First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2016/0100

Heard at Fleetbank House, London
On 16 April 2018

Before
Karen Booth
JUDGE

Alison Lowton and Paul Taylor
TRIBUNAL MEMBERS

Between

DEBBIE BRYCE

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

GOVERNING BODY OF THE UNIVERSITY OF CAMBRIDGE

Second Respondent

Date of Decision: **28 May 2018**
Date of Promulgation: **29 May 2018**

DECISION AND REASONS

DECISION

1. The appeal is allowed in part. The First Respondent's decision notice dated 9/3/2016 is not fully in accordance with the law. The Tribunal substitutes the following decision notice in its place:

   The Governing Body of the University of Cambridge ("the University") is not obliged to comply with the request for information made by the Appellant because it is a vexatious request, within the meaning of section 14(1) of the Freedom of Information Act 2000. The University is not required to comply with the requirement in subsection (5) of section 17 because subsection (6) applies. The University is not required to take any steps.

REASONS

Background

2. The Appellant is a former student of Trinity Hall, a College in the University of Cambridge. After she left in 2001, she became a member of the College alumni association. In 2011 she started to raise some concerns about issues relating to the management of the alumni association committee and about alleged improper data handling.

3. From 2012, the Appellant began to correspond extensively with various offices within the University about a number of issues that concerned her. Those communications are summarised in paragraphs 15 to 33 of the First Respondent's decision notice dated 5/1/2016 relating to the Michael Mansfield request referred to below (at page 190 of the first bundle of evidence).

4. The Appellant has raised numerous questions with the Second Respondent ("the University"), some of which have been treated as requests for information under the Freedom of Information Act 2000 ("FOIA"). She has also made a number of requests for information relating to herself, some of which have been treated as subject access requests under the Data Protection Act 1998.

5. In June 2013, the Appellant received a letter from a firm of solicitors acting on behalf of the University about some of her actions and in which she was informed that they would be handling any future information requests she made to the University. For reasons that are not clear, that arrangement was abandoned, and we noted (from page 201 of bundle 1) that, on 7/10/2013, the University's information compliance team responded to a request for information made by the Appellant on 27/9/2013. They refused that request in reliance on section 14(1) of FOIA on the basis that they considered it to be vexatious.

6. On 28/10/2014, the Appellant submitted a further information request to the University relating to the election statement of Michael Mansfield QC for the

position of chancellor in 2011. That request was considered to be vexatious and refused in reliance on section 14(1). The refusal notice included a notification that (in accordance with section 17(6) of FOIA) the University would not issue any further refusal notice in relation to any request that it considered to be vexatious. That notice also included a reminder that information requests should be addressed to the University's Information Compliance Officer, Dr Knapton.

The Appellant complained to the First Respondent ("the Commissioner"). In a decision notice dated 5/1/2016 (ICO ref. FS50574979) the Commissioner agreed that the University had correctly decided that the request was vexatious and could be refused in reliance on section 14(1). The Appellant did not appeal against that decision.

7. The Appellant made three further requests to the University for information (on 13/11/2014, 18/11/2014 and 5/12/2014) as well as one earlier request (made on 13/8/2014 and 20/9/14), all of which were also refused in reliance on section 14(1). All of those decisions were upheld by the Commissioner in her decision notices referenced as: FS50575377; FS50574980; FS50574062; FS50559529. The Appellant did not appeal against any of those decisions.

8. In December 2014, the Appellant also made a lengthy request for information, which included requests about alumni matters, to Trinity Hall. The Commissioner agreed that that request was vexatious (FS50588826) and the decision was upheld by the First-tier Tribunal on appeal.

The request for information, the complaint to the Commissioner and the first appeal hearing

9. On 11/6/2015, the Appellant sent an email to Mr Wong, the Chair of the University's Alumni Volunteers Committee. She copied in the University's information compliance team. The request read as follows:

> "In your email of 21st August 2014, you state:
>
> > 'I've replied to Ian to say what has been going on. Has he been filled in on what has been happening?'
>
> Please could you provide me with a copy of the reply you refer to and any answers you received to your question.
>
> Please also provide me with copies of any other correspondence or information you send to anyone about me.
>
> **On 5th August, you advised me that the university had mediated with alumni associations. Please could you provide me with the information on which you based your advice."** (my emphasis)

It is accepted by the parties that the only part of this request that is the subject of this appeal is the question highlighted in bold.

The University did not respond to the request or conduct an internal review. The Appellant complained to the Commissioner. In a decision dated 9/3/2016 (FS50601710), the Commissioner decided that the University was entitled to rely on section 17(6) (in not issuing a refusal notice) and was not required to take any steps to respond to the request.

10. The Appellant appealed against the Commissioner's decision. On 12/12/2016, a differently constituted panel of the First-tier Tribunal dismissed the appeal, having decided that the only issue they had to determine was whether the University was entitled to rely on section 17(6). The Appellant appealed to the Upper Tribunal. On 23/11/2017, Wright J of the Upper Tribunal decided that the First-tier Tribunal decision involved an error on a material point of law; namely, by failing to address whether the 11/6/2015 request for information was vexatious under section 14(1) and (relatedly) in agreeing with the Commissioner that the only issue before the tribunal was whether section 17(6) was met. The First-tier Tribunal decision was set aside and it was directed that the appeal be re-decided completely afresh by an entirely differently constituted First-tier tribunal at an oral hearing.

The second appeal hearing

11. The appeal came before us at an oral hearing on 16 April 2018 to decide afresh. The Appellant attended the hearing alone and the other two parties elected not to attend.

The law

12. Our task is set out in section 58 of FOIA:

> 58 Determination of appeals
>
> (1) If on an appeal under section 57 the Tribunal considers—
>
> (a) that the notice against which the appeal is brought is not in accordance with the law, or
>
> (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,
>
> the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.
>
> (2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

13. The parties were in agreement about the scope of the request. This meant that the issues we had to decide were: (a) whether the request for information made on 11/6/2015 was a vexatious request; and (if so) (b) whether the University had correctly decided not to issue a refusal notice in reliance on section 17(6).

    The relevant statutory provisions are section 1(1), section 14(1) and section 17(5) and (6) of FOIA:

1 General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

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.

17 Refusal of request

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

The appeal grounds

14. The Appellant submitted lengthy grounds of appeal and subsequent submissions. We focussed primarily on her (substituted) final submission as this was her "last word" on the matter. We considered only those points that were relevant to the issues referred to in paragraph 13 above.

15. We disregarded the Appellant's attempts to re-open the Commissioner's decisions referred to in paragraphs 6 and 7 above. Those matters have been decided, not appealed against and are now, therefore, closed.

The evidence

16. The evidence before us consisted of: the paper evidence in the two bundles of documents that had been produced for the hearing; the Appellant's oral evidence; and one additional page of evidence (see paragraph 22 below) that was accepted at the hearing (one side of A4 paper with copies of 3 emails –

email dated 5/8/14 from Kai-Yeun Wong to the Appellant, her reply of the same date and Mr Wong's subsequent response dated 21/8/2014).

Rule 16 application - (The Tribunal Procedure (First-tier tribunal) (General Regulatory Chamber) Rules 2009)

17. On 13/4/2018 at 16:01, the Appellant emailed the Tribunal seeking advice about the procedure for making a rule 16 application. She said that she wished to make a rule 16 application "for the information in the email of 26th February which the ICO sent to the parties on 3rd April ….". This was a very late request (at the end of the Friday before the hearing on the following Monday 16 April at 10 am).

    Rule 16 empowers a Tribunal to (a) (by summons) require any person to attend as a witness at a hearing or (b) order any person to answer any question or produce any documents in that person's possession or control which relate to any issue in the proceedings.

18. We considered this application at the start of the hearing. We had been unable to find an email dated 3rd April from the Commissioner or an email of 26th February in the evidence that was before us and the Appellant could not point us to these. The Appellant was very unclear about what information she was seeking and why. After discussing this with her, our understanding was that the purpose of her application was to obtain information that had been the subject of another request for information that the University had also refused. She described that information as "a key part of the context".

19. In considering the application, we were required to give effect to the overriding objective referred to in rule 2 (to deal with cases fairly and justly). We decided that it would be neither fair nor just (nor appropriate) to exercise our rule 16 powers. The Appellant had made this application very late in the day. The appeal has been running since early 2016. Had we decided to exercise a rule 16 power, the appeal would have had to be adjourned, which would have had significant cost implications and cause further delay. We had a voluminous amount of evidence before us, which provided a mass of detail about the context and background in relation to the request that was the subject of this appeal. We did not require any further evidence in that respect in order to decide the issues that were relevant to this appeal. The application was refused.

Our decision and the reasons for it

20. After considering all of the evidence before us and taking into account the jurisprudence on the question of what a vexatious request is (in particular, the decisions of the Upper Tribunal and the Court of Appeal in *Dransfield* ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454), we concluded that the request for information was vexatious. Although our starting point was that, in making an information request, the Appellant was exercising an important statutory right and that the hurdle of satisfying section 14(1) is, rightly, a high one, we had little difficulty in concluding that this request was vexatious.

Motive

21. On the face of it, the request was not obviously vexatious. It was politely worded, although it was not clear what information the Appellant was seeking *("On 5th August, you advised me that the university had mediated with alumni associations. Please could you provide me with the information on which you based your advice.")*. It did not, however, make any obvious sense and we had not been provided with a copy of the communication of 5th August. When we asked the Appellant about this at the hearing she was unable to locate that communication. At the end of the hearing we allowed her some additional time to find it. She did subsequently find it (see paragraph 16 above) and we took that evidence into account before making our decision.

22. The communication of 5 August was an email dated 5/8/2014 from Mr Wong to the Appellant. It was not clear whether the copy produced was a copy of the entire email or an extract from it (and the page included some comments that had been added by the Appellant). We had not been provided with a copy of the email to which he was responding. The relevant part of the email reads as follows: "*Conflict management is a difficult area and we have had situations with groups before, which the office has helped to mediate*." We note that Mr Wong referred to "groups" and not specifically to alumni associations and there was no reference to any "advice". We noted the Appellant's response on the same date ("*I am glad to hear that you have been able to mediate situations with groups before. Could I therefore request this assistance with my college alumni group which is not following CASE's guidance or the requirements of good alumni relations?* ……..).

23. The Appellant made her information request on 11/6/2015, *some 10 months after that exchange of emails*. Her request misrepresented what Mr Wong had said. Given the long background of disputes between the University and the Appellant referred to above, the subject matter of the request and the very long delay between Mr Wong's email of 5/8/2014 and her follow up email of 11/6/2015, we were satisfied that the Appellant's primary motive behind the request was to further and reopen those issues.

Value/serious purpose

24. We considered whether there was any reasonable foundation for thinking that the information sought (information relating to how the University had helped to mediate groups) had any serious purpose or value to the Appellant or to the public or any section of it. We concluded that there was not. When we asked the Appellant about this at the hearing, she told us that the purpose of the request was to clarify the relationship between the University and the alumni association. She pointed us to paragraph 18 of her final submission, in which she alleges that, rather than mediating with college associations, the University helps them to refuse to deal with DPA requests, thus furthering rather than helping to resolve such problems. In our judgement, it was clear from this that there was no objective value or serious purpose behind the request for information (about how the University had helped to mediate situations with groups) and that its real purpose was to obtain further information to bolster the Appellant's allegations that the University had colluded with her alumni association to hamper her data handling complaints.

Burden

25. Viewed in isolation, this request for information did not look unduly burdensome, although it would have required clarification. It was clear, however, from the evidence before us that the Appellant's unrelenting communications with and allegations against the University and its staff have imposed a huge and wholly unreasonable burden on the University and its resources over a number of years. Any further attempts to accommodate her requests would undoubtedly, in our judgement, have led to a further torrent of correspondence and an increased burden on resources.

Harassment/distress caused to staff

26. We considered that it would be surprising if the Appellant's unremitting communications had not caused distress to the officers of the University with whom she was corresponding. We noted, for example, that she has served notices under section 10 of the DPA and under the Protection from Harassment Act 1997 on the University's Information Compliance Officer, Dr Knapton. We also noted that, at the Appellant's request, a police officer had visited the University to speak to Dr Knapton about his letter dated 28/10/2015, which she described to us as "*hate mail*". In that letter, Mr Knapton was quite properly responding to the Commissioner's enquiries about her requests for information referenced as FS50574979 FS50575377; FS50574980; FS50574062; FS50559529. In our judgement, her reaction to that letter demonstrates an extreme lack of perspective that has typified her dealings with the university and its staff in relation to these matters over a very long period of time.

Section 17(6)

27. The University is relying on a claim that section 14 applies to the request for information and has given the Appellant a notice in relation to a previous request for information stating that it was relying on such a claim. Given all the circumstances described above, we were satisfied that it would be unreasonable to have expected the University to serve a further section 17(5) notice in relation to this request.

Conclusion

28. For the reasons given by the Upper Tribunal in the decision referred to in paragraph 10 above, the Commissioner's decision notice is not in accordance with the law and the notice set out in paragraph 1 above is substituted for it.

Karen Booth

Judge of the First-tier Tribunal
Date: 28th May 2018