



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

**Appeal Reference: EA/2016/0079**

**Decided Without a Hearing at Field House  
On 2 August 2016**

**Before**

**JUDGE PETER LANE  
DR HENRY FITZHUGH  
ROSALIND TATAM**

**Between**

**A**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**DECISION AND REASONS**

***A. Introduction***

1. We refer to the appellant as A, in order to protect the position of A's daughter. The appeal concerns the Commissioner's decision notice of 29 February 2016, categorising as vexatious for the purposes of section 14 of the Freedom of Information Act 2000 ("FOIA") the appellant's requests for information from a school. The appellant had wanted his daughter to attend the school but the school decided that she did not merit admission.

The appellant exercised his right to appeal to a panel against the school's decision. Following a hearing in June 2015, the panel rejected the appeal.

### ***B. The appellant's requests and the school's responses***

2. On 30 June 2015, the appellant wrote to the school requesting the following:–

“Under the Freedom of Information Act, I would like to request the following information regarding ... school's appeals process:

- (1) copies of the letters sent by the Appeals Panel to appellants under the school's appeals procedure (with the appellants' names and addresses redacted) informing them of:
  - (i) the appeal hearing arrangements; and
  - (ii) the constituent members of the Panel, including the clerk to the Panel and whether each was a lay or non-lay member.

For each of the previous 4 years (2011–2014)

- (2) details of any changes subsequently made to the constitution of each of the Appeals Panels for the years referred to in (1) (above), and the reasons for such changes
- (3) details of who appointed the Appeals Panel this year and for each of the previous 4 years (i.e. 2011–2015) whether this was the admission authority (i.e. the school) or the clerk to the Panel, and how the clerk and each Panel member were selected
- (4) copies of the decision letters sent to ... school by the Appeals Panels which heard the appeals for this year and each of the previous 4 years (i.e. 2011–2015)
- (5) confirmation that [name redacted] did not attend the presentation of the school's case to this year's appellants at the school on Monday 15<sup>th</sup> June at 5pm.”

3. On 13 July 2015 the school responded. It apologised for the delay in doing so. It stated that all information about appeals was exempt from release to the public under FOIA. The appellant requested an internal review.

4. On 20 July 2015, the appellant requested further information from the school:–

“I would also like to request the following information:

- (1) details of the training for the [school's] appeals process undertaken by each of this year's Panel members, and of appropriate training undertaken by the clerk to the Panel, to include:
  - (a) the dates each Panel member received the training

- (b) details of the person or organisation who delivered the training
  - (c) the content of the training
- (2) details of any advertisements for lay members of the Appeals Panel placed in local newspapers since the beginning of 2012, including:
- (a) the date each advertisement appeared
  - (b) the newspaper in which the advertisement was placed
  - (c) the content of each advertisement

I did have another request to include with my last email below, as follows:

- (3) details of how [NH] came to be on the original Panel communicated to us for this year's appeals (e.g. was she approached and if so by whom), and what checks were made to ensure that she was independent."

5. The school provided answers to certain of the requests. They informed the appellant that he should get an official response from the Education Funding Agency ("EFA") after the EFA had investigated the appeal hearing process, regarding his daughter.

6. After the appellant contacted the Commissioner in October 2015 to complain about the way in which his request for information had been handled by the school, the appellant was provided by the school with further responses. As a result, the appellant considered that the following were outstanding:–

- Parts 1, 2 and 4 of the request of 30 June 2015;
- Part 1(c) of the request for 20 July 2015;
- Parts 2(a), (b) and (c) of the request of 20 July 2015;
- Part 3 of the request of 20 July 2015.

7. After the Commissioner's intervention, the school responded with a further letter to the appellant dated 17 December 2015. The appellant then wrote to the Commissioner again on 6 January 2016, challenging and querying certain responses of the school. The appellant's comments were forwarded by the Commissioner to the school, which applied section 14 of the FOIA to the request.

8. The Commissioner's decision records that the school contended the appellant had been asking questions and "harassing" the school for over six months, which had led to a disproportionate amount of time being spent in dealing with his requests. The school said that since the appeal hearing regarding the appellant's daughter, the appellant had continued to contact members of staff at the school. The appellant had contacted the clerk

of the appeal panel on numerous occasions. The school provided the Commissioner with a timeline of the 30 emails it had received from the appellant during the period April 2015 to November 2015, as well as the 15 responses which the school had made to the appellant. The school had started to send requests from the appellant to its Deputy Head, as the requests had become a burden to the staff receiving them. The school contended that the appellant had repeatedly asked the same questions and it was of the view that he was trying to waste school time.

### ***C. The Commissioner's decision***

9. The Commissioner viewed the timeline provided by the school. He accepted that the school had spent a considerable amount of time and resources dealing with the information requests from the appellant. The Commissioner considered that these requests had been excessive and showed what the Commissioner considered to be unreasonable persistence on the part of the appellant. Given that the appeal concerning the appellant's daughter had been concluded, the Commissioner was of the view that the disclosure of further information, as requested by the appellant, would have no relevance to the appellant and his daughter. The Commissioner categorised the appellant's use of FOIA as a means of continuing to challenge the school's decision regarding the admission of his daughter. The Commissioner, in all the circumstances, concluded that the school was entitled to characterise the requests as manifestly unreasonable and, accordingly, covered by section 14(1) as being vexatious.

### ***D. The appeal***

10. In his grounds of appeal, the appellant points out that many of the emails he had sent to the school were to do with his requests for information regarding the appeals process and were made before the appeal hearing regarding his daughter had taken place. The appellant in effect contended that these emails were of a different nature from the requests made after the appeals panel had made its decision to dismiss his appeal regarding the admission of his daughter. At that point:-

"We decided we would make a complaint to the EFA in due course as we felt that many provisions of the appeals code had been breached by the school, the Panel and the clerk to the Panel throughout the appeals process. In order to prepare our complaint, we wish to ascertain details pertaining to the adherence to the code of the school, the Panel and the clerk and our requests for such details are those to which this case relates."

11. The appellant considered that he had a "strong case for the EFA to make recommendations for the school to review its appeals procedures and to insist on our appeal being heard again with a fresh Panel. Furthermore, there is the potential for other unsuccessful appellants to raise a complaint with the EFA based on these allegations".

12. The appellant denied “harassing” persons connected with the school and contended that none of his emails had been addressed to the clerk of the panel. The appellant said that the information he had requested was “wholly relevant to a complaint to the EFA we are preparing and also to the community in which the school is located, of which we are members”. He felt that there was a “deliberately unfair process in order to keep class sizes at a relatively small level” at the school. If this were not the case, then the school had nothing to hide.

13. In his response, the Commissioner questioned whether the remaining answers that the appellant sought from the school were of relevance to the challenge the appellant had made to the EFA, since such a challenge had to relate to the way the appeal was carried out, which the Commissioner doubted was the case with the information still sought. In the Commissioner’s view, the appellant’s request amounted to a:-

“fishing expedition to obtain information for his own private interests in seeking to contest the appeal decision already made which the appellant refuses to accept. The Commissioner considers this to be an inappropriate use of FOIA”.

14. Whilst the Commissioner accepted that there might be a public interest in transparency of the school’s appeals process in general, there was no evidence of such a wider public concern regarding the appeal hearing in issue or, indeed, the way in which the school carried out such appeals in general.

15. The appellant was content for the appeal to be decided without a hearing and in all the circumstances we concluded that it was appropriate to do so. In reaching our unanimous decision, we have had regard to all the materials contained in the appeal bundle (running to 295 pages), together with the additional documents comprising the appellant’s response of 27 May 2016, with appendices, and the appellant’s comments on additional pages from the Commissioner dated 3 July 2016.

## ***E. Discussion***

### ***(a) The Tribunal’s approach***

16. In deciding whether section 14 applies in the appellant’s case, we have had regard to the guidance issued by the Upper Tribunal in Information Commissioner v Devon CC and Dransfield [2012] UKUT 440 (AAC) and to the judgments of the Court of Appeal in Dransfield and Another v Information Commissioner and Another [2015] EWCA Civ 454. At paragraph 68, the Court of Appeal said:-

“68. In my judgment, the UT was right not to attempt to provide any comprehensive or exhaustive definition [of ‘vexatious’]. It would be better to allow the meaning of the phrase to be winnowed out in cases that arise. However, for my own part, in the context of FOIA, I consider that the emphasis should be on an objective standard and that the starting point is that vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable

foundation for thinking that the information sought would be of value to the requester, 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 vexatiousness can be inferred. If a requester 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 requester, if the request was aimed at the disclosure of important information which ought to be made publicly available. I understand Mr Cross to accept that proposition, which of course promotes the aims of FOIA."

17. We agree with the appellant that the questions he put to the school up to the point of the panel appeal hearing fall to be looked at differently from those which he made afterwards. We therefore differ from the Commissioner's approach, to the extent that his decision failed to make this distinction.

***(b) The school's letter of 17 December 2015***

18. The Commissioner has made reference in his notice of decision to the information that the school disclosed in December 2015, during the Commissioner's investigation of the appellant's complaint. The letter of 17 December 2015 and its aftermath are, we consider, of key significance in deciding whether the appellant's remaining requests are to be categorised as vexatious.

19. The letter begins by stating that the Commissioner has confirmed that all questions "have been answered satisfactorily"; that is to say, that the answers set out in the letter of 17 December (which had previously been shown to the Commissioner) constituted in the Commissioner's view a satisfactory response to the appellant.

20. The appellant had requested copies of letters sent by the appeals panels to appellants under the school's procedure, informing them of the appeal hearing arrangements. The school's answer was that the invitation letters "are standard. Copies of each letter are not held by the school, however, an example of the exact wording is attached at the end of this letter".

21. The appellant had asked for the identities of the constituent members of the panel, including the clerk, and whether each was a lay or non-lay member, for each of the years 2011 to 2014. The letter of 17 December disclosed the names and categories of the members over the requisite period.

22. The appellant had asked for details of any changes subsequently made to the constitution of each of the appeals panels for the years 2011 to 2014. The school's answer was that no changes had been made to the above constitutions.

23. The appellant had asked for details of who appointed the appeals panel in 2015 and for each of the previous four years; whether this was the admission authority or the clerk to the panel; and how the clerk and each panel member was selected. The letter of 17 December stated that appointment of panel members was delegated to the clerk to the panel. The clerk was selected by the school, based on "strong recommendations". Each panel member was interviewed and selection was made based on performance in interview and previous experience.

24. The appellant had requested copies of the decision letters sent to the school by the appeals panel which heard the appeals for 2015 and 2011 to 2015. The school responded by saying that these letters were exempt from the Freedom of Information legislation, citing the School Admissions Appeals Code February 2012.

25. The appellant had asked for confirmation that a particular member of the panel did not attend the presentation of the school's case to the appellants for 2015 on Monday 15 June at 5pm. The school confirmed that this was true.

26. The appellant had asked for detail of the training for the school's appeals process undertaken by each of the 2015 panel members and of appropriate training undertaken by the clerk, to include the dates each panel member received the training. The school stated that it did not hold this information. The appeal panel was said to be independent of the school and all training was organised independently of it. Panel members were only allowed to sit on a panel once training had been undertaken with the clerk and no panel member ever sat on a panel without first being trained.

27. The appellant had asked for details of the person or organisation who delivered the training. The school's letter stated that the clerk was appointed by the school to appoint and train all panellists.

28. The appellant had asked for the content of the training. The school said that the training covered all aspects of the appeal code, the organisation of the hearing processes and how the panellists must consider each case.

29. The appellant requested details of any advertisements for lay members of the appeals panel placed in local newspapers since the beginning of 2012 including the date each advertisement appeared. The school stated that no advertisement for lay members had been placed in the local newspaper since the beginning of 2012.

30. The appellant requested details of the newspaper in which the advertisement was placed. The school said that no advertisement had been placed in the local newspaper since the beginning of 2012.

31. The appellant requested details of the content of each advertisement. The school reiterated there had been no newspaper advertisement.

32. Finally, the appellant requested details of how NH came to be on the original panel, for instance, whether she was approached and if so by whom; and what checks were made to ensure that she was independent. The school stated that NH was originally invited onto the panel by the clerk but, because of past links, in order to make the panel acceptable to all, the clerk and Mr R decided to replace her with Mrs P at short notice. Mrs P was said to be "a very experienced panel member. She sat on the panel for all hearings".

33. The letter of 17 December ended by stating that "I hope that the matter is now closed".

### ***(c) The appellant's reaction***

34. On 5 January 2016, the appellant wrote to the Information Commissioner's Office say that he had "reviewed in more detail the school's recent response to my request, dated 17 December 2015 and considered that the following points in my request are still outstanding".

35. As regards the question concerning invitation letters, the appellant contended that the school "appears to have contradicted itself here, as it has stated that copies of each letter are not held by the school, yet the example of the exact wording it has attached to the letter is in fact a copy of our own invitation letter received from the school earlier this year ... This would therefore indicate that the school do in fact hold copies".

36. In his comments of 3 July 2016, the appellant further contended that the full text of his question relating to copies of the letters had not been reproduced by the school. These comments also attempted to deal with the school's letter of 9 February 2016 to Tina Hayman.

37. In the comments of 3 July 2016, the appellant contended that he wanted to see copies of the letters just mentioned "as my previous experience has been that answers provided by the school cannot be relied upon as being either truthful or correct". The appellant said that this was "a precursor to establishing whether the school has previously or even consistently breached the admissions appeals code".

### ***(d) The Tribunal's assessment***

38. The Tribunal does not consider that there is any indication at all in the appellant's letter of 5 January 2016 to explain that this was the reason for wanting to see the copies. A more fundamental problem with the appellant's stance on this and, indeed, other matters to which we shall turn in due course, is as follows. The appellant knows that one of the members of the panel was not present at the presentation of the school's case to the 2015 appellants on Monday 15 June. He also knows that a panel member was changed at short



notice. If the appellant is of the view (which he plainly is) that one or both of these matters should be brought to the attention of the EFA, with a view to its determining whether the manner in which his daughter's appeal was decided was problematic, then he has all that he needs to do so.

39. In his appeal, the appellant has conspicuously failed to show that investigating whether similar issues arose in the past few years is or would be likely to be regarded by the EFA as relevant to any examination of the process followed in the case of his daughter. Likewise, the appellant has failed to show whether the EFA would be likely to regard such information, if forthcoming, as relevant to its functions in any other respect.

40. In any event, the Tribunal considers that the appellant's extremely belated explanation for this question is indicative of the fact that he is attempting, after the event, to provide a rationale for his questions, which was lacking at the time they were made; and/or is indicative of a desire to engage, for its own sake, in a protracted series of communications with the school, that is, at best, disproportionate.

41. The appellant's desire to be given the full names of the panel members is now said (July 2016) by him to be "important in order to establish whether the individuals concerned are disqualified persons under the code, particularly as some of the surnames provided are relatively common". What we have said above applies to this question also.

42. So far as concerns the appellant's question regarding details of any changes subsequently made to the constitution of each of the appeal panels, the appellant now says that he wanted this information so as to be able to ascertain whether there were changes to the panel, after its composition had been communicated to the appellants. Once again, this could and should have been made clear by the appellant far earlier. The Tribunal also agrees with the Commissioner that here, and elsewhere, it is impossible to escape the inference that the appellant is more likely than not engaging in a "fishing expedition" which, even if it revealed there had been changes to panel membership in other years, is highly unlikely to be seen by the EFA (or any reasonable observer) as indicative of malpractice or incompetence.

43. It is manifest that the school was entitled not to give the appellant copies of decision letters relating to other appeals involving other children. Apart from anything else, such information would comprise the personal data of other individuals.

44. As for details of training, the appellant's justification, as articulated in July 2016, is that he has:-

"numerous pieces of evidence showing that the clerk has, in contrast to the school's claims, performed a sub-standard and unprofessional job in 2015. I am therefore trying to establish in a little more detail the content of the training that was delivered, as I would like to ensure sufficient and up-to-date information was included in that training".

45. We regard this response as extremely problematic. The appellant does not go into any detail as to what "numerous pieces of evidence" he has. Elsewhere he cites three matters:

changing interpretations as to the cut-off date for appeals; the fact that one panel member was absent from the evening part of the appeals process; and whether the school has increased its capacity (we have more to say about this last matter in paragraph 49 below). The obvious course would have been for the appellant to put these and any other pieces of evidence he claims to have to the EFA, as part of a complaint regarding the way in which appeals were handled in 2015.

46. So far as advertisements were concerned, in its letter of 9 February 2016 to the Commissioner the school has given details of the advertisement for a clerk placed in the *Echo* newspaper in April 2013. The appellant does not seem to have any further issue in this regard.

47. Finally, regarding how NH came to be on the panel, the appellant says in his response of July 2016 that he is:-

“trying to establish here whether initial contact was made by the clerk or the school, rather than [NH] this is as opposed to establishing whether [NH] was eventually invited onto the panel after that contact was made ... I am trying to determine here whether the school knowingly approached a disqualified person to be a lay member of the panel for our appeal”.

48. Once again, this justification is both belated and problematic. If the appellant is contending that misfeasance in public office has occurred, then the EFA would be the appropriate forum to investigate this, at least initially.

49. We find that the appellant's attempt to link his complaints about the school's adherence to its Admissions Appeals Code with the issue of whether the school should increase its class sizes is specious. The appeals panel does not have the function of deciding how large classes should be. It is tasked with determining, against the background of the school's present view of its capacity, whether children who have been refused admission to the school should, in fact, be allowed to join it.

50. Standing back and looking at matters overall by reference to the relevant case law, the Tribunal concludes that it is more likely than not that the appellant is motivated by feelings of hostility towards the school, as a result of his failure to obtain the admission of his daughter to it. His insinuations that he has evidence to put before the EFA of systemic failures on the part of the appeal panel sit badly with his decision to continue seeking evidence which, in part, is said to be necessary for the purposes of interesting the EFA in the running of the school's 2015 appeal panel. In any event, viewed objectively, the appellant's actions are, at best, unreasonably persistent, if one sets the avowed purpose of the requests against the burden placed on the school in addressing them.

51. Given the appellant's manifest skill and intelligence, it is more likely than not that his questions to the school were deliberately obtuse and that he considers himself adept at finding *ex post facto* justifications for them; all with a view to placing a disproportionate burden on the school.

52. In conclusion, objectively viewed, the questions have not been shown to serve any useful purpose whatsoever. Although the Tribunal does not accept the entirety of the Commissioner's reasoning (see paragraph 17 above), we agree, for the reasons set out above, that the Commissioner was right to accept the contention of the school that the burden placed upon it by the appellant's questions has become disproportionate. There is no public interest in allowing the appellant to invoke FOIA. The question of whether the school should expand its classes is an entirely separate one. Section 14 was correctly invoked.

***F. Decision***

53. This appeal is dismissed.

**Judge Peter Lane**

**24 August 2016**