IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2018/0268

ON APPEAL FROM:

The Information Commissioner's
Decision Notice No: FS50748585
Dated: 7 November 2018

Appellant:	**John Peters**
Respondent:	**The Information Commissioner**
Date of hearing:	**25 June 2019**
Date of decision:	**8 July 2019**

Before

Anisa Dhanji

Judge

and

Alison Lowton
and
Paul Taylor

Panel Members

Subject matter

Freedom of Information Act 2000, section 14(1) - whether request was vexatious.

IN THE FIRST-TIER TRIBUNAL **EA/2018/0268**
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

DECISION

Dated:	**8 July 2019**
Name of Complainant:	**John Peters**
Public Authority:	**Queen Mary University of London**
Address of Public Authority:	**Mile End Road** **London** **E1 4NS**

The appeal is dismissed.

Anisa Dhanji
First Tier Tribunal Judge

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr John Peters (the "Appellant"), against a Decision Notice ("DN") issued by the Information Commissioner (the "Commissioner"), on 7 November 2018.

2. It concerns a request for information made by the Appellant on 26 March 2018 (the "Request"), under the Freedom of Information Act 2000 ("FOIA"), to Queen Mary University of London College ("QMUL").

3. The Request arises from a medical trial, referred to as "PACE", or more fully, "Pacing, Graded, Activity, and Cognitive Behaviour Therapy". It was funded by the Medical Research Council, the Department of Health, the Department of Work and Pensions, and the Scottish Chief Scientists' Office. The trial's main sponsor was QMUL.

4. QMUL refused the Request on the basis of section 14(1) of FOIA (vexatious requests).

Background

5. PACE compared the effectiveness of different treatments for Chronic Fatigue Syndrome ("CFS"), also known as Myalgic Encephalomyelitis ("ME."). PACE was the largest clinical trial to date, concerning this condition.

6. The findings were published in The Lancet, in March 2011. The trial found that Cognitive Behaviour Therapy and Graded Exercise Therapy, were more effective treatments for CFS than either specialist medical care, or Pacing Therapy.

7. The causes and treatment of CFS are a contentious area of science. There are some who believe that CFS has a physical cause and should be treated as such. Others consider its cause to be psychiatric in nature. The treatments found to be the most effective by the PACE trial were psychiatric therapies.

8. The trial attracted considerable controversy. The rigour of the methodology employed in the trial, and its results, have both been subject to challenge. The trial has also generated a great deal of clinical data, and has led to numerous requests under FOIA, including by the Appellant.

The Request

9. The Request that has led to this appeal was made on the following terms:

> *These requests concern 'Comparison of adaptive pacing therapy, cognitive behaviour therapy, graded exercise therapy, and specialist medical care for chronic fatigue syndrome (PACE): a randomised trial.*
>
> *1. Please provide minutes of the analysis strategy group.*
>
> *2. Please provide minutes of the writing and publication oversight committee.*

I am happy to receive this information in electronic format.

10. QMUL responded on 25 April 2018. It refused the Request as vexatious under section 14(1) of the FOIA. It did not explain why it considered the Request to be vexatious.

11. The Appellant requested an internal review. QMUL replied saying that it was relying on its position in connection with a previous request the Appellant had made, in respect of which QMUL had also relied on section 14(1).

Complaint to the Commissioner

12. The Appellant complained to the Commissioner about QMUL's refusal.

13. The Commissioner investigated the complaint. For the reasons set out in her DN, she considered that the Request was part of a hostile campaign.

14. She agreed that the Request was vexatious, and upheld the refusal under section 14(1).

Appeal to the Tribunal

15. The Appellant has appealed against the Commissioner's DN under section 50 of FOIA. QMUL has not been joined as a party to the appeal.

16. The scope of the Tribunal's jurisdiction in dealing with an appeal from a DN is set out in section 58(1) of FOIA. If the Tribunal considers that the DN is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, she ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.

17. The Appellant has requested that this appeal be determined on the papers without an oral hearing. The Commissioner has agreed. Having regard to the nature of the issues raised, and the nature of the evidence, we are satisfied that the appeal can properly be determined without an oral hearing.

18. Just prior to the hearing date, and following the Commissioner's response to certain directions for clarification, the Appellant said he wished to withdraw his appeal. However, in the same communication, he maintained that the Request was not vexatious, and he reiterated several of his grounds of appeal. On the basis that he is unrepresented, we sought to ensure that he understood that withdrawing the appeal would mean that the findings in the DN would stand. In response, Appellant said that he wished to proceed with the appeal after all.

19. The parties have lodged an open bundle comprising over 400 pages, and an additional open bundle has been submitted by the Appellant, including his witness statement.

20. The additional documents lodged by the Appellant includes a response to a complaint he made to UK Research and Innovation ("UKRI") in relation to the PACE trial, UKRI's response dated 6 December 2018, and a letter dated 30th November 2018 from UKRI to QMUL advising that there should be a formal investigation, reserving the right to seek observers status, and requesting that UKRI Complaints be informed about the progress of any investigation.

21. We have considered all the material that has been submitted, even if not specifically referred to in this decision. There has been no closed material.

The Statutory Framework

22. Under section 1 of FOIA, any person who makes a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.

23. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA or if certain other provisions apply. In the present case, QMUL has only invoked section 14(1).

24. Section 14 of FOIA sets out two grounds on which a public authority may refuse a request. The first is where the request is vexatious. The second is where the request is identical or substantially similar to a previous request that the public authority has already complied with. QMUL has relied on the first ground.

25. Where section 14 applies, the public authority does not have to provide the information requested, nor indeed is it required to inform the requester if it holds the information.

The Parties' Positions

QMUL's Position

26. QMUL, not having been joined, has not made any submissions in this appeal. However, we have considered its responses to the Commissioner's investigations, in particular, its very detailed letter to the Commissioner dated 17 October 2018.

27. QMUL says that this single trial has generated a disproportionate number of FOIA requests. The trial has been subjected to extreme and unprecedented scrutiny. It has never before experienced such a quantity of requests on any one subject. QMUL says that the PACE trial is not controversial amongst the majority of scientists in the field, but some individuals are unwilling to accept the trial's findings.

28. About 10 individuals are responsible for well over half of all PACE related FOIA requests made to QMUL. Between February 2011 and September 2018, it received 63 FOIA requests, as well as other correspondence, about the PACE trial. Each has been considered individually, on its own merits. However, after 7 years, the PACE team and QMUL feel harassed by these requests and believe that some of them are vexatious. Even though the frequency of the requests has slowed, QMUL does not expect that the requests will stop any time soon.

29. As at the date of the refusal, the Appellant had made the following requests for information to QMUL regarding PACE, with the following outcomes:

- 31.05.2016 (QMUL reference 2016/F173) - some information provided and some refused pursuant to section 43.
- 23.08.2016 (QMUL reference 2016/F243) - information provided
- 18.10.2016 (QMUL reference 2016/F313) -some information not held and some refused pursuant to sections 40(2), 41 and 22A
- 27.03.2017 (QMUL reference 2017/F102) - refused pursuant to section 36(2)(b)i and ii and (c)
- 21.04.2017 (QMUL reference 2017/F137) information supplied
- 08.05.2017 (QMUL reference 2017/F157) information supplied

- 13.06.2017 (QMUL reference 2017/F194) refused pursuant to section 21
- 26.03.2017 (QMUL reference 2017/F112) refused section 14(1)

30. One of these requests was merely for clarification. Even without that, it still means that as at the date of the refusal, and including the Request, the Appellant had made 7 substantial requests relating to PACE. Several of these requests led to a complaint to the Commissioner and in some cases, an appeal to the Tribunal.

31. QMUL also says that in DNFS50687719, the Commissioner found that some minutes should be released, and set out in a confidential annex, what information could be redacted/withheld. The review and redaction of those minutes took a number of days. The information was sent to the Appellant on Friday, 23rd March 2018 and the Request was made on 26 March 2018. QMUL says that to locate and extract the information covered by the Request is not straightforward, and that to review and redact the minutes along the same lines as the earlier request, will be extremely time-consuming.

32. While QMUL recognises that there is a public interest in this area, it firmly believes the intent of requests is not always a true seeking of information, but that it is a coordinated campaign in an attempt to obtain information that the requesters will believe would discredit the trial.

33. As to the evidence of a campaign, QMUL refers to various on-line material which it says shows hostility, and coordination. It says the Appellant is one of several individuals who have been regular contributors. The Appellant also maintains a blog which is critical of PACE. QMUL further says that whenever anything is published about PACE or about the Commissioner or the FTT's decisions relating to PACE, there is a concerted effort to write replies in an attempt to dispute all issues and to introduce counter arguments. QMUL further says that while the individuals involved deny that there is any campaign or activism on their part, there are often references to "our case" or similar.

34. QMUL says that in John Mitchell Jr v IC and QMUL (EA/2013/0019), the Tribunal recognised that a campaign exists. QMUL says that the Appellant is demonstratively part of it. QMUL also says that when the results of the PACE trial were published in The Lancet (a leading independent general medical journal), such was the volume of critical letters they received, that they too concluded there was an active campaign to undermine and discredit the research.

35. QMUL also considers that the spacing of the requests seems likely to have been coordinated in such a way as to prevent aggregation so they are not refused on that basis. It says that it has noticed that once the FTT has ruled against an individual, that individual no longer makes request, but others do. It does not believe this is a coincidence.

36. QMUL says that although the quantity of the requests alone cannot be said to be overwhelming, the persistence and aggregated burden on staff, particularly when the requests are escalated to the Commissioner and the Tribunal has had a detrimental effect on QMUL. QMUL says that the requests need to be interpreted and dealt with by individuals familiar with the trial. The co-principal investigator for the trial, who was employed by QMUL was Professor Peter White who had spent much of his career treating and researching this condition. Professor White retired from QMUL on 31st December 2016. To deal with requests received since then, QMUL has had to contact the other principal investigators who are based at the University of Oxford, and Kings College London.

37. QMUL says that there seems to be an unwillingness to accept refusals of any type. Where responses lead to more requests, the burden grows further. QMUL says that the history of requests suggest that further requests will follow even if, on the face of any one request standing alone, it may not be judged as vexatious.

38. The co-principal investigators have all experienced harassment from some who do not agree with the research. QMUL says, for example, that the Appellant has used information it has provided to him previously, to harass Professor Sharpe on Twitter. There is concern that researchers will be put off from entering or staying in this area of research by such actions.

The Commissioner's Position

39. The Commissioner's position is set out primarily in the DN and her Response to the Appellant's grounds of appeal

40. The Commissioner says that the Request should not be viewed in isolation because the Appellant is engaged in a hostile campaign against the PACE trial and, by extension, universities and individual researchers who participated in it.

41. She says that a number of activists of whom the Appellant is one, believe passionately that the PACE trial should be discredited and see the FOIA regime as a "weapon" in their arsenal to do so. The Commissioner says that the Appellant is engaged in a hostile campaign against the PACE trial, and by extension, universities and individual researchers who participated in it. In DN FS50722835, issued on 12 July 2018, the Commissioner reviewed the evidence and found that the request in that case was "*part of a campaign that has placed a significant burden on QMUL*", and was "*likely to result in further requests being made*".

42. The Commissioner further says that existence of the campaign can be seen from the publicly accessible statements made by campaigners on internet forums and social media, which are usually derogatory and hostile. These include explicit calls to increase the number of FOIA requests being made. She says that it is also apparent that the requests are being spaced in such a way as to prevent aggregation for the purposes of section 12. The Tribunal found in Mitchell, that such a campaign existed

43. In the Commissioner's view, the Request represents another attempt in this hostile campaign to discredit the PACE trial. It arises from the same background and cannot be considered separately from that context. Having to comply would add yet further to the significant resources that QMUL has already devoted to dealing with FOIA requests relating to the trial.

44. The PACE trial was, and is, a matter of genuine controversy. However, it does not follow that a FOIA request cannot be part of an illegitimate campaign and itself be vexatious, simply because the requested information relates to a matter of controversy. While it is accepted there is a public interest in the information, it is vastly outweighed by the factors that point to the Request being vexatious.

45. Even if there is public interest in the information, in some cases, as in the present case, other factors may outweigh it. It is not the Commissioner's case that this is an example of "vexatiousness by drift". Instead, she says that the Request is part of an organised campaign which has been ongoing for some years. The course of dealings in this case does not feature "drift" but rather, the improper use of a formal procedure by design. That course of dealings is wholly disproportionate to any legitimate public interest that may exist in a request for information.

46. Although the Commissioner reached her decision primarily on the basis that the Request was part of a hostile campaign, she accepts QMUL's position that gathering

and redacting the information would be burdensome, given the need to involve people with knowledge of the trial and given the time that has passed, and the consequent departure of a key individual.

The Appellant's Position

47. The Appellant's position is set out in his grounds of appeal and various written submissions.

48. He has made 7 substantial requests on the trial in almost 3 years and every one of those requests was for information in which there is an unchallenged public interest. None has been, in the words of the Commissioner, 'patently vexatious'

49. At no time has he been intemperate or been accused of any rudeness or bad language or anything else untoward. He has never been belligerent or unreasonable.

50. He is not acting as part of a campaign. He has acted alone at all times in connection with all requests that he has made to QMUL. He has never been party to any agreement in this regard and is not "taking up the cudgels" on behalf of anyone. He has never been part of a plan to space requests out to prevent aggregation for the purposes of section 12.

51. It is important to differentiate between cases where the requesters are abusing their information rights to engage in a campaign of disruption, and those instances where the requesters are using FOIA as a channel to obtain information that will assist their campaign on an underlying issue.

52. Although patients (and MPs and scientists), have acted together on matters regarding PACE, there is no formal organization, no explicitly agreed aims or methods, and no control of any kind over what others may do or say. Whether providing briefings on the trial, or signing open emails to charities, or discussing the trial on a patient forum, constitutes belonging to a "campaign" is subjective and semantic and, he argues, irrelevant to the Request.

53. Under the Commissioner's own Guidance, similar requests from disparate requesters cannot be considered vexatious if they are asking for information independently on the same subject because of media or local interest, rather than acting in concert.

54. The Request raises matters of considerable public interest. The trial was flawed, discredited, and a medical scandal. He has referred, in his witness statement, to various materials which he submits support these assertions. He points out also that PACE received over 5 million pounds in public funds. He says that public perception and policy regarding CFS has been shaped by the trial, and that an estimated 250,000 people in this country and millions more worldwide who suffer from this illness, and the over 640 people who took part in the trial, have a right to know the truth.

55. The trial's findings have been rejected by all major US government health agencies. Universities and textbooks are using PACE as a case study on how not to conduct a trial. An MP and former science teacher has called it a "scandal". Jonathan Edwards, Emeritus Professor at University College, London, a clinical trial expert who developed the first ever safe and effective treatment for rheumatoid arthritis, says that the "patients have been proved right". Carol Monaghan in the House of Commons has said that PACE has been "debunked".

56. The Request relates to the decision taken after the PACE trial had been completed, to make major changes to the thresholds in the "outcome measures". This decision has led an independent psychiatrist to describe PACE as "absurd", and that it is now

widely seen and taught as an example of how not to conduct a clinical trial. He says that this decision has never been properly explained, and the Request is for information that might shed light on it.

57. The Commissioner says that if PACE has now been conclusively debunked and rejected by a consensus of the scientific community, the information sought could not add a great deal to the public's understanding of the trial. However, it is precisely because the trial has been debunked that these particular minutes are important. The consequences of the decision to change the thresholds have been enormous. The system has failed. It is absolutely crucial for everyone to understand that failure as much as possible. In order to maintain confidence in the system, the trial and its conduct must be subjected to detailed scrutiny to try to understand why it happened and to ensure it doesn't happen again. Such scrutiny fits the purpose of FOIA, as a means of holding public authorities to account. These minutes would allow for the scrutiny of a failure in a publicly funded trial that has had considerable ramifications for millions of people.

58. The Request is serious and reasonable, and not motivated merely to discredit the trial. While the FTT in Mitchell may have considered patients were acting without serious intent, it has since become clear that there was a genuine, legitimate purpose to their complaints and their actions. This change was implicitly recognized by the FTT in QMUL v Matthees (EA/2015/0269) when it ordered the release of trial data. At no point during that process was it considered that patients were acting unreasonably in asking for the information.

59. There is no evidence that this Request would be particularly burdensome. The Appellant says that even in the context of requests made by others, the burden on QMUL has not been significant. He points out that QMUL has listed individuals who it says have been responsible for more than half the FOIA requests. There are 11 individuals. He says that on a matter of great public interest, over a period of 8 years, 11 people have made fewer than 5 requests each. He argues that these requests have not been a campaign to disrupt QMUL, but merely an attempt to obtain public release of data. He says that had the data has been available from the beginning, some of the requests would not have been made.

60. There is also no accumulated burden from his own requests such as to warrant invoking the section 14 exemption. He has only made a relatively small number of requests over 3 years, and the Commissioner is not arguing any vexatiousness by drift. QMUL must accept some responsibility itself, for the number of requests it has received. It has refused to disclose anonymised data, has reacted strongly to any criticism of the trial, even from highly qualified independent scientists, and is the responsible authority for the conduct of a discredited trial. In any event, QMUL has itself acknowledged that the number of requests it has received about the trial has "dropped off".

Finding and Reasons

61. The only issue before us is whether the Request was vexatious. The burden of showing that it was, lies with the public authority asserting it, to the civil standard.

Meaning of Vexatious

62. FOIA does not define "vexatious". However, there are a number of decisions of the Upper Tribunal ("UT"), and the Court of Appeal ("CA"), which have offered guidance as to what the term means in the context of information requests.

63. The principles are perhaps most comprehensively set out by the UT in Information Commissioner v Devon County Council and Dransfield; Craven v Information

Commissioner and Department of Energy and Climate Change; and Ainslie v Information Commissioner and Dorset County Council [2012] UKUT 440 AAC.

64. These cases concerned section 14(1) of FOIA and/or the corresponding provision under the Environmental Information Regulations 2004. They were heard by Judge Wikeley, who treated Dransfield as the 'lead case' and set out guidance on the meaning of "vexatious", which we have summarised below:

- In the context of section 14, "vexatious" carries its ordinary and natural meaning, within the particular statutory context of FOIA. The dictionary definition of "vexatious" as *"causing, tending or disposing to cause … annoyance, irritation, dissatisfaction or disappointment"* can only take us so far. As a starting point, a request which is annoying or irritating to the recipient may well be vexatious, but it depends on the circumstances.
- "Vexatious" connotes *"manifestly unjustified, inappropriate or improper use of a formal procedure"*. Such misuse may be evidenced in different ways.
- The Commissioner's guidance that *"the key question is whether the request is likely to cause distress, disruption or irritation without any proper or justified cause",* provides a useful starting point, so long as the emphasis is on the issue of justification (or not).
- The purpose of section 14 is to protect public authorities and their employees in their everyday business. Thus, consideration of the effect of a request on them is entirely justified. A single abusive and offensive request may well cause distress, and so be vexatious. A torrent of individually benign requests may well cause disruption. However, it may be more difficult to construe a request which merely causes irritation, without more, as vexatious.
- An important aspect of the balancing exercise may involve consideration of whether there is an adequate or proper justification for the request.
- A common theme underpinning section 14(1) as it applies on the basis of a past course of dealings between a public authority and a particular requester, is a lack of proportionality.

65. Judge Wikeley stressed that this guidance is not intended to be prescriptive, and went on to say that the question of whether a request is truly vexatious may be determined by considering four broad issues or themes:

- The burden on the public authority and its staff;
- The motive of the requester;
- The value or serious purpose of the request; and
- Any harassment or distress caused to the staff.

In paragraphs 29 to 45, he set out further guidance about each of these four themes.

66. The UT decisions in Craven and Dransfield were upheld by the CA ([2015] EWCA Civ 454). The CA added 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, the public, or to any section of the public. It went on to say (at para 68), that:

> *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.

67. The CA also considered that where a motive can be established, that may be evidence of vexatiousness, although if a request is aimed at disclosure of important information which ought to be publicly available, then even a "vengeful" request may not meet the test.

68. The UT has revisited vexatious requests in a number of further cases, including CP v Information Commissioner [2016] UT 427 (AAC). This case considered whether the First-tier Tribunal ("FTT"), had correctly given weight to the nature of the requests made, and had conducted an appropriately rounded assessment in light of the high hurdle required to satisfy section 14(1), and also whether the evidential basis for the FTT's decision was sufficiently clear. The UT stressed that the satisfaction of the section 14(1) test requires an appropriately detailed evidential foundation of the course of dealings between the requestor and the public authority. While a compendious and exhaustive chronology exhibiting numerous items of correspondence is not required, there must be some evidence, particularly from the Commissioner, about the past course of dealings between the requestor and the public authority, which explains and contextualises them. The UT went on to say that a proper scrutiny of the number of previous FOIA requests requires more than a superficial count, and that section 14 should not be invoked without objective and careful justification.

69. In some cases, a request may pose a substantial burden for the authority in circumstances where it cannot rely on section 12; i.e. it goes beyond the location of the information and extends to the review of information for whether exemptions and redactions are required. In principle, section 14 can be relied upon in such a case. In Cabinet Office v Information Commissioner & Ashton [2018] UKUT 208 (AAC), for example, the request was for some 6 files relating to British relations with Libya between 1990-2002. It was clear that there was a significant public interest in the information. The Cabinet Office relied on section 14 based on the burden alone. Judge Wikeley accepted that section 14 can be relied upon on the basis of burden, without any other signs of vexatiousness. He also endorsed CP to the effect that public interest in the information cannot act as a trump card to justify disclosure. What is not permitted, though, is for a public authority to place any great reliance on the absence of resources, as that would risk undermining the section 1 right.

70. As to the relevance of the requester's conduct, in Oxford Phoenix Innovation Ltd v Information Commissioner & Medicines and Healthcare Products Regulatory Agency [2018] UKUT 192 (AAC), the UT observed that although the focus is on the request, it is usually difficult entirely to divorce that from the requestor where it is the course of conduct which is in issue. In that case, the requestor had repeatedly made disparaging and offensive allegations against the public authority which included drawing parallels between the public authority and the Nazis. Judge Markus QC considered that while at one point there had probably been a genuine dispute, the requests had drifted into vexatiousness. Any proper purpose the requestor had had was overtaken by what seemed to be a "war" by any, and every, means available.

71. The motive of the requester may also be a relevant factor in assessing whether a request is vexatious. Judge Wikeley noted in Dransfield, at paragraph 34, that "the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request".

72. As to the relevance of whether the requester was acting in concert with others, in Gary Duke v ICO and the University of Salford (EA/2011/0060)**,** the appellant had

made 13 requests for information to the University in November 2009 following his dismissal from the post of part time lecturer. There had been a significant increase in the rate and number of FOIA requests being received in the period October 2009 to February 2010, and these were similar in subject matter to the appellant's requests. The University had also observed that these requests originated from a comparatively small number of individuals who it believed had connections to Dr Duke. The FTT considered whether it should take account of these other requests. It considered that the proper test, is whether it was more likely than not, that Dr. Duke was party to their requests, whether by direction, incitement or mild encouragement. Finding that he was, the FTT considered that was relevant to the Tribunal`s assessment of the burden represented by Dr. Duke`s requests, the motive underlying them and their true purpose, and whether they were a reasonable proportionate way of pursuing a legitimate quest for information.

73. The Commissioner's Guidance on "Dealing with Vexatious Requests" (section 14) says that if a public authority has reason to believe that several different requesters are acting in concert as part of a campaign to disrupt the organisation by virtue of the sheer weight of FOIA requests being submitted, then it may take this into account when determining whether any of those requests are vexatious.

Was the Request Vexatious?

74. We turn now to the facts of the present case. We will set out our findings by reference to Judge Wikeley's 4 themes, although for convenience, we will address them in a different order.

75. We will not, however, make any findings on the underlying substantive issues raised by the Appellant about the merits and criticisms of the PACE trial. Those are matters outside our jurisdiction.

76. Although we have considered other decisions of the FTT, and of the Commissioner, as well as the Commissioner's Guidance, we are of course not bound by them.

Motive, Value and Purpose

77. We have considered these themes together because on the facts of the present case, as indeed in Dransfield, the issues are closely intertwined.

78. The Appellant says, and we accept, that he is not acting maliciously, and this is not a case of vexatiousness by drift.

79. We also agree that the issues raised by the Appellant are of public interest. Although the Appellant has explained his personal interest in the subject of the PACE trial, we accept that the Appellant is not just pursuing a narrow private issue. Indeed, as the Appellant has pointed out, neither QMUL, nor the Commissioner, has questioned the public interest of the Request.

80. However, having a justification does not mean that the Request cannot be vexatious. We consider that the Appellant's quest has become disproportionate to its original purpose, and also that he has used the Request, and his previous requests on the same broad subject matter, not simply as a means of obtaining information, but as a basis to challenge and discredit the PACE trial.

81. While we agree with the Appellant that it is not a misuse of FOIA to make requests intended to hold public authorities accountable, we consider that the persistent nature of the Appellant's requests, and his pursuit of his quest through multiple channels is indicative of a level of obsessiveness that goes beyond accountability.

Burden

82. In response to directions we made as to how many sets of minutes are in scope of the Request, and how long QMUL estimates it would take to respond, the Commissioner has said that QMUL have not performed a full search for all the minutes which could be within the scope of the Request. However, a quick search at the time the Request was received, identified at least 15 sets of minutes relating to the analysis strategy group and at least 19 relating to the writing and publication oversight committee. The Appellant says he did not realise there were that many.

83. QMUL says that gathering and redacting the information would impose a significant burden, because they would need to involve those with knowledge of the trial and also because of the time that has passed (and the consequent departure of a key individual). It has not undertaken a full estimate of how long it would take. To do so would require starting to gather and examine the information. QMUL also does not know how many pages each set of minutes consists of without retrieving and inspecting each document. It considers, however, that review and redaction would likely take longer than locating the information.

84. We have no reason to doubt QMUL's position as regards the burden the Request would impose. We accept that to respond to the Request would involve a significant burden for QMUL.

85. It is not only the burden arising from the Request that must be considered. Rather, the Request must be seen in the context of the Appellant's previous and likely future requests. This is in line with Judge Wikeley's guidance in Dransfield (at paragraph 29):

> *First the present or future burden on the public authority may be inextricably linked with the previous course of dealings. Thus 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 it is properly to be characterised as vexatious. In particular, the number, breadth, pattern and duration of previous requests may be a telling factor.*

86. The evidence before us is that the Appellant has previously engaged extensively with QMUL, with information requests on various aspects of the PACE trial. It is clear that he is convinced that the trial was flawed and is determined to show that it was flawed. We accept that the public has a right to share information obtained from FOIA requests, to express opinions on FOIA decisions, that the Appellant is entitled to participate in online forums. Nevertheless, these are an indication of the strength of the Appellant's views and commitment. Taking this into account, as well as his history of requests to QMUL, we find it likely that his requests for information will continue, with one response leading to another request.

87. We accept that the Appellant was not acting in concert with others and was not intending to disrupt QMUL by virtue of the sheer weight of FOIA requests being submitted. We find it likely, however, on the evidence before us (as set out in particular in QMUL's letter dated 17 October 2018 at pages 6 and 7), that at the very least, the Appellant was part of an informal group, sharing similar views about PACE and also sharing and evaluating information received from FOIA requests, and that this has led to further requests being made to QMUL.

88. We do not accept the argument that QMUL is the author of its own misfortunes. It is clear that a great deal of information about PACE has already been placed in the public domain.

Harassment or Distress Caused to the Staff

89. Although a finding of vexatiousness does not depend on there being harassment or distress caused to the public authority's staff, it may be evidenced:

> *…by obsessive conduct that harasses or distresses staff, uses intemperate language, makes wide-ranging and unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive…* (Dransfield, at paragraph 39).

90. QMUL have said, and we accept, that the number of requests it has received in relation to PACE, and the comments made on various on–line sites, have caused harassment.

91. The Request, and previous requests have not been made in offensive or intemperate terms. There is no evidence from QMUL to suggest that the Appellant's conduct, language or assertions in connection with the Request or at any other time, have been inappropriate or given rise to distress or concern for its staff. Nevertheless, we consider that the extent of the challenge in terms of both FOIA requests and criticisms in other channels, about PACE has been such as to cause a degree of harassment to QMUL's staff, and in particular those involved with the trial.

Conclusion

92. We accept there is controversy about PACE and that the Appellant is one of many who take issue with the way in which the trial was conducted and reported. We accept that it was not his intention to create an undue burden for QMUL, nor distress for its staff. We recognise both his personal interests and the public interest involved.

93. We also consider that while as a public authority, QMUL is properly subject to FOIA, as an academic institution, there must be a balance between the right to information and the right to undertake and publish academic research, however flawed some may regard such research to be.

94. We consider that the number of the Appellant's requests, his persistence, and his conviction that the trial must be shown to be flawed, borders on obsessiveness. We make no findings on the merits of his views. There may well be other channels for the Appellant and those who share his views to seek redress or review. It is clear from some of the documents the Appellant has lodged, that he has or is exploring some of these other avenues.

95. We consider that the Appellant's attempt to use FOIA for this purpose, to the extent he has, is unreasonable, having regard in particular to the burden for QMUL arising from this Request, and the cumulative effect of the Appellant's previous and his likely future requests.

96. We consider that the cumulative impact on QMUL has become disproportionate, bearing in mind, in particular, that experience and expertise is often needed to respond to the requests, and bearing in mind also that following a response, comments on message boards and other on line channels seem to generate further requests, thereby increasing the burden further.

97. After careful consideration, for all these reasons, we find that the Request has crossed the line, and that it was vexatious.

98. It follows that we uphold the Commissioner's decision and dismiss the appeal.

99. Our decision is unanimous.

Anisa Dhanji
First Tier Tribunal Judge

Date: 8 July 2019
Promulgated: 15 July 2019