IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2014/0149

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50532725
Dated: 5 June 2014

Appellant:	**MR ALAN DRANSFIELD**
Respondent:	**INFORMATION COMMISSIONER**
Heard at:	**EXETER MAGISTRATES' COURT**
Date of hearing:	**23 OCTOBER 2014**
Date of decision:	**11 DECEMBER 2014**

Before

ROBIN CALLENDER SMITH
Judge

and

DR HENRY FITZHUGH and SUZANNE COSGRAVE
Tribunal Members

Attendances:

For the Appellant: Mr A Dransfield
For the Respondent: Mr T Cross, Counsel instructed by Mr R Bailey on behalf of the Information Commissioner.

IN THE FIRST-TIER TRIBUNAL **Case No.** EA/2014/0149
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Subject matter: FOIA

Vexatious or repeated requests s.14

Cases:

Information Commissioner v Devon CC and Dransfield GIA/3037/2011.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 5 June 2014 and dismisses the appeal.

REASONS FOR DECISION

Background

1. Mr Alan Dransfield (the Appellant) made 15 requests between 30 December 2013 and 21 January 2014 to the Information Commissioner's Office (ICO).

2. He was seeking information about guidance, training, invoices, staff, correspondence relating to the Commissioner's guidance on the issue of vexatious requests, minutes, Tribunal decisions, presentations, fraud procedures, an attendance sign-in sheet for a tribunal hearing and reports relating to the monitoring of Devon County Council.

3. The Appellant featured in the leading case in the Information Rights Tribunal relating to vexatious requests under Section 14 FOIA: *Information Commissioner v Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013).[1]

[1] This particular appeal is listed for hearing as a "float" in the Court of Appeal (C3/2013/1855) on 27 or 28 January 2015.

4. The Information Commissioner decided the ICO had correctly refused to comply with the requests in this appeal because they were vexatious under s.14 FOIA.

5. In essence, the Appellant claims in this appeal that – because his name identifies the leading case on vexatious requests in respect of s.14 FOIA – the Commissioner has improperly interpreted his requests on these matters as vexatious.

The request for information

6. The requests are set out in Annex A of the Commissioner's Decision Notice FS50532725 dated 5 June 2014.

7. This is a publicly-available document so the detail of each request – involving issues set out at Paragraph 2 above – is not repeated further in this decision.

8. There was one request on 30 December 2013, three requests dated 3 January 2014, three requests dated 4 January 2014, two requests dated 5 January 2014, two requests dated 7 January 2014, a request dated 16 January 2014, a request dated 19 January 2014, a request dated 20 January 2014 and a request dated 21 January 2014.

The appeal to the Tribunal

9. The Appellant's Grounds of Appeal – maintained and developed in his oral argument at the appeal hearing – set out his position as follows:

   - No person "applying a right and proper mind" could have decided that his requests were vexatious.
   - The ICO was complicit in a "silent fraud". The Tribunal established that he meant, by this phrase, a conspiracy to misuse and misapply the provisions of FOIA.

- The ICO had applied the law incorrectly because the *Dransfield* Upper Tribunal decision (GIA/3037/2011) – the validity of which he was challenging - had yet to be determined by the Court of Appeal.

- The ICO was "in breach of Stare Decisis,[2] sub judice, due process and common sense".

- The ICO had failed to investigate his allegations of bad faith.

10. The Appellant maintained that he was being unfairly and unnecessarily stigmatised as vexatious. He claimed his name – in respect of the case before the Court of Appeal - had subsequently appeared in over 300 Decision Notices during the preceding 20 months.

11. He argued that the word "vexatious" was not defined in FOIA and had been incorrectly defined by Upper Tribunal Judge Wikeley in respect of his information requests. In support of this he offered an "expert report" from Dr John Olsson. [We deal with this report in Paragraphs 19 – 22 below].

12. It was wrong of the ICO to claim there was a history of vexatious requests from the Appellant from 2005 onwards on the basis of the *Dransfield* case before the Court of Appeal.

13. Public authorities – including the ICO - were now misusing the criteria set out in the *Dransfield* case to refuse legitimate information requests from other members of the public.

<u>Conclusion and remedy</u>

14. The Tribunal confirmed, at the beginning of the oral appeal hearing, that the Appellant had no objection to the composition of the Tribunal.

15. The Appellant addressed the Tribunal courteously throughout the hearing. He observed the occasional suggestions of the Tribunal that he focussed his arguments on the points in his appeal so that he did not include

[2] Which we take to mean "binding precedent".

extraneous or irrelevant issues that were either not before the Tribunal or outside the Tribunal’s statutory powers.

16. The Appellant’s arguments in this appeal are wholly undermined by an objective view of the nature and the timing of the requests he made.

17. The Tribunal has put from its mind – in reaching this decision – the Appellant’s name or the history associated with his appeals.

18. It has considered whether the Commissioner would have been entitled to deem requests such as the 15 in this appeal – made by any member of the public – as vexatious by virtue of s.14 FOIA.

19. In relation to the “expert report” from Dr John Olsson about the meaning of the word vexatiousness it was not presented in a form that allowed any reliance on it. It had not been requested by the Tribunal and had not been properly served on or agreed with the Information Commissioner.

20. We would have expected anyone claiming to be an expert to have been aware of the general requirements of The Civil Procedure Rules and, in particular in relation to objectivity, CPR 35.10 (2): *At the end of an expert’s report there must be a statement that the expert understands and has complied with their duty to the court.* Also CPR 35.10 (3)*: The expert’s report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written*. None of these requirements had been complied with.

21. There is no background, objective information about the standing of Dr Olsson’s Forensic Linguistics Institute based at Bryntirion Farmhouse, Llanfair Caereinion, SY21 0BL or Dr Olsson’s experience of presenting expert evidence.

22. More generally we give no weight to his opinion that "….in reality, 'vexatious' is a term of art without proper legal foundation, or having no legitimate purpose."

23. Firstly, these are 15 serial requests covering the short time-span of three weeks from 30 December 2013 until 21 January 2014. They relate to guidance, training, invoices, staff, correspondence relating to the Commissioner's guidance on the issue of vexatious requests, minutes, Tribunal decisions, presentations, fraud procedures, an attendance sign-in sheet for a tribunal hearing and reports relating to the monitoring of Devon County Council.

24. There are a small number of themes within the requests: the *Dransfield* case itself, the Commissioner's guidance on s.14 FOIA that followed that case, reliance by the ICO and other parties on the guidance or the findings of the Upper Tribunal in that case, ICO representation at Tribunal cases and the training and qualifications of ICO staff and their fitness to held their positions.

25. The binding nature of the Upper Tribunal's decision in *Dransfield,* and the criteria it identified, applies as a matter of law on this First Tier Tribunal.

26. We cannot and do no seek to distinguish anything in this appeal from that binding decision. We have arrived at the conclusion that this series of requests were vexatious because of the number and frequency of them, their overlapping nature, the tone of them and the lack of an obvious benefit that might be derived from responding to any or all of them. The Appellant offered no explanation about any benefit that might accrue from responding to them.

27. The Commissioner's observation at [31 – 32] of the Decision Notice is both reasonable and merited on the facts of this appeal:

[31]. The Commissioner recognises that the unreasonable persistence, intransigence and the frequency and overlapping nature of

the requests outweighs any public interest there might be in responding to the requests due to the drain on resources this would cause and the diversion from other functions and duties.

[32]. In all the circumstances, particularly the volume and nature of the correspondence and the fact that the complainant's grievance in relation to how his previous complaints were handed has been the subject of appropriate external scrutiny, the Commissioner is satisfied that the requests are vexatious and that section 14 (1) has been applied correctly.

28. We agree with and adopt these observations.

29. For all these reasons the Appellant's appeal cannot succeed.

30. Our decision is unanimous.

31. There is no order as to costs.

Robin Callender Smith
Judge
11 December 2014