



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

Appeal No: EA/2014/0093

BETWEEN

JANET TREHARNE OAKLEY

Appellant

and

INFORMATION COMMISSIONER

Respondent

Before

**Brian Kennedy QC
Jacqueline Blake
Gareth Jones**

Promulgated:

19th January 2015

DECISION

The Tribunal allows the Appeal in that we find in all the circumstances the request was not vexatious.

Introduction:

[1] The appeal is brought under section 57 of the Freedom of information Act 2000 ("FOIA"). The Tribunal and the parties worked from an Open Bundle ("OB") indexed and paginated and from a smaller Closed Bundle ("CB") also indexed and paginated. The appeal was heard at an oral hearing at Cwmbran Court, Wales on 19 November 2014.

[2] The impugned decision under appeal is the Decision Notice ("DN") from the Respondent dated the 14 April 2014: Reference FS50526132.

Background to the Appeal:

[3] The relevant background to this appeal is set out in the confidential annex to the DN and has been disclosed to the Appellant and is adopted for the purposes of this appeal. Essentially the Appellant made complaints to the Parliamentary and Health Service Ombudsman ("PHSO"), the Public Authority in question, about the service received from PHSO including how staffs have dealt with her concerns when dealing with her complaint about the Respondent herein. The issues that arise in this appeal include requests made by the Appellant where she claimed that she experienced difficulties in identifying where she should direct her complaint and about the way her case had been dealt with and the member of staff concerned. The nature and extent of the requests are set out fully in the DN, the grounds of appeal and the Respondents formal response.

[4] In response specifically to the Appellants request of 18 November 2013 to PHSO for "telephone extension numbers", later identified further and clarified by the Appellant to be "telephone numbers of Executive Office Staff" (*"the requested information"*), PHSO provided a further response on 4 February 2014 stating that the requested information was still exempt by virtue of section 14(1) FOIA for the reasons previously provided. It is noted that PHSO did provide a central number for the Executive Office which could be used as a point of contact.

The Decision Notice:

[5] Section 14(1) FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test. The Respondent properly identifies the criteria to be considered in the issue of vexatious requests and refers to the Dransfield decision wherein the Upper Tribunal commented that vexatious could be defined as "*manifestly unjustified, inappropriate or improper use of formal procedure*" and further refers to instructive identification examples such as the burden imposed by the request, the motive of the requester, harassment or distress to Public Authority employees while reminding us these were not exhaustive tests. As in any case before these courts and tribunals each case must be decided on its' merits. Proportionality and justification are important aspects also and again in Dransfield the Upper Tribunal helpfully identifies the importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not. We note and have noted in many of these cases the significance of a previous course of dealings, as there is in the facts of this case.

[6] In the DN and his response to the grounds of appeal, the Respondent sets out carefully his reasoning for his Decision and finds that this case crosses the fine line between being an "*Obsessive rather than a Persistent*" request. This Tribunal heard at length from the Appellant at the oral hearing of this appeal and while we agree the request has most of the ingredients of a vexatious request and borders on the obsessive, we are satisfied having heard the Appellant and considered all the evidence that the request while certainly persistent, falls short of being obsessive and in all the circumstances we do not find the request vexatious.

Reasons:

[7] We do not accept that it was designed to cause disruption and annoyance to staff at the PHSO and while we accept it may well have done so we are convinced beyond doubt about the bona fide design behind the request which arose out of frustration pursuant to her dealings with the PHSO in getting answers to important and genuine issues she required assistance with.

[8] Again we do not accept that the Appellant used her request as a means to vent anger at any particular decision or to harass and annoy the public authority. We have considered carefully her response to this suggestion in her Grounds of Appeal and her detailed evidence before us and are satisfied that there were reasonable grounds for her request and there was reason to be dissatisfied with the service she was being given by the public authority.

[9] Having considered the evidence and on hearing the Appellant on what were clearly her genuine concerns we find that the backdrop of other correspondence and complaints only exacerbated her grounds for concern and the frustration she felt in all the circumstances of this case. The Appellant clearly was not getting satisfaction nor the meaningful response she deserved. This Tribunal reminds itself that there is duty on Public Authorities to assist members of the public in formulating and processing their requests. On hearing the Appellant on the facts in this case we are of the view that more could have been done to assist the processing of this request. That this was a request with a genuine purpose was acknowledged by the Respondent but this Tribunal add that the Appellant has satisfied us that the need for her persistence, in its various forms as it transpired on the facts, is justified by the failure of the public authority to respond more comprehensively, effectively, efficiently or adequately. This is despite the assertion that the value of this particular request may be or even might be regarded as limited. We have no doubt (and it seems to be common case) that the motive for the Appellants' request is to genuinely seek information that would enable her to contact the relevant person in order to challenge the review team decisions as they were not answering complaints. That is what this case is all about. This failure to properly or adequately respond to this request led to confusion and frustration and a break down in communications such that the Appellant did not seek or deserve. We are of the view that it is wrong to suggest that she deliberately sought to or set out to harass or distress the public authorities' staff and on hearing the Appellant at length we find on balance this case has not been established. We note the Respondent also accepts to a degree these findings of fact but decided that the effect of the request was such as to cause harassment or distress. We do not accept this as proven on balance on the papers and have heard no evidence in support of these assertions. Further if there were any perceived harassment or such distress then the burden for such, in our considered view, cannot be placed solely on the Appellant or her request.

[10] We note the Ombudsman's decision dated 28 February 2014 and have heard the Appellant on the background and give it significantly more weight that the Respondent seems to have given it.

[11] We have heard the Appellant give the details of the history of the background of complaints and inquiries referred to in the Response from the Respondent herein. We are satisfied that a more constructive and helpful response from the public authority would have averted the resulting persistence that evolved through the frustration caused to the Appellant by a failure to provide appropriate assistance and answers in an unnecessarily long and drawn out process of dealing with the Appellant. The evidence of impact of any burden on the authority is not, in our view, a burden that can or should be placed solely on the Appellant on the facts in this case. As can be seen from our deliberations above, this was an unfortunate case of poor communication that led to persistent conduct by the Appellant which bordered on oppressive but did not in our view on a holistic and broad view of the facts of this particular case become either oppressive or vexatious.

[12] Accordingly we allow the appeal and reverse the finding of the DN under appeal.