



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

Appeal No: EA/2016/0081

BETWEEN

RODERICK LUBBOCK

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

THE UNIVERSITY OF OXFORD

Second Respondent

Heard at Field House in London: 28th September 2016 and

at Fox Court in London: 20 December 2016.

Date of Decision: 6th February 2017.

Before

Brian Kennedy QC

Paul Taylor

Anne Chafer

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the Decision Notice dated 3 March 2016 and 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 3 March 2016 (reference FS50606866), which is a matter of public record. The Public Authority concerned is the University of Oxford (“ the University”).

[2] The Tribunal Judge and lay members sat at Field House, London on 28th September 2016 but the Tribunal were unable to conclude the hearing and issued Directions on the 29th September 2016. The Tribunal reconvened at Fox Court, London on 20 December 2016.

Factual Background to this Appeal:

[3] Full details of the background to this appeal, Mr. Lubbock’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 Mr. Lubbock’s request was vexatious.

History and Chronology:

[4]

4 Sept 2015	Request for all university communications referencing ice hockey
2 Oct 2015	University refuses request, citing s14 (1)
2 Oct 2015	Request for internal review
15 Dec 2015	Request again refused
12 Jan 2016	Complaint to the Commissioner

Relevant Law:

[5]

Section 14 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.

Commissioner's Decision Notice:

[6] The University explained that there has been a private dispute between the Oxford University Sports Federation (the department of the University that oversees student sports clubs) ("OUSF") and the Oxford Ice Hockey Trust (a team and club that is independent to the University)("the Trust"). The requested information relates broadly to that dispute.

[7] The University stated that it had attempted to resolve this dispute in various ways. However, since March 2013 it had received 15 FoIA requests from various individuals known to be associated with the Trust. Ten were complied with, and five were refused on the grounds of vexatiousness. Evidence was received by the Commissioner showing the scale of the effort required to comply with these requests (estimating approximately sixty hours and requiring consultation with twenty-three individuals), as well as the unreasonable persistence and at times openly hostile attitude of requesters.

[8] Regarding the subject matter of the requests themselves, the University states that backdrop of the requests is a private dispute between the University and former athletes that is of no interest to the wider public. It characterised the totality of the

requests as a “scatter gun” attempt to open up a “second front” of the dispute. The Commissioner accepted this argument, noting that even if the request were complied with, the dispute would continue. Therefore, whilst considering the Appellant’s request not to be vexatious *per se*, it forms part of a series of requests that are in their entirety vexatious.

Grounds of Appeal:

[9] Mr. Lubbock put forward three grounds of appeal:

i) *Inaccurate Characterisation of the Background to the Request*

The instant request was made on behalf of the Trust, which has no dispute with the OUSF; rather, it has lodged a formal complaint with the University alleging serious misconduct on the part of University staff including, *inter alia*, covert audio recordings of students, intentional disruption of sporting activities, threatening students with academic repercussions, deceit and defamation. The Appellant argues that any references to this misconduct as a ‘dispute’ trivialise and misrepresent the misconduct and attempts to conceal it. Such misconduct by University staff that has been allowed to continue and has been ‘covered up’ by the institution is a matter of public interest.

ii) *Previous Requests by the Trust*

Contrary to the Decision Notice, the Trust has only made three previous FOIA requests. There is at least one FOIA request that was made by an individual unknown to the Trust, and no evidence has been provided that the remaining requests came from individuals associated with the Trust and not from journalists or interested third parties.

iii) *Insufficient attempts to address the Trust’s concerns*

Following one meeting with senior University staff in October 2013, the Appellant alleges that the Trust was threatened with legal action and attempts were made to prevent the team competing in the British University league. A further meeting in January 2015 was also adjudged by the Appellant to be an attempt to conceal misconduct.

The Commissioner's Response:

[10]

i) Inaccurate Characterisation of the Background to the Request

The Commissioner's understanding is that the Oxford Blues team was formed from former members of the official University Ice Hockey Club ('OUIHC') as the result of an ongoing dispute over the organisation's structure and the branding of merchandise. This and the allegations of misconduct are beyond the remit of this appeal, but the Commissioner now accepts that identifying and addressing such misconduct is in the public interest. Nevertheless, the extremely broad nature of the request in both subject matter and time period, with no direct link to the misconduct allegations, has lead the Commissioner to repeat his contention that the request is a fishing expedition likely to lead to further correspondence without providing any resolution to the disputes.

ii) Previous Requests

The Commissioner cannot determine whether the disputed twelve requests were associated with the trust, and as such the Commissioner requests that the University be joined to the appeal. However, the three previous requests made on behalf of the Trust are extremely broad in scope (albeit admittedly narrower than the instant request) and there exists a degree of overlap with the present request. The burden of complying, the disruption to and negative impact on staff members and the irritation of the requests is sufficient to meet the 'high standard' of vexatiousness described in *Dransfield*.

iii) Insufficient Attempts to resolve the concerns

The University's attempts at resolving the dispute is out-with the remit of this appeal, and is not critical to the question of vexatiousness. Nevertheless, having reviewed the University's evidence, the Commissioner is satisfied that there have been attempts made at a resolution.

[11] In view of new evidence presented by the Appellant, which was not before the Information Commissioner at the time of his investigation, the Tribunal issued Directions dated 29th September 2016, joining the University and requesting submissions from all parties as follows:

- i) The University to provide evidence as to the precise nature of the burden in complying, how it determined the previous requests to have come from the Trust, precisely what correspondence it considers to be 'hostile' and any further submissions regarding the involvement of particular staff members in the dispute.
- ii) The Appellant regarding his claims about certain meetings with the University and if his complaint had been finalised.
- iii) The First Respondent as to whether the Appellant's subject access request was a relevant consideration in relation to whether his request was vexatious and the independence of the University officer carrying out the internal review.

The Directions required submissions within 28 days from all Parties with a further 14 days for submissions in response.

THE UNIVERSITY OF OXFORD SUBMISSIONS

[12] On 24th November 2016 the University replied.

[13] Ms. Potts provided a witness statement. She is the Academic Registrar for the University, with responsibility for the co-ordination and development of student-related services and operations; in this case, she is charged with rebuilding relations between the University and the ice hockey community, and supporting members of OUIHC. She gave evidence that subsequent to the present appeal being lodged, the Appellant raised a formal complaint of harassment to the Vice Chancellor.

Background to the Dispute:

[14] Regarding the genesis of the dispute, it arose when certain members of the Men's Ice Hockey Team within OUIHC objected to the Women's team using OUIHC branding on their merchandise, being of the opinion that they should use the Oxford University *Women's* Ice Hockey Club branding. OUIHC approached OUSF to attempt to resolve the dispute. OUSF ruled that the women's team should be given the opportunity to use the OUIHC branding, but made certain criticisms of the layout of the website which did not adequately highlight the distinctions between the teams.

[15] In protest, fifteen members of the men's team resigned, one of which being the Appellant. They requested they be permitted to continue to play under the name 'Oxford University Ice Hockey Club'. Mr. Roycroft, the University's Director of Sport, began a series of discussions with a view to encouraging the dissenting players to rejoin OUIHC. This was unsuccessful, and the players formed their own team under the auspices of the Trust. The disagreement has now stretched beyond branding, and the dispute is which team is the proper successor to the historical Men's Blues team and has the right to name its fixture against the University of Cambridge the 'Varsity Match'. The University is only concerned that an independent group does not present itself as an official University team.

[16] Ms. Potts accepted that, during a meeting in April 2013, Mr. Roycroft attempted to make an audio recording without the permission of the participants. This recording was discovered in the course of the meeting, immediately deleted and Mr. Roycroft apologised for his error of judgment. However, between 26 March 2013 and 4 September 2015, the University received fifteen FOIA requests pertaining to this dispute. Mr. Damien Fessey, honorary trustee of the Trust at the time, made three of the requests and voluminous disclosure was made between June 2013 and March 2014. Ms. Potts noted that no complaints were forthcoming from the Trust from this time until after the present appeal was lodged. The harassment complaint was investigated by the University and dismissed without merit. Ms. Potts informed the Tribunal that much of the material used by the Appellant to ground this complaint was disclosed to the Trust in the course of its requests.

[17] The attempts to resolve the dispute are evidenced in Ms. Potts' statement. She contrasts this with the Trust's decisions to publish their own perspective (as she describes, to "name and shame" alleged transgressors) on the dispute online, and alleging that at times OUIHC's Wikipedia page had been edited to redirect readers to the Trust's website.

Burden of Compliance:

[18] Ms. Potts provided the evidence for the burden of complying with the Trust's previous requests, requiring consultation with twenty-three individuals and taking more than twenty hours. She observes as well, that the Appellant made a subject access request for information held by the University, but with the exception of information pertaining to him as a former student and staff member. Ms. Potts states that this left only information relating to his involvement with ice hockey. The request was complied with, and eighty-six pages were disclosed, taking eight hours for the Compliance Team to process. She gave evidence that this, along with all the other ice hockey requests with the exception of the instant request, requires an estimated compliance time of eighty-eight to one hundred hours. This is unprecedented for requests regarding university sports.

[19] Regarding the other requests, they came from whatdotheyknow.com and use names that the University accepts are not transparently associated with the Trust or any known journalists; however, from a glance at their account history, these particular usernames have only ever made requests to the University pertaining to this dispute. This would lead the University to conclude that they are not journalists but are in some way connected to the Trust. This suspicion is further heightened by the heated language used in some of the requests, with allegations and insinuations of misconduct in destroying, concealing or altering information. Finally, the responses to these requests are referenced and linked on Trust-affiliated websites.

[20] The Appellant's request as it stands would encompass thousands of email addresses, covering three years of communications that would capture a significant amount of personal data and potentially require consultation with a vast number of individuals. If s14 had not been applied, the request would exceed the cost limit under s12 in any event. As the attempts at reconciliation stalled in 2014, there is unlikely in Ms. Pott's estimation to exist any further material that could assist in resolving the dispute that has not already been disclosed to the Trust.

THE UNIVERSITY OF OXFORD: WITNESS STATEMENT OF PROFESSOR EWAN MCKENDRICK

[21] The Tribunal noted a comment made by the Appellant in his grounds of appeal, which suggested that Professor McKendrick was line manager to Ms. Emma Potts (p.14). Whilst not explicitly stated, this appeared to the Tribunal to be suggesting that Professor McKendrick was insufficiently independent of the handling of the original request. Consequently the Tribunal directed that Professor McKendrick provide a witness statement setting out his involvement in the dispute, which he did on the 24th November 2016.

In his statement Professor McKendrick set out:

"I only participated in one conference call with representatives of the Trust on 7 October 2014. I recall that Emma Potts was also involved with this call and that the relevant Trust representatives informed me within the two weeks thereafter that they had resigned from the Trust." (para.4)

"I was not otherwise involved in the dispute. I was not responsible for line managing Ms. Potts during the period in question because, in her role as Director of Student Administration and Services, she was line managed by the Deputy Registrar, Michael Silby." (para.5)

[22] The Tribunal is satisfied that Professor McKendrick's very limited involvement in the dispute does not sufficiently affect his independence in a way which would render his internal review invalid.

[23] The University adopted Ms. Potts' statement, reiterating the cost of compliance issues and confirming that the University stopped actively pursuing a resolution of the dispute in February 2014.

INFORMATION COMMISSIONER SUBMISSIONS

[24] The Information Commissioner submitted that in her view: -

- i) the Appellant's subject access request is a relevant part of the course of dealings between the Appellant and the University as it appears to be connected to the ongoing dispute;
- ii) if it were to be established that Professor McKendrick was involved in, or connected to the dispute in any way this would be a relevant factor and would diminish his independence.

THE APPELLANT

[25] Despite the Tribunal's Directions, which were sent to all parties, and having been copied in to submissions from the First and Second Respondents, the Tribunal had received no submissions from the Appellant by the time of the second hearing on the papers on 20th December 2016. A copy of the Tribunal's Directions was sent out in error following this and, whilst the First and Second Respondents sent further copies of their submissions, the Appellant sent none. On the 3rd January 2017 the Tribunal corresponded with the Appellant and made clear that no submissions had been received from him. On the same day the Appellant requested an extension of 28 days for his submissions, claiming that he had not understood the date by which these should have been made. The Second Respondent objected to this request stating that it had been clear from the Tribunal's Directions when these should have been submitted. We are not satisfied that the Appellant has given any adequate reasons for an extension of time for him to respond further and in any event we do not consider it is in the public interest to delay the matter further.

[26] The Tribunal further agrees with the Second Respondent. The timing of submissions was clear from Directions 3 and 4, which read as follows:

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3. The Response from the second Respondent and all submissions, inter-alia, addressing

the points outlined in 2 (ii) are to be served on the Tribunal within 28 days.

4. Within 14 days of receipt of a copy of the items served pursuant to (3) above, all Parties may serve submissions in response

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[27] Accordingly the request by the Appellant for an extension of the time in which to make submissions is denied.

Conclusions:

[28] Despite the Directions issued by the Tribunal, the Appellant has provided no additional information in relation to the meeting with the University and also did not reply to any issues arising in the submissions or witness statement provided by the University or the further submissions from the Commissioner.

[29] Specifically the Appellant did not rebut the information in the witness statement of Emma Potts which referred to the other requestors who 'use names that the University accepts are not transparently associated with the Trust or any known journalists' and that their account history shows that these particular usernames have only ever made requests to the University pertaining to this dispute.

[30] In his Grounds of Appeal the Appellant states that no evidence has been provided by the University that 'the other requests came from individuals associated with the Trust and not from journalists or interested third parties' but the Tribunal notes that the Appellant has not provided any evidence to the contrary, for example to show that they are journalists.

[31] The detailed understanding of the issues which were demonstrated by these other requestors, both in the wording of their requests and in their comprehensive

challenges to the information provided by the University in response to their requests, and the fact that their usernames have not been linked to any other requests, leads the Tribunal to accept, on the balance of probabilities, that these other requestors have, at the very least, had discussion with the requestors and that these requests can, in our view properly be considered as part of the history of the Trust's requests.

[32] For all of the above reasons, the Tribunal upholds the Commissioner's Decision Notice and dismisses the appeal. Our decision is unanimous.

Brian Kennedy QC

6 February 2017.