



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

Case No. EA/2016/0020

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50596077
Dated: 6 January 2016**

Appellant: MR JOSEPH WHITTAKER

Respondent: INFORMATION COMMISSIONER

Heard at: FOX COURT, LONDON

Date of hearing: 18 MAY 2016

Date of decision: 4 JULY 2016

Date Promulgated: 4 July 2016

Before

ROBIN CALLENDER SMITH
Judge

and

ROGER CREEDON and NARENDRA MAKANJI
Tribunal Members

Attendances:

For the Appellant: Mr J Whittaker in person.

For the Respondent: Ms C Nicholson, Solicitor for the Information Commissioner

GENERAL REGULATORY CHAMBER

INFORMATION RIGHTS

Subject matter: Freedom of Information Act 2000

Vexatious or repeated requests s.14

Cases: *Information Commissioner v Devon County Council & Dransfield* [2012]

UKUT 440 (AAC).

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out in the Tribunal's determination, the Tribunal allows the appeal and substitutes the following decision notice in place of the decision notice dated 6 January 2016.

The Governing body of the University of Bolton has 35 days to respond to the information requested by the Appellant.

REASONS FOR DECISION

Introduction

1. Mr Joseph Whitaker (the Appellant) made a series of five information requests to the Governing Body of the University of Bolton during May and June 2015.
2. The University refused to comply with any of these requests on the grounds that they were vexatious in terms of section 14 (1) of FOIA.
3. Its position was that the Appellant's requests were part of a wider pattern of collective vexatious behaviour generated by a group which called itself the "Campaign for an Ethical University of Bolton" (CEUB).

The five requests for information

4. The Appellant's five requests for information from the University were as follows:

- (1) 25 May 2015: Please can you provide an itemised breakdown of the cost of any building work commissioned by the University within Bolton One since Jan 2012.
 - (a) Name of Supplier carrying out the building work.
 - (b) The amount paid to each supplier.In addition, please provide details of all the acquisition and tender process carried out for all building work commissioned by the University within Bolton One since 2012.
- (2) 25 May 2015: Please can the [redacted name] confirm that he "signed off" on all financial arrangements between the University of Bolton and [redacted name], during his period of office.
- (3) 25 May 2015: Please would you state all payments (fees and/or expenses)
 - (a) made to the company Ginetta Cars Ltd by the University Bolton.
 - (b) made to the University of Bolton by Ginetta Cars Ltd. including any costs incurred by the University of Bolton as a result of the unveiling of the Ginetta-Juno LMP3 at Autosport 2015 at Birmingham's NEC (stand 7120, 11 AM on January 8 2015) as detailed in Bolton News 30 December 2014.
- (4) 8 June 2015: Please provide details of flights (destination, date and cost) paid for by the University of Bolton to fund any journeys made by [redacted name], during the last 5 years.
- (5) 11 June 2015: Please provide the following information for the period of 2010 – 2015
 - (1) Destinations travelled on University of Bolton Account.
 - (2) Purpose of each visit.
 - (3) Cost of travel, subsistence and accommodation paid to each person and their companions.The above information is required for: [four named individuals].

The complaint to the Information Commissioner

5. In considering the Appellant's complaint about the University of Bolton's reliance on section 14 (1), the Information Commissioner had considered the University's response and the issues around the term "vexatious" explored in the leading case set out in the Upper Tribunal decision of *Information Commissioner v Devon CC and Dransfield*. "Vexatious" was not defined in FOIA but the UTT had commented that it could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". That definition established that the

concepts of proportionality and justification were relevant to any consideration of whether a request was vexatious.

6. In *Dransfield*, four broad issues had been explored by the UTT:

- (1) the burden imposed by the request (on the public authority and its staff);
- (2) the motive of the requester;
- (3) the value or serious purpose of the request, and
- (4) harassment or distress of and to staff.

7. The UTT had cautioned that those four considerations were not meant to be exhaustive but, rather, it stressed the

importance of adopting a holistic and broad approach to the determination of whether a request is fixation saw not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality but typically characterises vexatious requests [45].

8. The Information Commissioner accepted that the Appellant received no replies to any of his requests and concluded that they were vexatious for reasons set out in the Decision Notice between Paragraphs 46 and 58.

9. In particular the Commissioner noted the University's belief that the Appellant made his request as part of an organised campaign and had provided a significant amount of evidence to support its position that the requests were made as part of a vendetta campaign [DN 50]. This was on the basis that:

- A copy of a blog on the CEUB website confirmed that over 20 FOIA requests had been made to the University.
- The requests related to issues that had been discussed on CEUB blogs.
- To the University on 24 July 2015 and 2 August 2015 included links to the CEUB blog. In particular, in an email dated 21 September 2015 sent to the Vice Chancellor of the University, the Appellant asked him to circulate a link to the CEUB blog to "all our supporters".

10. On that basis, the Commissioner accepted the University's position that the Appellant was linked to a campaign group that was targeting the University. Reviewing the correspondence the Appellant had with the University, the Commissioner concluded that the Appellant had an issue with the University. The example cited was an email the Appellant sent to a number of employees at the University stating the following:

Question:

How many (dis) Honorary Doctorates does it take to prop up the corrosive substance of [redacted name]

Answer:

Don't know, but just keep dishing them out to any Tom Dick or Harriet, who is naive enough to grab one and shovel them in.

11. In additional correspondence to the University, the Appellant made the following remarks:

The University was once an honourable institution, its reputation is in rapid decline, no longer based on integrity but based on disreputable action of [redacted name].

When will the Chair of Governors have the courage and personal integrity to speak out and refute these allegations of abuse and injustice and speak up for the University of Bolton.

This unifying position adopted by the Chair of Governors has brought the UoB into disrepute and public ridicule.

12. The Commissioner accepted that the Appellant might have an interest in the requested information and that he might have submitted the requests on "important principles of openness and honesty". However taking into account the number of similar requests which appeared to be of little value and the purpose and wider context of the campaign, the Commissioner considered that it was creating a significant and disproportionate burden on the University.

13. The Commissioner was also satisfied that the requests organised by the campaign had caused disruption and annoyance to the University and inevitably had the effect of harassing its staff. Taking into account the wider context behind the requests the Commissioner considered that,

even if the University responded to the requests, it would not be an end to the matter and was likely to lead to further requests and correspondence.

The appeal to the Tribunal

14. The Appellant, after travelling down to London for the hearing of his oral appeal, adopted his grounds of appeal (of which more later). The Information Commissioner had already indicated that he was not going to be represented at the oral appeal.
15. At the conclusion of the appeal hearing on 18 May 2016 the Tribunal considered that, in the interests of justice, it would be useful to hear further from the University of Bolton itself.
16. As a result, on 23 May 2016, it issued directions seeking to join the University as an Additional Party to the appeal.
17. The Directions were made under the provisions of Rules 2 and 9 of the GRC rules. In essence, Rule 2 relates to the overriding objective to enable the Tribunal to deal with cases fairly and justly. Rule 9 gives the Tribunal power to make Directions adding a Party as an Appellant or Respondent.
18. In issuing those Directions, the Tribunal noted:

In this matter, although the University of Bolton has declined an earlier invitation from the Tribunal Registrar to be joined and has explained that it had taken legal advice in respect of that, the Tribunal considers that it is in the interests of justice to join the University as a Respondent before coming to its final conclusion in respect of this appeal.

Although it is being joined as a Respondent, the Tribunal cannot force the University to participate further in this appeal if it does not wish to.

If that is the case then the University should indicate that and the matter will proceed to a final conclusion and decision. If, however it does wish to participate further then the Tribunal is prepared to arrange a resumed hearing either in London or in the Bolton area to facilitate this.

19. On 26 May 2016 the University indicated it did not wish to be joined as a party or to participate in the proceedings.

20. On receipt of that indication the Tribunal decided that nothing further would be achieved by forcibly joining the University against its express wishes particularly, as had been made clear earlier by the Tribunal, it could not be compelled to engage further in the proceedings. It notified the University accordingly.

21. The Appellant's main points in his appeal were, to summarise:

(1) His requests for information were not made as part of a campaign but on a personal basis.

(2) Those requests for information had a serious purpose. They were aimed at questioning "the integrity and transparency of management and Governance [at the University]" and because "accurate information from [the University]'s senior managers and governors is essential to end damaging speculation and return to an ethical [University]".

(3) The language and tone of his FOIA requests was respectful.

(4) The information requested should be readily available and its provisions should not place a great burden on the University.

(5) The requests were not submitted with the intention to disrupt the University.

22. In presenting his oral evidence he made it clear that he did not consider what he had done to be vexatious at all.

23. He had wanted to know why a particular financial agreement had been arranged between the University Vice Chancellor and the University's Governing Body.

24. He pointed out that issues relating to the arrangement itself could be completely legitimate but – without the kind of transparency in the answers

he was seeking or any response from the University – it was difficult to assess that.

25. The University's response, by declaring him vexatious from the start and without engaging with him at all, fostered an atmosphere of suspicion.

26. He did not see himself as a "leader" of any campaign organised by the CEUB.

27. He was an individual who had worked for the University for some 24 years and he was "deeply disheartened" by its reaction to his requests.

28. He was associated with the CEUB but not that this was a campaign that he was running or leading. The requests that he had made were his own requests and not requests engendered by the CEUB.

The questions for the Tribunal

29. The issue before the Tribunal was the sole question of whether the Appellant's requests were, on the balance of probabilities, vexatious within the meaning of section 14 (1) sufficient to allow the University of Bolton to refuse to respond to them at all.

Evidence

30. The Tribunal considered, in addition to the oral evidence of the Appellant, the documentary evidence provided to the Information Commissioner by the University in respect of the background issues that had caused it to arrive at the conclusion it did.

31. The Appeal bundle ran to some 494 pages, some of which are repetitious and not particularly well-copied but all of which have been read by the Tribunal.

Conclusion and remedy

32. The Tribunal finds that the oral evidence presented by the Appellant merits careful consideration in terms of its cogency and credibility.
33. In terms of cogency, the fact that the Appellant is part of a larger group of individuals interested in specific issues at the University of Bolton does not in and of itself make his requests vexatious.
34. The University's reaction to his information requests seeks to place him into a group of individuals who, in its view, are carrying out a vindictive and, by implication, unjustified and disproportionate campaign against the University.
35. That has been the University's reaction but, having heard directly from the Appellant, the Tribunal is satisfied on the balance of probabilities that this is likely to have been an overreaction in respect of this individual and in respect of these requests.
36. In terms of credibility, the Tribunal finds that it was dealing with an Appellant who presented his reasons for making the information requests in reasonable language and for an understandable purpose. It is perhaps unsurprising that, having retired from the University as a Senior Lecturer after 24 years' service, he would maintain an interest in the institution.
37. That purpose was to find out why and how certain financial transactions relating to the Vice Chancellor and the disposition of University funds had been made and deployed.
38. Echoing the meaning of "vexatious" in the Court of Appeal's decision in *Dransfield* that there was no comprehensive or exhaustive definition of what comprised the conduct within section 14 (1) FOIA, the Tribunal notes the higher Court's reminder:

I consider that the emphasis should be on an objective standard and that the starting point is that the vexatious and is primarily involves

making a request which has no reasonable foundation, that is, no reasonable foundation the thinking that the information sought would be of value to the request, or to the public or any section of the public. Parliament has chosen a strong word which therefore means that the hurdle of satisfying it is a high one and that is consistent with the constitutional nature of the right. The decision-maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious. If it happens that a relevant motive can be discerned with a sufficient degree of assurance, it may be evidence from which vexatious and as can be inferred. If a request pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. *But this could not be said, however vengeful the request, if the request was aimed at the disclosure of important information which ought to be made publicly available* [emphasis added].

39. For these reasons, and echoing the points made in Paragraphs 21 to 28 above in this judgement, the Tribunal finds that both the University and the Information Commissioner erred in believing that, as a matter of fact, these information requests were vexatious within the terms of section 14 (1) to the extent that no response was necessary to the requests.

40. In essence, the University of Bolton “drew up the drawbridge” too early in respect of this Appellant and engaged the section 14 refusal in a manner in which it was not entitled to do.

41. It failed to engage at all with the Appellant’s requests but appears to have decided in advance and as a matter of policy not to respond to enquiries relating to the matters he raised.

42. The University failed to recognise that section 1 of FOIA gives a person requesting information the right to have that information unless it can show that one of the exemptions set down in the Act is engaged.

43. It is the clear view of this Tribunal that the University of Bolton has failed to do so as regards section 14. The requests had a serious

purpose and we are not persuaded on the evidence, such as it was, from the University that that they would, by design or otherwise, cause harassment or distress. We are also not persuaded that responding to them would place an unreasonable burden on the University, because such information - as the Appellant argued - should be readily available.

44. We were surprised to learn that 'responding to any request is a duty that is undertaken by staff members in addition to their existing roles' *[page 84 OB]* and that as a public body the University does not have a more coherent way of dealing with FOIA requests.

45. For these reasons the Tribunal's decision is that the University of Bolton should respond to all the Appellant's information requests, save those in relation to the cost of the relationship with Ginetta Cars Ltd, within 35 working days or rely on other FOIA exemptions for not doing so.

46. In respect of the "Ginetta Cars" information request, the Tribunal agrees that section 21 of FOIA is engaged and that it is an appropriate response within the Act. As the University pointed out *[pages 80/81 of the OB]* the "cost of the relationship with Ginetta Cars Ltd" is available publicly by way of the WhatDoTheyKnow.com website.

47. Our decision is unanimous.

48. There is no order as to costs.

Robin Callender Smith

Judge

4 July 2016