



:

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

Appeal No: EA/2019/0008

ON APPEAL FROM:

**The Information Commissioner's Decision Notice Nos: FS50734061
Dated: 20 December 2018**

Appellant: John McTighe

First Respondent: The Information Commissioner

Second Respondent: The Welsh Government

Decided on the papers in telephone conference

Date of decision: 2 July 2019

**Before
HH Judge Shanks
and
David Wilkinson and Alison Lowton**

Subject matter:

Freedom of Information Act 2000 (FOIA)

Section 14: vexatious requests

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

Background

1. This appeal is concerned with four “multi-part” requests for information made to the Welsh Government ostensibly under FOIA between 22 January and 18 February 2018 by the Appellant, Dr McTighe, all of which concern the TrawsCymru long distance bus service.
2. Unfortunately we have not been provided with the requests in their original form but we attach to this decision a copy of the Annex to the Information Commissioner’s decision which reproduces the text of the requests. They cover six pages of close text and include 50 numbered questions, some of which contain sub-questions and the first of which asks for an answer to 11 questions sent on 22 November 2017.
3. Drawing on Dr McTighe’s own description of his requests, they can be summarised as follows:
 - (1) a request dated 22 January 2018 addressed to the “Transport Minister” (it appears that technically his title is Cabinet Secretary for Economy and Infrastructure; we shall refer to him as “the Minister”); the questions relate to timetable changes made to the T2 service in January 2018 and a review relating to the T3 service which the Minister commissioned in November 2017;
 - (2) a request dated 25 January 2018 addressed to the Minister seeking the release of all email and other written communications made by him and the

TrawsCymru Network Manager over the previous few months on those topics and on the topic of the request made on 22 November 2017;

- (3) a request dated 7 February 2018 addressed to the Deputy Director of Network Management (we shall refer to her as “the Deputy Director”) about a report from the Bevan Foundation produced in 2013 relating to the T3 route and discussions which followed it, in particular relating to a decision apparently taken to take the route to Aberystwyth rather than Barmouth;
 - (4) a request dated 18 February 2018 addressed to the Minister seeking information about proposed new TrawsCymru bus routes in North Wales.
4. These requests came against a background of extensive correspondence between Dr McTighe and the Welsh Government over the preceding two years on the subject of the TrawsCymru bus service. This correspondence included, according to Dr McTighe’s own figures, 281 questions under FOIA addressed to the Government (though he says that only a very small proportion (2.1%) have been answered) (see bundle page 226). In his correspondence, he has complained that the Welsh Government has managed the network incompetently, in particular because of the limited connectivity of the T2/T1 routes in Aberystwyth, which he says has ruined the service. He has criticised named individuals connected with the Government, both politicians and officials, including the Minister and the Deputy Director, for the way they have run the service and dealt with his correspondence and FOIA requests; in so doing he has made numerous accusations of lying and has accused the Minister of breaches of the Ministerial Code.
 5. The Welsh Government refused to answer the first three requests on 19 February 2018 and the fourth on 14 March 2018 on the basis that they were “vexatious”. Dr McTighe complained to the Information Commissioner about the refusals under section 50 of FOIA but the Commissioner upheld the Government’s position in a decision notice dated 20 December 2018. Dr McTighe has appealed against that decision notice to this Tribunal.

The appeal: procedural matters

6. Dr McTighe's grounds of appeal ran to 76 pages in length. The Commissioner applied to the Tribunal for an order that he reduce them to six pages. The Registrar ordered on 24 January 2019 that the Commissioner need only respond to the first 28 pages of the grounds of appeal which had been lodged which she identified as being the only part which really addressed the decision notice. Only those 28 pages are in our bundle (see: pages 18-45). They are in small typescript and very detailed. By an email dated 29 May 2019 Dr McTighe invited us to decide the appeal on the basis of those 28 pages, his answer to the Commissioner's and Welsh Government's respective Responses and a further responsive document he had prepared dated 28 May 2019 which addressed a document he had not seen previously prepared by the Welsh Government for the Commissioner in the course of her investigations which is at pages 131-214.

7. For some reason the appeal bundle prepared by the Welsh Government omitted any copy of the four requests we are concerned with and omitted the Commissioner's Response. The Tribunal office was able to obtain the Annex to the Commissioner's decision notice referred to above and a copy of her Response to the appeal at short notice and we have obviously also had regard to them.

8. All parties were content for us to determine this appeal on the papers and we are satisfied that it was appropriate to do so. We have taken account of all the material before us and considered afresh whether the Welsh Government were indeed entitled to rely on the exemption for vexatious requests.

The relevant law

9. Section 14(1) of FOIA provides:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

10. The proper interpretation of this provision has been considered authoritatively by the Court of Appeal in the familiar cases of *Dransfield v IC* and *Craven v IC* [2015] EWCA Civ 454 and by the Upper Tribunal in the subsequently decided appeal in *Cabinet Office v IC and Ashton* [2018] UKUT 208 (AAC) (see paras [24]-[27] in particular). The following propositions are well established:

- (1) The issue is whether the request is vexatious and not whether the requester is vexatious;
- (2) Parliament has not defined the word “vexatious”: it is an inherently flexible concept; it connotes a “manifestly unjustified, inappropriate or improper use of a formal procedure”;
- (3) In considering whether such misuse of the procedure is established in any case all relevant circumstances must be considered and a balanced conclusion reached based on an objective standard;
- (4) In deciding whether a request is vexatious four factors are likely to be relevant: (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; but this is not an exhaustive list of relevant factors and should not be treated as a formulaic check list;
- (5) The previous behaviour of the requester and the number, breadth and pattern of previous FOIA requests may be relevant in considering whether a request is vexatious by, for example, throwing light on the requester’s motivation for making the request in question or by placing the burden involved in answering that request in its proper context;
- (6) A clear public interest in the subject matter of the request is a consideration which needs to be balanced against other factors, but it is not a “trump card” which always tips the balance against a finding of vexatiousness.

Our initial assessment

11. The starting point must be the four requests themselves. As we say, there are a total of 50 numbered questions, many of which contain sub-questions, all on the

same general topic. They were sent to the Welsh Government within a period of a month. They were addressed to two specific individuals and ask direct questions of those individuals. Many of the questions do not appear to be appropriate as requests for recorded information under FOIA; rather, they are in the nature of parliamentary questions addressed to a politician, obviously argumentative and tendentious. Some of those which can clearly be classified as FOIA requests would be likely to involve a considerable amount of work. We consider that, even looking at them without any other context, the burden to the Welsh Government in dealing with these requests would be very considerable.

12. The four requests came against a background of two years' correspondence involving many FOIA requests and complaints by Dr McTighe about the running of the bus service and the way his complaints and FOIA requests had been dealt with and involving accusations against individuals, including the two who are the addressees of the FOIA requests we are concerned with. Against that background we consider it would be reasonable to infer (a) that these FOIA requests are the continuation of a rather obsessive campaign by Dr McTighe and (b) that whatever responses were forthcoming, they would lead to further requests and further accusations of a similar nature to those already made.

Dr McTighe's points

13. We have indicated the extent of the material put forward by Dr McTighe in the course of the appeal; it would clearly be wholly disproportionate to address everything he says in these reasons. We consider below the main points on which he relies, which are largely set out at pages 19/20 of the bundle.
14. First, he says that the requests are on "different subjects"; he has also made the related point that they largely arise out of changes to the timetable made in January 2018 and new routes in contemplation in February 2018. It is fair to say that the immediate triggers for the requests appear to be new developments but they are all on the same general theme of his dissatisfaction with the bus service and the activities of the Welsh Government in relation thereto.

15. Second, he says that there has been no burden on the Welsh Government in the past because they have studiously avoided answering previous requests under FOIA and all the burden has been on him. That is not consistent with our impression of the correspondence (see in particular the correspondence at pages 109-121 which Dr McTighe has specifically directed our attention to); but in any event, as we say, the burden involved in dealing with the four requests in question alone would be very considerable.
16. Third, he says he has not targeted any individual official in his requests. Whatever may have applied in the past, that is clearly not the case in relation to the four requests we are directly concerned with.
17. Fourth, he says there are no “vexatious” elements in those four requests. If he means by this that they are put in reasonably temperate language we would agree.
18. Fifth, he suggests that the “trigger” for the refusal to answer the first three requests on 19 February 2018 was the receipt of the fourth one, which asked the Minister direct questions about a new route in North Wales about which it seems Dr McTighe is suspicious. We do not think that that inference can fairly be drawn but, in any event, we consider that the question for us to address is whether the four requests taken together amount, on an objective assessment, to vexatious requests for information.
19. In his sixth to ninth points he implicitly accepts that there has been a large volume of correspondence over the years leading up to 2018. He accepts that this reflects “persistence” on his part but, he says, the real reason for it is the behaviour and lies of the Welsh Government in relation to the bus service and its dealings with him and his FOIA requests in particular. As he acknowledges in a passage at page 236 of our bundle, whether he is right in his allegations of lies by the Government is unknown because they have never been properly investigated. But, he says, given that they have never been investigated, the Welsh Government should not refuse to answer FOIA requests because of his accusations of lying. We would only observe that the Welsh Government appear to have continued to engage with

his FOIA requests notwithstanding his accusations of lying and that this is by no means the only matter they rely on for refusing to answer these four requests.

20. In his tenth point Dr McTighe states that his request has a serious purpose and raises a matter of substantial public concern. We accept that Dr McTighe has a close and genuine personal interest in the TrawsCymru bus service and that he genuinely believes that his FOIA requests have some useful purpose and, indeed, that his beliefs about the conduct of the Government and the individuals against whom he has made allegations are genuine. We also accept that the way the bus service is run by the Welsh Government is a matter of some public interest, though the issues that concern Dr McTighe appear to relate very much to the parts of the system that he personally uses. But, as we have indicated, the public interest in the topic at hand cannot be a “trump card” in assessing whether FOIA requests are vexatious; and the same must apply to the genuineness of the requester’s motives and beliefs.

21. Dr McTighe also makes a specific complaint that the Information Commissioner did not contact him in the course of her investigation for a response to the material put before her by the Welsh Government at pages 131-214 of the bundle. Generally, it is for the Commissioner to decide how to conduct her investigations but in any event, since he has now had an opportunity to respond and this Tribunal is able to carry out a full review, any unfairness has been remedied.

Conclusion

22. Taking account of all the relevant circumstances, including the points made by Dr McTighe, we are quite satisfied that these requests were vexatious. The most important factor in our view is the burden involved in dealing with the four requests themselves. And however genuine Dr McTighe’s motives and beliefs, we are satisfied that the requests represent the continuation of an obsessive campaign which will involve further FOIA requests and further accusations against individuals, whatever responses are given this time. So far as there is a

public interest in the matter, it does not come close to “trumping” the conclusion that the requests are vexatious.

23. We therefore consider that the Commissioner’s decision notice was right in its conclusion and we dismiss the appeal.

24. Our decision is unanimous.

HH Judge Shanks

Promulgation date: 8 July 2019