



**IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL UNDER
SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No. EA/2015/0180

BETWEEN:

LISA WRIGHT

Appellant

-and-

INFORMATION COMMISSIONER

First Named Respondent

-and-

THE UNIVERSITY OF SURREY

Second Named Respondent

Before

**Brian Kennedy QC
Narendra Makanji
David Wilkinson**

**Date of Hearing: 13 April 2016, at Staines County and Family Court, TW18
1XH.**

DECISION

Subject matter: Application of section 14 (1) of the Freedom of Information Act 2000.

Decision: The Tribunal dismisses the appeal.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“the FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice dated 7 July 2015 (reference FS50574126), which is a matter of public record.

2. The Tribunal Judge and lay members sat to consider this case on 13 April 2016.

Factual Background to this Appeal:

3. Full details of the background to this appeal, the Appellant’s request for information and the Commissioner’s decision are set out in the Decision Notice and not repeated here, other than to state that, in brief, the appeal concerns the question of whether the requests for information relating to correspondence between the University of Surrey (“the University”) and Guildford Borough Council were vexatious.

History and Chronology:

4.
 - a) 23rd Oct 2014: Appellant’s request for email correspondence between University staff and Guilford Borough Council re speeches at a council meeting.
 - b) 11 Nov 2014: University refuses request as vexatious.
 - c) 26 Nov 2014: Request for internal review.

d) 18 Dec 2014: Internal review upholds s14 vexatiousness exemption.

e) 10 March 2014: Complaint to Commissioner

Relevant Law:

5. S. 14 F.O.I.A. Vexatious or repeated requests.

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

The Commissioners' Decision:

6. The Commissioner relied upon the four considerations in *Dransfield*, [2015] AACR 34, namely burden, motive, purpose/value, and distress/harassment, but accepted that they do not amount to a prescriptive or all-encompassing definition.

7. The University informed the Commissioner that the Appellant is part of a local campaign against the development on the green belt, and that she targeted the University as it had applied for planning permission to build on the green belt. The Appellants' request followed thirteen other multi-part requests from this campaign, which requested, *inter alia*, material, which was over ten years old, and specifically requested deleted material. After having made a reasonable effort to comply the University felt that the totality of the burden was

unreasonable and disproportionate, and suspected that FOIA was being used as a device to disrupt its normal operation and frustrate the planning application.

8. Further to this the University provided evidence that members of this campaign had infiltrated internal University meetings and covertly recorded them before misrepresenting matters to the local press, including detailed attacks on named staff members in articles and letters. The University acknowledges the public interest in the development of the Local Plan, but the requests seem to be searching for evidence of a conspiracy that does not exist and disclosure would not add to public understanding of the issues.

9. The Commissioner agreed that the request was part of the campaign, and the campaign's requests were imposing a disproportionate and unreasonable burden.

Appellants' Notice of Appeal:

10. The Appellant denies that her request is vexatious, making instead the following claims:

- That the Commissioner did not receive an accurate context from the University as to the planning process of the proposed development, in that:
 - The University is attempting to silence campaign groups and coerce members of its own staff to speak at Council meetings in support of the proposed development;
 - The University, in connivance with certain 'discredited' members of the Council, are orchestrating public debate and denying campaigners an equal platform;

- The University is misrepresenting the purpose of the development as being homes for staff members, when in fact only a small proportion if any of the proposed properties would be retained for staff;
- Furthermore the University proposed another development eleven years prior that failed to abide by the conditions of the planning permission
- There are in fact two separate campaign groups, Save Hogs Back and Guilford Greenbelt Group, and despite the appellant being a member of both she was only aware of three other requests for information, none of which relate to the joint effort of the Council and the University to frame the debate;
- The Appellant denies gaining unauthorised entry to an internal staff briefing, alleging instead that she was invited to attend by a member of staff and spoke openly to the University's PR officer;
- The Appellant denies disrupting the aforementioned proceedings, instead characterising her actions as asking questions in a measured manner in the open forum that followed the presentation.

11. The Appellant however accepts that some campaigners may indeed have named University staff members in letters and articles to the press, but only in the context of stating fact and not in a personal attack. Nevertheless she felt fit to remark that such is the "anger" amongst residents that "it is almost impossible to control outbursts in the media". She denies that she has any intention to disrupt the proper workings of the University.

Commissioners' Response:

12. The Commissioner received from the University a list of requests received from the campaigns, copies of those requests and examples of the campaigns' media activities. The Commissioner repeated his contention that it is not his role to determine the underlying issues of the appropriateness of the development.

13. Regarding the Appellant's knowledge of the other requests, as she acknowledges that she is a member of both campaigns, it is reasonable, the Commissioner argues, to consider the requests made by those campaigns as a whole. The Commissioner was satisfied that the instant request is a fishing expedition, motivated by the Appellant's beliefs about aspects of the University's conduct, and as such it is an improper use of FOIA. The whole series of requests is disproportionately broad in scope and places an inappropriate and unnecessary burden on the University.

Appellants' Response:

14. This response focuses on the public interest arising from the University's alleged misconduct in stifling and twisting public debate.

15. The Appellant further denies that her request is a 'fishing' expedition but rather a focused request designed to "confirm evidence of other matters" that would be of public interest.

17. The Appellants have asked the Tribunal to consider her belief that the public discussion at various borough council meetings in regard to the Draft Guilford Local Plan had been carefully orchestrated between the University, its staff and the Guilford Borough Council. It was, the Appellant contended, that what was presented as a public debate was in fact carefully staged and that it was in the public interest that this was revealed, hence the reason of the FOIA request. The

Appellant referred us to a video in support of this contention at http://www.guildford.public-i.tv/core/portal/webcast_interactive/224847, which we have considered.

University's Response:

16. The University provided evidence of other requests from named individuals purporting to be members of the campaigns of which the Appellant is also a member, and argues that the requests can therefore rightly be considered in conjunction with each other and the burden of the totality of the requests is the appropriate consideration for the Tribunal.

Issues:

17. The issue before the Tribunal is whether the request itself is vexatious and whether the Appellant has persuaded us that the Commissioner was wrong in reaching the conclusion he did with the reasoning as set out in his DN.

18. We have considered the DN and in particular the reasoning as set out at paragraphs 8 to 23 at pages 2 – 5 of the OB herein.

19. We have also heard the Appellant and noted her submissions in support of her grounds of appeal as set out above.

20. We accept and adopt the reasoning of the Commissioner and the Appellant has not persuaded us that the Commissioner was wrong.

21. We note and understand the Appellants concern about the appropriateness of the University's stated intention to build on a green belt, however we are not in a position to determine or adjudicate on the question that this may establish any

collusion or other “relationship” between the University and the Guilford Borough Council, not is it our function to do so.

22. The issue is not whether or not the Appellant is vexatious. The question is whether or not the request in all the circumstances is vexatious. Having considered all the evidence and submissions before us, we agree that this request is closely aligned to the local campaign against building on the green belt and that in all the circumstances this request would exert a disproportionate and unreasonably onerous burden on the University when considered in the context of how much the information derived would actually add to the public’s understanding of the University’s position.

23. In light of all the above considerations and for the reasons given above, this Tribunal finds the Appellant has failed to persuade us that the Commissioner erred in that conclusion or in his reasoning in support thereof in the DN.

Brian Kennedy QC

31 May 2016.

Promulgated 1 June 2016