

#### Our consideration of the issues arising on the appeal

21. A preliminary issue between the parties is that the Information Commissioner considers that the Request addressed an entirely private issue between Mr Parker and the HRA. Mr Parker has insisted that his purpose throughout has been to uncover policies and practices which he considers to be unfair in general terms and not just by reference to his own position. His submissions have not been entirely consistent on this point but we have proceeded on the basis that there is an underlying public interest in the manner in which the HRA conducts itself in relation to committee appointments.
22. The essence of the Information Commissioner's case was that, given the history of requests and complaints the HRA had been entitled to

say, (in the language adopted in the Information Commissioner's Response to the Appeal) "enough is enough".

23. In our view, taking into account the whole history of communications between Mr Parker and the HRA to which we have referred, the Information Commissioner had ample evidence to support his conclusion that the Request was disproportionate and manifestly unjustified, and that it represented an inappropriate use of the freedom of information regime introduced by the FOIA. By the time Mr Parker submitted the Request he had moved a long way from the subject matter of his original complaint and was clearly engaged in a campaign of extracting at least something from every piece of information provided to him and using it as the basis for a further request. Several elements of the Request also repeat, in effect, those made on 23rd August 2013 in that, where the earlier requests had asked the HRA for a "determination" on various issues, the revised set asked for the Board's "record and information on its consideration."
24. Taken together with the persistent and repetitive nature of the requests, these facts demonstrated to our satisfaction that any original element of fact seeking had been reduced to an oppressive pursuit of grievance. This could have been a disproportionate and inappropriate use of FOIA even following a case of dismissal from employment, yet the trigger for the grievance was that a time-limited voluntary appointment had not been renewed. The Request was clearly vexatious within the meaning of that term provided by the *Dransfield* decision and the Information Commissioner had been justified in reaching the conclusion he did.
25. We should add two further points. First the Information Commissioner referred in the Decision Notice to an estimate provided by the HRA that dealing with Mr Parker's various requests and other communications had cost it in the region of £100,000. The Decision Notice gave no indication of how that sum had been calculated or whether the Information Commissioner had tested or verified the figure. We have decided that, in those circumstances, we should not give any weight to that particular assertion. However, for the reasons we have given, there was still ample evidence of the burden imposed on the HRA as a result of the obsessive pursuit by Mr Parker of every point he could extract from both his original complaint and the material provided to him by the HRA in response to previous requests. Secondly, Mr Parker also raised a complaint about the manner in which the Information Commissioner pursued his investigation, but we found nothing in the materials or detailed submissions presented to us that



provided any evidence to support the allegation.

Conclusion

26. We have concluded that the Decision Notice was in accordance with the law in concluding that the HRA had been entitled to refuse the Request under FOIA section 14.

27. Our conclusion is unanimous.

Chris Ryan  
Judge  
10<sup>th</sup> November 2014