



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2018/0263**

**Before**  
Judge Stephen Cragg Q.C.

**Tribunal Members**

Mr John Randall CBE  
Dr Henry Fitzhugh

**Heard at the Havant Court Centre on 17 April 2019**

**Between**

**Patrick Galvin**

Appellant

-and-

**The Information Commissioner**

Respondent

**Attendances:**

For the Appellant: In person

For the Respondent: Did not appear

**DECISION AND REASONS**

1. The background to this case is that, for many years, the Appellant has been seeking to raise issues about the safety and operation of a particular kind

of life-raft, the NLMK1. Since about 1998 the Appellant has been concerned about actions taken by various bodies to ensure that his safety concerns have been complied with. The current body he has been in communication with is the Maritime and Coastguard Agency (MCA) who he believes should hold information about the safety of the life-raft. Prior to the requests made for information which form the subject matter of this appeal, the Appellant had been engaged in correspondence with the MCA as to the information it held about the NLMK1 life-raft.

2. On 21 April 2017 MCA explained that it held no information. On 15 June 2017 the Appellant was told in correspondence by MCA that it would not be initiating an investigation into the safety of the NLMK1 life-raft. However, on 28 July 2017, the MCA said that, in fact, 'colleagues in our Marine Technology Branch are undertaking a review of historic files relating to the Liferaft Service Stations in order to clarify...the status of the NLMK1 liferaft'.
3. On 28 September 2017 the MCA said that the review of historical files was continuing. Then, on 1 February 2018 Sir Alan Massey, the Chief Executive of the MCA sent the Appellant an email which said that a thorough search had been conducted and that the MCA did not hold any records of accidents involving the NLMK1, and was not aware of any ongoing safety risks associated with the continued use of the NLMK1 which would affect UK seafarers. It was said that 'our investigations and correspondence on this issue will now rest'.
4. Having received this response, the Appellant then made requests under the FOIA on 17 February 2018 for six sets of information about the NLMK1 life-raft from the MCA, in the following terms (reproduced with original spelling and punctuation):-

...We therefore wish to make a request, Under the Freedom of Information Act 2000 (the act), for the Following information 1/. For all copies held on emails-Documents, and Electrical Searches On each of these Individuals Investigation's Carried out by the Maritime and Coastguard Agency 2/ Had the Maritime and Coastguard Agency, during these Four Investigation's. Contacted The ONLY Manufacturer of the Board of Trade N L.M K 1 Life raft, R F D Beaufort air-sea Equipment Limited (Liverpool). And the Sea Survival Equipment Test Center (S S E T C)H.M Naval Base Portsmouth Hampshire Who are both Approved, and Maritime Safety Agency(M S A) Accredited by the Maritime and Coastguard Agency Who carry out Three to Four unannounced inspections, at these approved (M S A), service stations each year (And have done so, for the Past Twenty Years) Had the Maritime and Coastguard Agency, requested these approved service stations, for copies of there File's, and Record's(As this is a Board of Trade Life raft). 3/ Had the Maritime and Coastguard Agency during there Four Investigations Contacted the Ministry of Defence, The Royal Navy, and the Ministry of Defence Establishment, The Ship Supply and Support Agency, Ensligh, Bath.Who are involved in the Purchasing, and Supplying Royal Naval Ships, with this Board of Trade N.L.M K 1 Life raft Had the Maritime and Coastguard Agency, during there Four Investigations asked these above organisations, for copies of there Files, and Records, on this serious issue 4/. Had the Maritime and Coastguard Agency, (To support there Four Investigations, (And the File of Evidence, we had Provided to you).Formally requested the Manufacturer R F.D Beaufort air-sea Equipment Limited(Liverpool), and the Sea Survival Equipment Test Centre (S.S E T.C), H.M. Naval Base, Portsmouth, Hampshire. For ALL copies, of Defects Found (i e Valves Fitted to the N L.M K 1 Life raft) Which has to be Reported, and Documented, on a Special Survey Form(SUR 235) Which has to be completed, by these two above Maritime Safety Agency(M.S A) Accredited Departments (Under your own Laid Down Maritime Laws, and Regulations) And which has to be completed, and Returned to the Maritime and Coastguard Agency, during there Four Investigations, asked these above Service Departments, for the copies of these Special Survey Forms (SUR 235) 5/ Is the Sea Survival Equipment Test Centre (S S E T C), on H.M Naval Base Portsmouth, Hampshire Still Approved with a Maritime Safety Agency (M S A) Accreditation By the Maritime and Coastguard Agency To Test Service, and Pack, This Board of Trade (Registered) 25 man N L M K 1 Life raft 6/. IF the S.S E T C is no longer,

accredited with a approved Maritime Safety Agency(M S.A)Accreditation, from the Maritime and Coastguard Agency, (As this would be a Part of your Investigation) Could you Please let us know when this occurred, and Provide us with copies of the reason, or reasons why?..."

5. The MCA responded to the requests on 8 March 2018. It decided that that the requests were vexatious under section 14(1) FOIA and declined to deal with them. There was an internal review and the position was confirmed on 24 April 2018. By that time the Appellant had already contacted the Commissioner. The decision notice is dated 26 October 2018. The Commissioner explains her approach to s14(1) FOIA as follows:

7. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request under the FOIA if the request is vexatious.

8. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:

- Abusive or aggressive language
- Burden on the authority - the guidance allows for public authorities to claim redaction as part of the burden
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance

9. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the

circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

10. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.

11. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

6. The decision notice states the MCA had made submissions to the effect that:-

- (a) Before the current requests there had been numerous pieces of correspondence going back to March 2017, with 22 contacts from the Appellant, all raising the same or similar issues about naval life-raft NLMK1.
- (b) NLMK1 had been involved in a fatal accident in 1998, which appears to be the catalyst for the correspondence and requests.
- (c) The Appellant has also been in touch with two MPs, the National Union of Rail, Maritime and Transport Workers, the International Maritime Organization and, previously, the Ministry of Defence (MOD).
- (d) The MCA had made every attempt to answer questions, explained that it does not hold information requested, and has no grounds to investigate his concerns.

7. The Commissioner noted that the Appellant had raised many questions about the NLMK1 with the MOD between 2007-2008. FOIA requests at that time to the MOD were found to be vexatious, a position upheld by the Commissioner in 2010 in decision notice FS50200860. The MCA had also discussed the case on the telephone with the Appellant and explained that a thorough search of its records regarding NLMK1 had been carried out which had not revealed anything which needed further investigation.
8. The Commissioner records MCA's view that the Appellant has been involved in a campaign for a long period about the life-raft which has led to protracted correspondence with public bodies and the use of FOIA. The MCA complains about the significant burden placed on staff to deal with the requests and the risk of diverting staff from other tasks and that is why the MCA says it categorised the Appellant's current requests as vexatious.
9. The decision notice states that the Appellant provided the Commissioner with a background to his current requests. He was a former employee of the MOD, who had brought his concerns about a design fault in the NLMK1 life-raft to the MOD's attention in 1998. Raising the issue led to his dismissal. He had been advised by the organisation Concerns at Work, which had put him in touch with various bodies, and this eventually led him to the MCA. The Appellant further explained his concerns about the life-raft in correspondence. Although the Commissioner understood that the life-rafts are still in service, it was noted that the main concerns of the Appellant took place many years ago. The Appellant had provided the Commissioner with a newspaper article from 2005 which had raised concerns about a life-raft. The Commissioner says at paragraph 23:

From her own, albeit not in any way exhaustive, research, the Commissioner has been unable to find any evidence that, in the intervening 13 years, any widespread concerns about the NLMK1 life raft have emerged, continued or deepened.

10. Having reviewed the extensive contact between the Appellant and the MCA, the responses by the MCA that it does not hold any information about the life-raft in question, and the fact that the concerns raised by the Appellant relate to events many years ago (and there is no evidence of recent concerns), the Commissioner concluded that in her view the Appellant 'appears to be pursuing, with a degree of unreasonable persistence, a campaign, or personal investigation that has no merit'.
11. She found that to respond to the Appellant's requests for information about the NLMK1 life-raft would continue to place a burden on the MCA that is disproportionate to the value of the requests. On that basis the Commissioner found that the MCA had correctly applied section 14(1) FOIA.

#### THE LAW

12. As set out above, in decision notice the Commissioner has set out a summary of her approach to section 14(1) FOIA. Thus, section 14(1) FOIA states that "(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious". Vexatiousness is not defined in section 14 FOIA, but it is immediately noticeable that it is the request that must be vexatious and not the person making the request.
13. Amongst other things, the Commissioner's guidance on section 14 FOIA states that it is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
14. The approach to vexatiousness is based mainly around the case of *Information Commissioner vs Devon County Council & Dransfield* [2012]

UKUT 440 (AAC). The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal in *Dransfield* when it defined the purpose of section 14 as follows:

'Section 14...is concerned with the nature of the request and has the effect of disapplying the citizen's right under Section 1(1)...The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA...' (paragraph10).

15. Also in *Dransfield*, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question as to whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal placed particular emphasis on the issue of whether the request has adequate or proper justification. As the Upper Tribunal observed:

'There is...no magic formula - all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA'.

16. *Dransfield* was also considered in the Court of Appeal (*Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454) where Arden LJ observed at paragraph 68 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... The decision maker should consider all the relevant circumstances in order to reach a balanced conclusion as to whether a request is vexatious.'



17. The recent Upper Tribunal case of *Cabinet Office v Information Commissioner v Ashton* [2018] UKUT 208 (AAC) made clear that s14(1) FOIA can apply purely on the basis of the burden placed on the public authority, even where there was a public interest in the request being addressed and where there was a 'reasonable foundation' for the request.
18. The case also confirmed the approach in *Dransfield* to the effect that the Tribunal should take a holistic approach, taking into account all the relevant factors, in order to reach a balanced conclusion as whether a particular request is vexatious: see especially paragraph 27 of the UT judgment in *Ashton*.

#### THE APPEAL

19. The Appellant filed an appeal dated 19 November 2018 which argued that his request was not vexatious and had a serious purpose as it concerned the important issue of life-raft defects. The purpose of the request was to obtain information that the MCA held in relation to the safety concerns of the NLMK1 life-raft. The Appellant thought that the MCA should hold information relating to safety concerns. He said that although the MCA maintained it did not hold any records of accidents or fatalities concerning the NLMK1 life-raft, the MCA had informed the Commissioner of an accident that occurred in February 1998.
20. In relation to this last point, the Commissioner has sought clarification and says (in her Amended Response) that the MCA's reply is that it only became aware of the said incident while carrying out on-line research into the Appellant's previous requests and came across the Commissioner's 2010 decision notice (see above) on the ICO website.

## THE HEARING

21. The Appellant represented himself at the hearing and was accompanied by Ms Skae. We explained to the Appellant that the Tribunal had read the background documents in the case, and understood the history of the matter and his concerns about the safety of the life-raft. The Appellant told us some more about the background and emphasised his long involvement with the issue, which had cost him his job and livelihood.
22. The Appellant explained that the reason for the requests was his dissatisfaction with the MCA's responses concerning the investigation it said that it had carried out into its own records on the issue of life-raft safety. The Appellant made it clear that he did not believe that the investigation had, in fact, been carried out. The reason for this, he said, was the links of key personnel at the MCA with the Admiralty.
23. He told us that the requests that he made was for information that he believed should have been revealed if, in fact, the investigation had been carried out, and therefore should be readily available for disclosure. The invocation of section 14(1) FOIA confirmed his suspicions that there had been no investigation. The Appellant said that if, in fact, the investigation had been conducted, then his requests would assist the MCA in identifying whether it had sought and obtained the right information.
24. The Appellant was also concerned that the MCA had contacted the MOD about his requests. As a result, the MCA had become aware that the MOD had successfully invoked s14 FOIA in the past to resist complying with requests from the Appellant about life-raft safety issues. The Appellant had ascertained that there were no written records about contact between

MCA and MoD, and he deduced that communication must have taken place by telephone.

25. Ms Skae was listed in the appeal document as a witness (although there was no witness statement from her). We invited her to address us in any event, but she said that the Appellant had covered all the relevant points.

## DISCUSSION

26. We have no doubt about the earnestness with which the Appellant is pursuing his concerns about life-raft safety, and no doubt that he believes that not everything is being done to investigate his concerns.
27. However, there comes a point when even if the making of FOIA requests has a serious aim, the requests made can be vexatious when looked at holistically.
28. As the Commissioner notes, it is now many years since concerns were raised elsewhere about the NLMK1 life-raft. There is no evidence that there are current concerns. As the Commissioner says it now appears that the Appellant is 'pursuing, with a degree of unreasonable persistence, a campaign, or personal investigation that has no merit'. The Appellant clearly does not want to take 'no' for an answer, and appears intent on carrying on with his investigation.
29. In relation to the MCA, although there were some delays, it has specifically told the Appellant that an investigation has been carried out into its archives and records to establish whether there is anything that relates to the safety of the life-raft. This seems to be a sensible course of action when safety issues are raised. However, the result of the investigation was that no relevant records are held. We have no reason to

believe that that is not the case, or that no investigation was carried out. It would be extremely unwise of the MCA to provide an untrue response to the Appellant about these issues, given what he says is at stake.

30. However, that is exactly what the Appellant thinks has happened, and his list of requests is expressly designed, he tells us, to show that that is the case. In our view, it is at that point when these requests become vexatious: when the Appellant has been told that an investigation has been carried out and no records are held, but he nevertheless provides a detailed list of documents he still wants to be disclosed. In our view the requests (a) are an unnecessary burden on the MCA, especially in relation to staff time, when it has already said that no records are held; (b) show unreasonable persistence in the face of the MCA's conclusions on its investigation; (c) verge on making unfounded accusations, given the Appellant's submission that he does not believe any investigation has been carried out; and (d) show intransigence in the face of the responses from the MCA.

31. The Appellant complains about the fact that the MCA has obtained information about his previous requests to the MOD which were found by the Commissioner to be vexatious in 2010. However, in our view the previous findings are part of the whole picture of previous correspondence and requests in relation to the safety of the NLMK1 life-raft, and both the MCA and the Commissioner were entitled to take these into account when taking an 'holistic' approach to the question of vexatiousness.

32. We take the same approach and reach the same conclusions, but for the avoidance of doubt, even in the absence of the previous findings on vexatiousness by the Commissioner, we find that the current requests are vexatious for the reasons set out above.

## CONCLUSION

33. On that basis, we would dismiss this appeal.

**Stephen Cragg QC**

Judge of the First-tier Tribunal

Date: 10 May 2019