First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2018/0099

Heard at Coventry Magistrates Court
On 5 November 2018
Representation:
Appellant: in person
First Respondent: The Information Commissioner did not appear
Second Respondent (Warwickshire County Council): Mr Mark Bradshaw (Counsel)

Before

JUDGE BUCKLEY

DAVE SIVERS AND ANNE CHAFER

Between

AMIT MATALIA

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

WARWICKSHIRE COUNTY COUNCIL

Second Respondent

DECISION

1. For the reasons set out below the Tribunal allows the appeal and issues the following substitute decision notice.

SUBSTITUTE DECISION NOTICE

Public Authority: Warwickshire County Council

Complainant: Amit Matalia

The Substitute Decision

1. For the reasons set out below the Public Authority was not entitled to refuse the complainant's request for information made on 24 March 2017 on the grounds that it was vexatious.

Action Required

2. The Public Authority is required to respond to the complainant's request within 35 days of the promulgation of this judgment either by supplying the information or by serving a refusal notice under s 17 of the Freedom of Information Act 2000 (FOIA), indicating what grounds they rely on other than s 14(1).

REASONS

Introduction

1. This is an appeal against the Commissioner's decision notice FS50700113 of 4 May 2018 which held that Warwickshire County Council ('the Council) had correctly applied s 14(1) of FOIA. The Commissioner did not require the public authority to take any steps.

Evidence and submissions

2. We have read and were referred to a bundle of documents. We heard evidence from Ms Hiller on behalf of the Council and oral argument from the Council and Mr Matalia.

Factual background to the appeal

3. This matter arises out of an application for a place at a grammar school ('the school') for Mr Matalia's son commencing in September 2013. It is not necessary for us to make detailed findings of fact about all matters relating to that application, and what follows is a summary of what happened based on the documents we had before us.

4. The admissions authority at that time was the governing body of the school ('the governing body'). The Council offers places on behalf of the governing body.

5. The application was made to the Council's Admissions Service by Mr Matalia in November 2012. At the time of the application Mr Matalia lived in Coventry, but stated that he would be moving to a house that he owned in Rugby before September 2013. In March 2013 the governing body decided to offer Mr Matalia's son a place on the basis of the Rugby address.

6. The governing body subsequently decided to withdraw the place on the basis that the application was fraudulent or misleading. The withdrawal of the place was communicated to Mr Matalia on 17 July 2013. He was not given the opportunity to appeal.

7. The Council had taken the view at the time that if the offer was withdrawn Mr Matalia's son would go straight to the top of the school's waiting list because of his 11 plus scores. The Council's view was that the school would then have to offer him the place which had become available when his offer was withdrawn. This is not what happened. The governing body withdrew the offer and offered it to another child already on the waiting list.

8. The governing body then considered Mr Matalia's application afresh treating it as still based on the Rugby address. They reached the conclusion that the application was fraudulent and misleading and 'rejected' the application, refusing Mr Matalia the opportunity to appeal.

9. On 19 May 2014 the Local Government Ombudsman determined that the governing body were at fault for failing to consider Mr Matalia's application properly afresh and failing to offer him an appeal.

10. Mr Matalia was then given the opportunity to bring an appeal before an Independent Appeal Panel (IAP). On 24 November 2014 the appeal was allowed and it was determined that Mr Matalia's son should be offered a place at the school. The IAP observed that they were 'not able to reach the same conclusion' as the school on the issue of the original offer being made on the basis of a fraudulent or intentionally misleading application. The IAP found that the governing body should not have used the Rugby address when considering the application afresh and therefore a place ought to have been offered. In the alternative, it was not possible under the School Admissions Code 2012 to 'reject' an application: if they had 'refused' the application Mr Matalia's son would have been placed on the waiting list where he would have been offered a place because of his 11 plus score.

11. Mr Matalia's son was offered a place. There is a dispute as to why this place was not ultimately taken up, but it is not necessary for us to make findings of fact on this.

12. Mr Matalia has made 11 previous FOI requests arising out of the dispute relating to the school's handling of his application for a place for his son ('the school application'). 10 of those requests took place before the IAP made its determination in November 2014:
    9 July 2013
    1 August 2013
    22 August 2013
    23 September 2013
    26 February 2013
    18 March 2013
    2 April 2014 (as regards 2 of the requests made on this date)
    8 April 2014
    10 April 2014

13. Mr Matalia has also made a number of FOI requests to the Council on a different topic, which we refer to as 'the 11+ issue', some of which were the subject of a First Tier Tribunal (Information Rights) decision dated 5 May 2015 in EA/2014/0284. Mr Matalia publishes a number of websites intended for parents whose children are taking the 11+. In this role, Mr Matalia is critical of the Council's testing processes, in particular the practice of holding 11+ tests on more than one date. On the basis of the documents in the bundle we find that he has published information obtained in response to these requests on his websites. He has also published a plethora of other information related to this topic on his websites, resulting at one stage in the Council obtaining an injunction to prevent him publishing certain information which was found to be confidential.

14. We accept, in the absence of submissions to the contrary, that Mr Matalia made 15 requests relating to the 11+ issue including a number of requests related to the injunction proceedings.

    8 and 31 October (both requests) 2013
    11 February, 19 March and 2 April 2014
    Part of request on 29 May 2015,
    2 December 2015
    1 February, 4 May, 13 July, 9 October, 28 October, 24 November and 27 February 2017.

15. The previous first tier tribunal (EA/2014/0284) found that the requests before it which related to the 11+ issue had a wider value to members of the public and were not vexatious.

16. The previous first tier tribunal did not need to make any findings on the school application requests. It did make a number of obiter observations about the position in April 2014 as follows:

> The culmination of the sequence of requests regarding the subject of withdrawal of the offer might well be seen as justifying reliance on s 14(1). (para 23)
>
> They *[the 11+ requests]* marked a clear change of direction from the barrage of requests on the previous topic. (para 25)
>
> …the fact that earlier requests may have been vexatious does not, of itself, condemn later requests on a distinct, if related topic. (para 28)

17. After the request in April 2014 there was a gap of almost 18 months before the next request that related, at least in part, to the school application. That request was made on 29 September 2015. No other requests were then made relating to the school application until the current request on 24 March 2017 – another 18-month gap.

18. In July 2018 Mr Matalia issued a claim of misfeasance in public office against certain individuals linked to the school and the school academy trust. This claim is based, in part, on the allegation that the school acted in wilful disregard of the risk of illegality or without an honest belief in the legality of their actions in withdrawing the offer and not allowing an appeal. The Council is not a defendant to this action.

19. The Particulars of Claim rely on a letter dated 14 June 2013 and an email dated 5 July 2013 from the Lead Officer, Pupil and Student Services at the Council to the Headmaster of the school. They set out the Council's view and its recommendations on the governing body's proposal to withdraw the offer to Mr Matalia's son. These letters were not in Mr Matalia's possession at the time of the request or review. He received them after the Council's internal review of its response to a Subject Access Request made by Mr Matalia on 8 May 2017.

20. The Particulars of Claim state, at paragraph 7:

> The Claimant will rely on the terms of that letter ('the letter of 14 June 2013") in full at trial. Before trial, and for the purposes of these Particulars of Claim, it is the Claimant's case that the letter made it clear to the Governing Body and its members… that it would be unlawful… to withdraw the Offer.

21. The Particulars of Claim then set out a number of substantial extracts from the letter of 14 June 2013 and the email of 5 July 2013.

Requests, Decision Notice and appeal

The Request

22. This appeal concerns the following request made on 24 March 2017:

> I ask the following questions under the FOIA regarding my son, [redacted], and [redacted] School due to pending litigation… There are a number of questions,

but they are fairly simple and I believe the questions can be answered in less than an hour.

1. Is it correct that formal responsibility for determining [the school's] student admissions in 2013 rested with the LSS's governors? However, in discharging these responsibilities in relation to year 7 the governors had adopted the County Council's procedure for selective admissions? (3rd paragraph of admissions code in 2013).

2. Is it correct WCC has no record of any mechanism for [the school] to take admissions back in house for 2013 as the admissions policy did not state there was? (Once published the policy cannot be changed and the school adopted the Councils procedures for selective admissions and there is no way to reverse it without permission from the secretary of state – which was not obtained).

3. According to the County Council's procedure for selective admissions for 2013 if a future change in address is not accepted, then there was only one option – to reject the future change in address and use the original address to process the application? There was no option to reject the application (especially once it had been accepted by WCC and a place offered). If not, what were the other options and provide documentary evidence)?

4. In essence in the case of [Mr Matalia's son], if [the school] rejected the future Rugby address all it could have done under the County Council's procedure for selective admissions was to use the original Coventry address for admissions. If so, is it correct [Mr Matalia's son] would have been offered a place?

5. Is it correct every school applied for accepted [Mr Matalia's son]'s future change of address, except [the school]?

6. Is it correct that WCC refused to withdraw [Mr Matalia's son] 's place on 4 occasions? If not then on how many occasions?

7. Did the Council's procedure for selective admissions allow [Mr Matalia's son] 's place to be withdrawn?

8. Did [Mr Matalia's son] 's application comply with the County Council's procedure for selective admissions?

9. Did WCC except that the application for [Mr Matalia's son] was not fraudulent (hence accepted the application)?

10. Did WCC accept that the application for [Mr Matalia's son] was not misleading (hence accepted the application)?

11. I understand there was a meeting between [the school] and WCC regarding [Mr Matalia's son]'s place where WCC refused to withdraw the place. I understand John Galbraith was at the meeting for the school. Where was

this meeting held and how many of [the school] Governors were at the school? Please name the Governors who attended.

12. Was it the legal view of WCC that withdrawal of [Mr Matalia's son]'s place by [the school] was unlawful?

13. Did WCC inform [the school] that withdrawal of [Mr Matalia's son]'s place was unlawful? If yes, on how many occasions?

14. Was it the view of WCC that [the school] had to offer an appeal to [Mr Matalia's son] and could not simply refuse to offer an appeal? Did they tell this to [the school]? If so, who did they inform?

15. Was it the view of WCC that [the school] could not simply reject an application and had to process it? Did they inform [the school]? If so, who did they inform?

16. Was it the view of WCC that the application for [Mr Matalia's son] to [the school] was not fraudulent? Was [the school] told, if so who?

17. Was it the view of WCC that it was impossible to determine if the application for [Mr Matalia's son] was fraudulent until the first day of term, because only on that day could one determine whether a move had taken place. If so, did the inform [the school] and if so, who?

18. Was it the view of WCC that refusal to place [Mr Matalia's son] on the [school] waiting-list was unlawful. Did WCC tell [the school], and if so who?

19. Was WCC (Craig Pratt) provided with documentary evidence of a move to Rugby by the first day of term?

20. Please confirm the average time it had taken [the school] to process or consider an application for a place in 2013. Eg 1 day, 1 week.

21. State how long it took [the school] to process the second application of [Mr Matalia's son].

22. Who did WCC communicate with from [the school] regarding [Mr Matalia's son] 's place?

23. Who was the main point of contact at [the school] for [Mr Matalia's son]'s application?

24. Was the time period to consider [Mr Matalia's son]'s second application significantly longer than any other child?

25. Was the school capable of processing the application immediately – stating the school was full and placing him on the waiting list? Was this what was expected under the County Council 's procedure for selective admissions?

26. Did Amy Taylor feel that the admissions issue may cause stress and anxiety to [Mr Matalia's son] and his family and felt the decisions should be quick to avoid this (you may wish to check her emails). i.e. did she believe the threat of withdrawing a place would cause a reasonable person stress and anxiety?

27. On how many occasions in the last 10 years has [the school] refused to process a school application (excluding [Mr Matalia's son])?

28. On how many occasions in the last 10 years did [the school] reject a school application (excluding [Mr Matalia's son])?

29. On how many occasions in the last 10 years did [the school] refuse to offer an appeal (excluding all incidents of [Mr Matalia's son])?

30. Excluding [Mr Matalia's son], on how many occasions in the last 10 years did [the school] take back admissions inhouse for an individual applicant and on how many times was a place withdrawn?

31. How many families registered a change of address who were offered places at [the school] in 2013? How many of these children had their places removed? How many had their addresses questioned by [the school]?

The Council's reply

23. The Council replied by letter dated 25 April 2017 refusing to comply because it had decided the request was vexatious within s 14(1) of the FOIA. We have considered the response in detail but the salient points are as follows.

24. The letter included a timeline setting out all the previous requests submitted by Mr Matalia to the Council on the same and related matters. The Council calculated that Mr Matalia had made 28 FOI requests over a period of 5 years and 5 months. Of those requests the Council determined that 12 previous requests (plus the current request) related to the school application. As the Commissioner notes in her Decision Notice this is a miscalculation and there are in fact 11 requests. The dates are set out above. The Council determined that 15 requests related to Mr Matalia's complaint about the Council's testing process and/or to injunction proceedings against Mr Matalia, on the dates set out above. There was one additional request related to a different complaint dated 26 October 2012.

25. The Council considered the current request in the particular context of the 12 other requests on the same theme of the school application. It also took account of the background context of the other unrelated requests/disputes with the Council. The Council considered whether or not the request was vexatious by considering the factors in *Information Commissioner v Devon County Council v Dransfield* [2012] UKUT 440:

Burden on the authority

26. The request contains 31 numbered questions which break down into 47 distinct questions. It would take a considerable time to address each one. The Council would first have to decide if the questions were requests for recorded information or requests for opinions and views. It would take significant effort to locate where the information might be contained, because the dispute happened in 2013 and some Council officers are no longer at the Council. The burden would therefore be grossly oppressive and put undue strain on the Council's resources.

Personal grudge

27. The naming of individual officers in the request in questions 11, 19 and 26 are an attempt to further a personal grudge against those people. Mr Matalia has previously threatened police action against Council employees and accused them of perjury.

Unreasonable persistence

28. Mr Matalia has made 13 requests relating to the same issue. It was resolved in 2014. The Council was unaware of any legal avenue in which Mr Matalia could pursue it further and therefore concluded that the request was an attempt to reopen an issue for the sole purpose of causing disruption and annoyance to the Council.

Futile requests

29. The issue about the school admission has been conclusively resolved.

Serious purpose and value

30. Assuming litigation were to take place, information which showed the Council's view on the legality of the school's actions would not assist Mr Matalia's case.

Wider public interest

31. Most of the information obtained in previous requests has not been published on Mr Matalia's website. If the information was provided it would not be used by Mr Matalia to assist other parents, but as part of a campaign against the Council resulting from a personal grudge.

Information already in Mr Matalia's possession

32. Questions 19 and 26 relate to information already in Mr Matalia's possession. This is an inappropriate use of FOIA.

33. The Council considered whether it was appropriate to rely on s 40(1) but decided that it was not engaged.

34. Mr Matalia requested an internal review. He was informed on 30 August 2017 that the original decision had been upheld. The review made the following additional point about burden: while the request may not have been vexatious

considered in isolation it becomes so in the context of Mr Matalia's involvement with the Council and other requests on the same theme. Taken together the burden has become grossly oppressive.

35. Mr Matalia referred the matter to the Information Commissioner on 10 September 2017.

The Decision Notice

36. In a decision notice dated 4 May 2018 the Commissioner decided that the Council had correctly applied s 14(1) FOIA (vexatious request).

37. The Commissioner decided as follows:

    1. Approximately 18 months passed between the last request in this category and this request, so it did not form part of a series of frequent requests. The circumstances had changed. It was not 'more of the same'. It would not be grossly excessive or burdensome to deal with the current request in isolation.
    2. The request was not a deliberate attempt to further any personal grudges or cause distress to Council officers.
    3. The request did not have serious value and purpose. There was no evidence to suggest that the information requested would be of value to any other parents or third parties. It was difficult to identify what further information could be provided that would be of any further value in litigation or otherwise. The Court in any future litigation can ask questions and compel a third party to answer.
    4. The past dealings and contact with the Council do have some relevance.
    5. A significant part of the request asked for the Council's view or opinion and the Commissioner doubted that the Council held information which would answer many of the questions.
    6. There was a realistic possibility that Mr Matalia will continue to ask questions.
    7. In conclusion, the Council had demonstrated that a point had been reached where it was no longer reasonable for it to expend further resources dealing with requests made by Mr Matalia which have no serious purpose or value either to Mr Matalia or the wider public.

Notice of Appeal

38. Mr Matalia appealed against the Commissioner's decision notice. In summary, the relevant parts of the notice of appeal challenge the Commissioner's decision notice on the grounds that:

    1. The information requested has serious purpose or value. It is relevant to a claim for misfeasance in public office, an important aspect of which is the Council's stance and what it explained to the school. He would not

necessarily be able to obtain the information during the court proceedings.

2. Answering the request would finally resolve the matter. Many of the questions could be answered with a yes or no answer.
3. The burden of answering the request was not excessive. Many questions could easily have been answered by providing a copy of the letter of 14 June 2013. Overall the request could have been dealt with in less than an hour.
4. The request would not cause a reasonable person distress. Officers were named to be helpful.
5. Previous information has been put on Mr Matalia's websites.
6. A question has been repeated because data may have been created since it was first asked.

39. Mr Matalia also makes arguments about s 40(1), but as this is not not relied on by the Council, we do not have to resolve the issue.

The ICO's response

40. The tribunal has considered the response in its entirety but the salient points are as follows. Exposure of misfeasance in public office is of value to the public but there is no evidence of misfeasance. Further: 'public interest cannot act as a trump card so as to tip the balance against a finding of vexatiousness.' (**CP v Information Commissioner** [2016] UKUT 0427 (AAC). At [45]).

41. The request and litigation are connected to Mr Matalia's personal dispute against the school and the Council and the wider course of dealing between the parties.

42. The questions are an attempt to compel the Council to provide opinions and statements for use in Court proceedings rather than recorded information, indicating an inappropriate use of the FOIA. The Court claim is the appropriate means of addressing his allegations.

43. The aggregated burden of dealing with requests related to the school application is oppressive. As a whole Mr Matalia's conduct presents a picture of unreasonable persistence and obsessive conduct. One of the requests is a repeat request, Mr Matalia has persisted with this appeal despite having received the letter of June 2013 and his concerns have already been addressed by the LGO and the IAP. Responding to this request will likely generate further correspondence and requests.

The Public Authority's response to the appeal (28 June 2018)

44. The tribunal has taken into account the response in its entirety but considers the salient points to be as follows.

45. Locating the letter of June 2013 in response to this request would have taken an excessive amount of time. If the Council had not relied on s 14 it would have considered applying s 12. The request is not relevant to the misfeasance proceedings. Distress has been caused to Council staff through previous allegations of untruthfulness, racism, corruption, perjury and misfeasance. The current request is therefore likely to cause cause distress.

Mr Matalia's replies

46. The tribunal also notes the points made in Mr Matalia's replies, and has taken account of them where relevant.

Issue

47. The issue we have to determine is whether the Commissioner erred in finding that the CCG was entitled to rely on s 14(1) FOIA.

Legal framework

S 14(1) Vexatious Request

48. Guidance on applying s 14 is given in the decisions of the Upper Tribunal and the Court of Appeal in **Dransfield** ([2012] UKUT 440 (AAC) and [2015] EWCA Civ 454). The tribunal has adapted the following summary of the principles in **Dransfield** from the judgment of the Upper Tribunal in **CP v Information Commissioner** [2016] UKUT 427 (AAC):

49. The Upper Tribunal held that the purpose of section 14 must be to protect the resources of the public authority from being squandered on disproportionate use of FOIA (para 10). That formulation was approved by the Court of Appeal subject to the qualification that this was an aim which could only be realised if 'the high standard set by vexatiousness is satisfied' (para 72 of the CA judgment).

50. The test under section 14 is whether the request is vexatious not whether the requester is vexatious (para 19). The term 'vexatious' in section 14 should carry its ordinary, natural meaning within the particular statutory context of FOIA (para 24). As a starting point, a request which is annoying or irritating to the recipient may be vexatious but that is not a rule. Annoying or irritating requests are not necessarily vexatious given that one of the main purposes of FOIA is to provide citizens with a qualified right of access to official documentation and thereby a means of holding public authorities to account (para 25). The IC's guidance that the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause was a useful starting point as long as the emphasis was on the issue of justification (or not). An important part of the balancing exercise may involve consideration of

whether or not there is an adequate or proper justification for the request (para 26).

51. Four broad issues or themes were identified by the Upper Tribunal as of relevance when deciding whether a request is vexatious. These were: (a) the burden (on the public authority and its staff); (b) the motive (of the requester); (c) the value or serious purpose (of the request); and (d) any harassment or distress (of and to staff). These considerations are not exhaustive and are not intended to create a formulaic check-list.

52. Guidance about the motive of the requester, the value or purpose of the request and harassment of or distress to staff is set out in paragraphs 34-39 of the Upper Tribunal's decision.

53. As to burden, the context and history of the particular request, in terms of the previous course of dealings between the individual requester and the public authority in question, must be considered in assessing whether the request is properly to be described as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor [para 29]. Thus, the greater the number of previous FOIA requests that the individual has made to the public authority concerned, the more likely it may be that a further request may properly be found to be vexatious. A requester who consistently submits multiple FOIA requests or associated correspondence within days of each other or who relentlessly bombards the public authority with email traffic is more likely to be found to have made a vexatious request [para 32].

54. Ultimately the question was whether a request was a manifestly unjustified, inappropriate or improper use of FOIA. Answering that question required a broad, holistic approach which emphasised the attributes of manifest unreasonableness, irresponsibility and, especially where there was a previous course of dealings, the lack of proportionality that typically characterises vexatious requests [paras 43 and 45].

55. In the Court of Appeal in Dransfield Arden LJ gave some additional guidance in paragraph 68: 'In my judgment the Upper Tribunal was right not to attempt to provide any comprehensive or exhaustive definition. 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...'

56. Nothing in the above paragraph is inconsistent with the Upper Tribunal's decision which similarly emphasised (a) the need to ensure a holistic approach was taken and (b) that the value of the request was an important but not the only factor.

57. The lack of a reasonable foundation to a request was only the starting point to an analysis which must consider all the relevant circumstances. Public interest cannot act as a 'trump card'. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious.

The role of the tribunal

58. The tribunal's remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner's decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

Discussion and conclusions

Value and purpose of request and motive

59. The Tribunal considers the four factors identified by the Upper Tribunal to be a helpful framework to structure its consideration of whether the request was vexatious but has had regard to the fact that it is not intended to be an exhaustive definition or a checklist for determination of this issue and that a holistic approach must be taken, with no one factor acting as a trump card.

60. We accept that the purpose of the request was to obtain information to support a proposed claim of misfeasance in public office. As set out above at paras 18 and following, the particulars of claim rely heavily on information contained in the letter of 14 June 2013 and the email of 5 July 2013, which we find would have answered a large part of Mr Matalia's request. This is a separate and additional

legal challenge to the other avenues pursued in 2014, with the potential for Mr Matalia to receive compensation. It is not a case of Mr Matalia simply trying to revive issues that have already been dealt with.

61. The questions are not simply asking for the Council's opinion on the legality of the school's actions, which, it is acknowledged, would not assist a Court. They are intended to elicit the disclosure of recorded information showing the communication of the Council's opinion on the legality of the school's proposed actions *at the relevant time* and the *communication* of that opinion to the school. The Particulars of Claim show the relevance of this to establishing misfeasance.

62. We do not think that the fact that Mr Matalia might have been able to obtain some or all of the information he has requested by applying to a Court for disclosure makes this an inappropriate use of the FOIA. Mr Matalia has used the information in the letters to draft his initial particulars of claim. We are not in a position to judge whether an application for pre-action disclosure against a non-party would have been successful.

63. We acknowledge that the request is not explicit in asking for recorded information. Some of the request, at first glance, appears to be simply asking for the Council's opinion. However, Ms Hiller knew that there had been a difference in view between the Council and the school as to the legality of the school's actions, and she stated that she would have expected there to be correspondence between the Council on the School recording that. The request must be seen in the light of the fact that the Council was aware that there was likely to be a written record of the Council's opinions at the time in correspondence to the school. We note also the use of the past tense ('Did WC accept….' 'Was it the view of…') and the repeated references to whether or not the school was informed. Taking all this into account we find that an objective reading of the request in the light of the relevant background information known to the Council would lead to a conclusion that Mr Matalia was, in the main, seeking recorded information of the Council's view in 2013/2014, and recorded information that showed communication of that view to the school.

64. The request is of clear value to Mr Matalia and we find that his motive in pursuing it was not vengeance or because of a personal grudge. Further we find that the exposure of potential misfeasance in public office is a matter of objective public interest. So too, is the exposure of a school as an admissions authority acting in the face of clear contradictory advice from the Council. We find that the request had an adequate and proper justification.

65. One of the questions is repeated from a previous request. We accept Mr Matalia's submission that the situation may have changed. The Council could easily indicate if this information is still not held. Two of the questions may relate to information already in Mr Matalia's possession. This can be stated in

any response. We do not think that these are significant indicators of this request being vexatious or, taken as a whole, an inappropriate use of FOIA.

Harassment and distress

66. We accept that Mr Matalia's requests cause some stress and annoyance to Council staff. This is not only through the volume of the requests over the entire course of dealings, but also because of Mr Matalia's tendency to be quick to make allegations of untruthfulness or make threats of police action against individuals. We do not accept that the mentioning of individuals in this request could cause harassment or distress. The request does not use intemperate language, or make allegations of criminal behaviour. Nor could it be described as offensive. We do not find that this request would cause harassment or distress to staff.

Burden

67. Although the 11+ requests are on a different topic, we have taken into account the volume and frequency of the 11+ requests, which will necessarily place a burden on the Council's resources. However, we echo the findings of the previous tribunal in relation to the purpose and public interest in the 11+ information. We accept Mr Matalia's evidence that some of the information obtained has been published on websites intended to assist parents whose children are sitting the 11+. We have not seen the 11+ requests, but from the very brief summary provided by the Council of each request, there is no evidence before us to suggest that these are anything other than proper requests for information relevant to Mr Matalia's role as publisher of these websites.

68. In relation to the requests relating to the school admission, we note that what the first-tier tribunal described as a 'barrage' of requests took place during the period before the matter was heard by the IAP. Thereafter there was a significant period of time (nearly 18 months) before a single request was made on this topic, and then another similar gap before the current request. This is a very different picture to the one before the previous First Tier Tribunal.

69. In relation to the burden of this particular request, we find that many of the answers are contained either in the letter dated 14 June 2013 and email dated 5 July 2013. We heard evidence from Miss Hiller that she would have expected the answers to some of the questions to have been contained in correspondence between the Council and the school. She said that she would have asked the relevant department and they are likely to have given her the hard copy file within which these letters were obtained. She stated that she would also have had to ask officers to carry out email searches to locate relevant information. Whilst we find that the Mr Matalia is unrealistic in expecting the current request to be possible to resolve in less than an hour, we do not think that responding to this request in isolation would have been disproportionately burdensome.

70. In the light of the history of requests, the Tribunal acknowledges that there is a risk that further FOI requests will be made to the Council by Mr Matalia. We note, however, that Mr Matalia has not been making repeated requests on the school application issue, that this particular request came after an 18 months gap and that it was focussed on information needed to support a particular claim rather than simply reopening the previous issues. This does not suggest a lack of proportionality in relation to this issue.

71. Taken together, we accept that the entire course of dealings with Mr Matalia since 2013 has put a significant burden on the Council.

Conclusion

72. Taking all the above into account, we have asked ourselves whether the request was vexatious in the sense of being a manifestly unjustified, inappropriate or improper use of the FOIA. We have taken a holistic and broad approach and have looked at the entire course of dealings. We have considered the number and pattern of requests made on this particular issue, but have also taken account of the burden on the Council from all the requests made by Mr Matalia. We do not think that this is a request that has no reasonable foundation. It is not simply a request for the Council's opinion. The information requested has value for Mr Matalia and objective public interest. We do not see this as a 'trump card', but have balanced it against the resource implications of the request and all the other relevant factors. Taking all this into account, and our detailed findings in the preceding paragraphs, we conclude that the request is not vexatious.

Signed Sophie Buckley

Judge of the First-tier Tribunal
Date: 27 November 2018